

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

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| ITA No. 104/Coch/2023 |
| Assessment Year : 2009-10 |

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| M/s. Kadirur Service Co-operative Bank Ltd., Kadirur, Thalassery, Kannur, Kerala – 670 642. PAN: AAFFK6859E | Vs. | The Income Tax Officer, Ward – 2, Kannur. |
| APPELLANT | | RESPONDENT |

| | | |
|-------------|---|-------------------------------|
| Assessee by | : | Shri Arun Raj .S, Advocate |
| Revenue by | : | Shri Ilayaraja K.S, Sr. DR |

| | | |
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| Date of Hearing | : | 19-06-2024 |
| Date of Pronouncement | : | 15-07-2024 |

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order passed by NFAC, Delhi dated 22.11.2022 for A.Y. 2009-10.

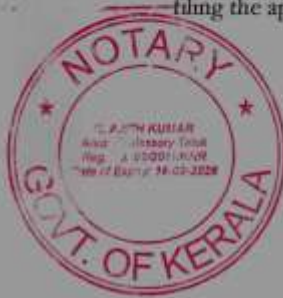
2. At the outset, it is submitted that, there is delay of 12 days in filing the present appeal before this *Tribunal*. The Ld.AR furnished affidavit for condonation of delay that reads as under:



AFFIDAVIT

I, Hemalatha P.M, D/o Narayanan PM, aged 57 years, residing at Sreekunj, P.O Champad, Kannur-67 0694 do hereby solemnly affirm and state as follows:

1. I am the Secretary of the petitioner/appellant society. I know the facts of the case as disclosed from the records. I am competent to swear to this affidavit and I am authorised to swear to this affidavit on behalf of the petitioner/appellant society. I do so.
2. The order dated 22-11-2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi for the AY 2009-10 was received on 22-11-2022. Thereafter a decision was taken by the petitioner/appellant society for filing the appeal before the Hon'ble ITAT. The appellant thereafter contacted the Chartered Accountant in the last week of December, 2022 for further course of action. The date of receipt of the order was inadvertently noted in the file as 22-12-2022. Therefore was under the impression that the time for filing the appeal is till 20-2-2023. The order of the CIT (Appeals) along with the assessment order was thereafter forwarded by the Chartered accountant to the counsel at Ernakulam by the third week of January, 2023. On receiving the same, the counsel sought for the back records. The same was thereafter arranged and given to the counsel. The appeal was then prepared and the same could be filed only on 1-2-2023.
3. As already stated the order dated 22-11-2022 of the CIT (Appeals), NFAC, Delhi was received by the appellant on 22-11-2022. The appeal ought to have been filed on or before 21-1-2023. For the reason stated above the appeal could be filed only on 1-2-2023. There occurred a delay of 12 days in filing the appeal.



[Handwritten Signature]
 SECRETARY
 For The Kadirur Service
 Co-op. Bank Ltd. No. F. 1262
 Head Office, Kadirur-670 643
[Handwritten Signature]
 31/01/23
K. AJITH KUMAR
 ADVOCATE & NOTARY
 ROLL NO. K/852/05
 Near Dist. Court Thalassery
 PH: 9487252180

4. As already stated above, the delay caused is solely due to the bonafide reason narrated herein above. There is no wilful negligence or deliberate latches on the part of the appellant in not filing the appeal within the stipulated time limit. The delay caused is solely due to the reasons state above. If the delay of 12 days is not condoned by the Hon'ble ITAT, the appellant would be put to great hardship and irreparable loss and injury.


5. It is submitted that several legal grounds are taken in the appeal and the same may be considered and treated as part of this affidavit. The petitioner has got every chances of succeeding the matter in appeal if the same is considered on merits.

6. In the interest of justice the aforesaid delay of 12 days may kindly be condoned and the appeal may be heard on merits.


7. A separate petition seeking for the above relief is filed herewith.


All the facts stated above are true to the best of my knowledge, belief and information.

Dated this the 31st day of January, 2023


SECRETARY
 For The Kadirur Service
 Co-op. Bank Ltd. No. F. 1262
 Head Office, Kadirur-670 642
 Deponent

Solemnly affirmed and signed before me by the deponent whom I know on this the 31st day of January, 2023

Signed before me
 Notary 
 K. AJITH KUMAR
 ADVOCATE & NOTARY
 ROLL NO. K/852/95
 Near Dist. Court, Thalassery
 PH: 9497292980



2.1 In view of the above, the assessee could not file the appeal before this *Tribunal* well in time and by the time the appeal papers were prepared for filing, there arose delay of about 12 days in filing the present appeal before this *Tribunal*. As reason for the delay in filing the present appeal was due to reason

beyond the control of the assessee, he prayed for the delay to be condoned.

2.2 The Ld.DR though objected however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeal.

We have perused the submissions advanced by both sides in the light of records placed before us.

2.3 In our opinion there is sufficient cause to condone the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

2.4 It is also noted that there is no malafide intention on behalf of assessee in not filing the present appeal within time. Considering the circumstances under which the delay was caused in filing the present appeal before this *Tribunal* we are of the opinion that there was no malafide intention of the assessee in causing the delay to file the present appeal. It is also that nothing contrary could be established by the revenue before us.

2.5 We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits". The

expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

2.6 Considering the submissions by both sides and respectfully following the observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeal as it is not attributable to the assessee.

Accordingly, the delay in filing the present appeal before this Tribunal stands condoned.

3. The Ld.AR further submitted that, there is delay of 1425 days in filing appeal before the Ld.CIT(A).

4. It is submitted that in Form 35, the assessee stated the reason for the delay caused in filing the appeal before the Ld.CIT(A), as under:

“1. The assessment order dated dated 17-03-2015 issued u/s 143(3) rws 147 by disallowing deduction u/s 80p 2 a i and 80p 2 d by the Income Tax officer Ward - 2 Kannur was served on the assessee on 21-03-2015.

2. The return for AY 2009 10 was originally filed in pursuance to a notice u/s 142(1) dated 28-02-2011 on 15-09-2011. The detailed information was called for by the assessing officer u/s 142(1) and all the details was provided by the Society from time to time during the course of the hearing. The assessing officer on the basis of the details submitted by the appellant issued a pre assessment notice dated 21-11-2011. The Order u/s 143(3) was not issued completing the assessment.

3. Subsequently a notice u/s 147 dated 29-03-2014 was issued and a return was filed on in pursuance to the notice u/s 147 on 25-08-2014. The demand for the A.Y 2009-10 arose on account of an erroneous addition of two items in the Balance sheet ie provision for core Banking and service tax amounting to Rs.20,00,000 and 10,00,000 respectively which was not debited to the profit and Loss A/c of F Y 2008-09.

4. The secretary inadvertantly kept the order without knowing that there was a demand as per the order since there was no demand raised in the pre assessment notice issued by the income Tax office ward 2, kannur. The assessment order was for the same reason was also not handed over to the authorized representative.

5. It was only when the Income Tax office ward-2 kannur issued an outstanding tax arrear notice dated 11-01-2019 that the demand has come to the notice of the Society and the appellant immediately thereafter has filed this appeal. The order u/s 143(3) was received on 21-03-2015 and there is a delay of about 1425 days which may be condoned in view of the unusual and unintentional circumstances stated above.”

The Ld.AR thus prayed for the delay to be condoned before the Ld.CIT(A) as the appeal has been dismissed by Ld.CIT(A) in limine, without considering the issues on merits.

On the contrary, the Ld.DR vehemently opposed to the condonation.

5. Having regard to the submissions by the assessee, we refer to the decision of *Hon'ble Cochin Bench of this Tribunal* in the case of *Midas Polymer Compounds Pvt. Ltd.* dated 25.6.2018, condoned the delay of 2819 days by observing as follows:

"6. We have heard the rival submissions and perused the record. There was a delay of 2819 days in filing the appeal before the Tribunal. The assessee has stated the reasons in the condonation petition accompanied by an affidavit which has been cited in the earlier para. The assessee filed an affidavit explaining the reasons and prayed for condonation of delay. The reason stated by the assessee is due to inadvertent omission on the part of Shri Unnikrishnan Nair N, CA in taking appropriate action to file the appeal. He had a mistaken belief that the appeal for this year was filed by the assessee as there was separate Counsel to take steps to file this appeal before the ITAT. Therefore, we have to consider whether the Counsel's failure is sufficient cause for condoning the delay. The Madras High Court considered an identical issue in the case of Sreenivas Charitable Trust v. Dy. CIT (280 ITR 357) and held that mixing up of papers with other papers are sufficient cause for not filing the appeal in time. The Madras High Court further observed that the expression "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.

6.1 On merit the issue is in favour of the assessee. But there is a technical defect in the appeal since the appeal was not filed within the period of limitation. The assessee filed an affidavit saying that the appeal was not filed because of the Counsel's inability to file the appeal. The Revenue has not filed any counteraffidavit to deny the

allegation made by the assessee. While considering a similar issue the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late

(2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay?

The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

6.2 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of nondeliberate delay. In the case on our hand, the issue on merit regarding allowability of deduction u/s. 80IB of the Act was covered in favour of the assessee by the binding Judgment of the jurisdictional High Court. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the appeal was not filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the Tribunal is

capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalising an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorised by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalise an illegal and unconstitutional order passed by the lower authority. Therefore, in our opinion, by preferring the substantial justice, the delay of 2819 days has to be condoned.”

6. In the present facts, on examining whether the reason stated by the assessee to seek condonation of delay are sufficient to condone the delay and whether, there exists sufficient cause for not presenting the appeal before Ld.CIT(A) within the period of limitation under the statute, the assessee must show that it was diligent in taking appropriate steps and the delay was caused notwithstanding with its due diligence. It is for the party concerned to explain the reasons for delay and it is not the function of concerned authorities often to find cause for delay. The Court/authority has to examine whether the sufficient cause has been shown by the party for condoning the delay, and whether such cause is reasonable or not. In the present case in hand, the assessee explained the delay in filing the appeals before the Ld.CIT(A) was on the reason that the assessee presumed the appeals were filed by the representative who was handling the case at that point of time, and it was only on receipt of the recovery notice that the lapse was realized. This being the position, it constitutes a sufficient cause for filing the appeals belatedly.

6.1 Further, on perusal of cause that leads to delay, we note that it was the bounden duty of the secretary to approach a tax practitioner for correct advice. It is submitted by the Ld.AR that the secretary was under a bonafide belief that nothing further needs to be done in respect of the assessment order. In any case, the assessee is not benefitted with the delay caused in filing appeal before Ld.CIT(A), the lapse that occurred on behalf of the representative cannot be attributed to the assessee for which assessee could be punished.

7. In case of *People Education & Economic Development Society Vs. ITO* reported in *100 ITD 87 (TM) (Chen)*, it was held that;
“when substantial justice and technical consultation are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay”.

8. The next question that arises is whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not able to file the appeals within the period of limitation. The cause for the delay therefore deserves to be considered, when there exist a reasonable cause, and therefore the period of delay may not be relevant factor. In support, we rely on the decision of *Hon’ble Madras High Court* in the case of *CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596)* considered the condonation of delay and held that there was sufficient and

reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. *Hon'ble Madras High Court* thus condoned nearly 21 years of delay in filing the appeal. As compared to 21 years, delay of about 1000 to 2000 days cannot be considered to be inordinate or excessive.

9. *Hon'ble Madras High Court* in the case of *Sreenivas Charitable Trust* reported in 280 ITR 357 held that, no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the *Hon'ble Madras High Court (supra)* clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause" should receive a liberal construction. In opinion of this *Tribunal*, this decision of *Hon'ble Madras High Court* is applicable to the present facts of the case. A similar view was taken by *Hon'ble Madras High Court* in the case of *Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad)*.

10. We also refer to the decision of *Hon'ble Mumbai Bench of this Tribunal* in the case of *Bajaj Hindusthan Ltd. v. Jt. CIT (AT)* reported in *277 ITR 1* condoned the delay of 180 days when, the appeal was filed after the pronouncement of the Judgment of the *Hon'ble Supreme Court*. It is also to be noted that the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. *Hon'ble Supreme Court* in the case of *Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi* reported in *AIR 1978 SC 537* held that, non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counter-affidavit opposing the application of the assessee, therefore, as held by *Hon'ble Supreme Court*, there is sufficient cause for condonation of delay. *Hon'ble Supreme Court* also observed that; *"It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. Condonation of delay is the discretion of the Court/Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not filing the appeal within the period of limitation, the delay deserves to be condoned, irrespective of the duration/period."*

11. At this juncture, we also take assistance and support from the observations of *Justice Krishna Iyer* as he has quoted at various occasion while dealing with technicalities that *"any interpretation that alludes substantive justice is not to be followed and that substantive justice must always prevail over procedural*

technicalities". Even *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 has laid down a ratio of similar principles.

12. We therefore feel that the reasons assigned by the assessee inability to present the appeal within time before Ld.CIT(A) deserves consideration based on the principles laid down by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471.

13. Reliance is placed on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

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14. However, it is noted that the assessee could not substantiate the delay caused in filing the appeals before the Ld.CIT(A) in accordance with law and the Ld.CIT(A) dismissed the appeal for non-appearance.

In the interest of justice, the appeals are remitted back to the Ld.CIT(A). The assessee is directed to file condonation petition before the Ld.CIT(A) along with necessary evidences. The Ld.CIT(A) shall consider the affidavit filed by the assessee and pass necessary orders in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 15th July, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 15th July, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore