

IN THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

(Through Virtual Court)

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PRAKASH CHAND YADAV, JM**

**ITA No. 612/Coch/2024
& SA No. 144/Coch/2024
Assessment Year: 2017-18**

D.C. Mills (Pvt.) Ltd. 134/1, Valavanadu Kalavoor, Alappuzha 688522 [PAN: AABCD1022F]	vs.	The Income Tax Officer Ward - 1 & TPS, Alappuzha
(Appellant)		(Respondent)

Appellant by:	Smt. Parvathy Ammal, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	18.11.2024
Date of Pronouncement:	29.11.2024

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [hereinafter "CIT(A)"] dated 18.03.2024 for Assessment Year (AY) 2017-18.

2. Brief facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. The assessee is engaged in the business of manufacturing and trading of coir and coir products. The assessee filed return of income for AY 2017-18 on 29.10.2017 declaring a loss of Rs.10,65,59,015/-. During

the course of assessment proceedings based on the audited financial results the loss was revised to Rs. 3,56,76,310/-. Accordingly the assessment was completed vide order dated 26.12.2019 vide order passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total loss of Rs. 3,56,76,310/-. The Income Tax Officer, Ward-1 & TPS, Alappuzha (herein after "the AO") also initiated penalty proceedings u/s. 270A r.w.s. 274 of the Act. Subsequently the assessment was rectified by the AO vide order dated 13.04.2021 passed u/s. 154 of the Act at a total loss of Rs. Nil. As the assessee had failed to respond to the show cause notice issued u/s. 270A r.w.s. 274 of the Act, the AO proceeded with levy of penalty of Rs. 7,37,55,890/- u/s. 270A of the Act alleging that the assessee is guilty of misreporting the income of Rs. 10,65,59,015/- vide order dated 07.08.2021.

3. Being aggrieved by the above penalty order an appeal was filed before the CIT(A), who vide the impugned order dismissed the appeal for non prosecution.

4. Being aggrieved by the order of the CIT(A) the assessee is in appeal before the Tribunal in the present appeal. At the outset we find that there is a delay in filing the present appeal by 41 days. The assessee filed an affidavit praying for condonation of delay on the ground that the order passed by the CIT(A) was not served physically but through e-mail which was not noticed by the assessee. He also placed reliance on the decision of the Hon'ble Madras High Court in the case of Jack Communications (P.) Ltd. vs. DCIT (W.P. No. 35453

of 2023 dated 19.12.2023) wherein it was held that the failure of the department to serve the assessment order through physical service renders the service invalid. Thus he prayed that the delay be condoned in the interest of justice adopting a liberal view.

5. On the other hand, the learned CIT-DR has not seriously opposed the condonation of delay.

6. We have heard the rival contentions of both the parties and perused the material available on record. There is no material on record to disbelieve the averments made in the affidavit explaining the reasons for the delay in filing the present appeal. Keeping in view the salutary principle of law that ordinarily the litigant does not stand to gain anything by filing the appeal belatedly. We are of the considered opinion that it is a fit case for condoning the delay. Accordingly we condone the delay and admit the appeal for adjudication.

7. We have carefully perused the order passed by the CIT(A). In the grounds of appeal the assessee has taken a specific ground that the penalty is not leviable for the failure of the AO to strike off the relevant part of the show cause notice placing reliance on certain judicial precedents. The assessee also brought on record the statement of facts leading to the levy of penalty. However, from the perusal of the impugned order it would show that the CIT(A), after extracting the assessment order and the statement of facts filed by the assessee had merely dismissed the appeal for non prosecution. It

is the settled position of law that the CIT(A), even while disposing of the appeal exparte, is duty bound to dispose of the appeal on merits. Reliance in this regard can be placed on the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Premkumar Arjundas Luthra 279 CTR 614. Therefore, in the light of the above legal position we are of the considered view that the matter required to be remanded to the file of the CIT(A) with the direction to dispose of the appeal de novo on merits after affording reasonable opportunity of hearing to the assessee.

8. Since the quantum of appeal of the assessee is disposed of by the order of remand to the CIT(A), the stay application becomes infructuous, hence dismissed.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay application is dismissed as infructuous.

Order pronounced in the open court on 29th November, 2024

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 29th November, 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

By Order

Assistant Registrar
ITAT, Cochin