

**IN THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN**  
**BEFORE SHRI SANJAY ARORA, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No.73/Coch/2022  
(Assessment Year: 2011-12)

Laly Chirakandathil George Kattarukudiyil, RMV Road, Elamakara, Kochi-26	Vs.	The ACIT Corp. Circle 1(2) Kochi
PAN/GIR No. AFCPG 8832 K		
(Assessee)	:	(Respondent)
<b>Assessee by</b>	:	Shri Mathew Joseph
<b>Respondent by</b>	:	Smt. J M Jamuna Devi
<b>Date of Hearing</b>	:	06.03.2024
<b>Date of Pronouncement</b>	:	05.06.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2011-12.

2. The assessee has challenged the intimation passed u/s. 143(1) of the Act by the learned Assessing Officer (ld. A.O. for short)/CPC in disallowing the set off of short term capital loss (STCL for short) amounting to Rs.18,76,000/- against the long term capital gain (LTCL for short).

3. The brief facts are that the assessee is an individual and had filed her return of income dated 12.02.2013 declaring total income at Rs.29,18,400/- and the same was

processed u/s. 143(1) of the Act. The Id. A.O./CPC vide intimation dated 02.09.2013 u/s. 143(1)(a) of the Act disallowed the set off of short term capital loss against the LTCG thereby determining the total income at Rs.29,18,400/-.

4. The assessee was in appeal before the first appellate authority on 11.03.2019, challenging the impugned intimation.

5. The Id. CIT(A) vide order dated 23.12.2021 had dismissed the appeal filed by the assessee for the reason that there has been a delay of 5 years and 157 days in filing the appeal before the first appellate authority and for which the assessee has not given 'sufficient cause' for the said delay.

6. Further aggrieved the assessee is in appeal before us, challenging the orders of the lower authorities.

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee had filed her return of income for the impugned year on 12.02.2013 u/s. 139(4) of the Act, declaring total income at Rs.10,42,400/-. The assessee in her written submission had stated that she had incurred the STCL on transfer of property of Compara amounting to Rs.18,76,000/- which was claimed to be set off against LTCG of Kothamangalam property amounting to Rs.22,47,759/- u/s.74(1)(a) of the Act. The assessee has further stated that after set off she had declared a sum of Rs.3,71,159/- under the head 'capital gains (long term)', thereby declaring total income at Rs.10,42,400/-. The assessee contended that the intimation u/s. 143(1) of the Act, the

CPC has erroneously determined total income at Rs.29,18,400/- after disallowing the claim made by the assessee u/s. 74(1)(a) of the Act.

8. In the above factual matrix of the case, we notice that the assessee has filed the first appeal before the Id. CIT(A) with a delay of more than five years for which the assessee has reasoned that she was on a *bona fide* belief that the mistake committed by Id. A.O/CPC will be *suo moto* corrected and only after receiving the demand notice dated 26.10.2018 for a demand of Rs.6,65,380/- she was aware of the said proceeding. The Id. CIT(A) had denied to condone the inordinate delay on the part of the assessee in filing the appeal before the first appellate authority and had proceeded to dismiss the appeal on this ground without getting into the merits of the case.

9. Before us, the assessee has challenged only the intimation passed by the CPC and rather had not challenged the order of the Id. CIT(A). As the Id. CIT(A) has not decided the issue on the merits of the case, we refrain to decide the same without there being a finding on the merits. Even before us, the assessee has neither raised a ground challenging the order of the Id. CIT(A) in refusing for such condonation nor has she substantiated the delay of more than five years in filing the first appeal with 'sufficient cause'. Intimation u/s. 143(1)(a) of the Act is itself a notice of demand and further there was nothing to suggest that the said intimation dated 02.09.2013 was not received by the assessee in due course. The letter dated 26.10.2018 was a reminder for the payment of outstanding demand. There is no explanation for the delay after 26.10.2018 as well. As we are aware of the legal maxim that "*Ignorantia Juris Non Excusat*" means

that ignorance of the law is no excuse, we find no infirmity in the order of the Id. CIT(A).

We, therefore, are inclined to dismiss the appeal filed by the assessee.

10. In the result, the appeal filed by the assessee is dismissed.

*Order pronounced on 05.06.2024 under rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963.*

Sd/-

(Sanjay Arora)  
Accountant Member

Mumbai; Dated : 05.06.2024  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Cochin
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Cochin