

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

Before Shri Waseem Ahmed, Accountant Member and  
Shri Soundararajan K., Judicial Member

**ITA No. 367/Coch/2024&  
SA No. 44/Coch/2024**  
(Assessment Year: 2016-17)

Centre for Heritage Studies Hill Palace, Thripunithura Ernakulam 682301 [PAN: AACAC5001G]	vs.	Deputy Commissioner of Income Tax, Kochi
(Appellant)		(Respondent)

Appellant by:	Shri .M. Veeramani, CA
Respondent by:	Smt. Girly Albert, Sr. D.R.

Date of Hearing:	30.09.2024
Date of Pronouncement:	21.10.2024

**ORDER**

Per Bench

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 26.03.2024 for Assessment Year (AY) 2016-17. The assessee has also filed a stay application SA No. 44/Coch/2024 qua the appeal.

2. At the outset, it was noticed that there was a delay in filing the appeal before the Id. CIT(A) of 1439 days which was not condoned by the learned CIT(A) and therefore the appeal filed by the assessee was dismissed in limini.

3. However, the learned A.R. before us contended that in the present case the gross amount has been added to the total income of the assessee in arbitrary manner without given benefit of corresponding expenditure/application of income. According to the learned A.R., the income of the

assessee has to be charged to tax within the four corners of law despite the assessee failed to cooperate during the proceedings. According to the learned A.R. the assessee has a strong case on merits and therefore a meritorious case should not be dismissed on technical lapses.

4. The learned A.R. also contended that the substantial delay in filing the appeal before the learned CIT(A) is also attributable to the Covid-19 period which was duly condoned by the Hon'ble Supreme Court. Accordingly, the learned A.R. prayed before us to restore the issue to the file of the Id. CIT-A with the direction to the learned CIT(A) to condone the delay and decide the issue on merits.

5. On the other hand, the learned CIT-DR considering the substantial delay opposed to condone the same.

6. We have heard the rival contentions of both the parties and perused the material available on record. Indeed, the delay is substantial, but the meritorious case cannot be ignored merely on the delay in filing the appeal. In this regard, we note that the Hon'ble Gujarat High Court in the case of Vareli textile industry versus CIT reported in 154 Taxman 33 has held as under:

*It is equally well-settled that where a cause is consciously abandoned (as in the present case) the party seeking condonation has to show by cogent evidence sufficient cause in support of its claim of condonation. The onus is greater. One of the propositions of settled legal position is to ensure that a meritorious case is not thrown out on the ground of limitation. Therefore, it is necessary to examine, at least prima facie, whether the assessee has or has not a case on merits.*

7. From the above, it is transpired that a meritorious case of the assessee should not be thrown away due to negligence or on account of technical lapses. In the light of the above stated discussion, we proceed to evaluate whether the delay in the present case needs to be condoned in the given facts and circumstances. Admittedly, the gross amount cannot be made subject to the charge of tax

without allowing the corresponding expenditure/ application of income. Accordingly, we are of the opinion that it is the fit case where the delay has to be condoned irrespective of the duration/period of the delay. We also note that there is no allegation from the Revenue that the appeal was not filed by the assessee within the time deliberately. Therefore, we are inclined to prefer substantial justice rather than technicality in deciding the issue. We also find that if we reject the application of the assessee for condoning the delay before the Id. CIT-A, then it would amount to legalise injustice on technical ground whereas the Tribunal is capable of removing injustice and to do justice. Thus, we condone the delay of in filing the appeal before the Id. CIT-A and restore the issue to the file of the Id. CIT-A. Accordingly, we direct the Id. CIT-A to adjudicate the appeal on merit. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 21<sup>st</sup> October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-  
(Soundararajan K.)  
Judicial Member

Sd/-  
(Waseem Ahmed)  
Accountant Member

Cochin, Dated: 21<sup>st</sup> October, 2024

n.p.

Copy to:

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

Assistant Registrar  
ITAT, Cochin