

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

BEFORE SHRI INTURI RAMA RAO, AM

**ITA Nos. 759 to 763/Coch/2024
Assessment Years: 2010-11 to 2014-15**

Syedali Ebrahim Appellant
328, 239 Saad Manzil, Pathamkallu
Neyyatinkara, Trivandrum 695009
[PAN: AAJPE7592E]

vs.

ACIT, Circle - 1(2) Respondent
Aayakar Bhavan, 1st Floor
Kowdiar, Thiruvananthapuram 695003

Appellant by: Smt. Divya Ravindran, Advocate
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 17.01.2025
Date of Pronouncement: 23.01.2025

ORDER

These appeals filed by the assessee are directed against the orders of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 26.06.2024 for Assessment Years (AYs) 2010-11 to 2014-15.

2. Since identical issues are involved, these appeals are heard together and disposed of vide this common order. For the sake convenience and clarity, I shall adjudicate the appeal for AY 2010-11 as the lead case and the findings of this year will mutatis mutandis apply to the other assessment years.

3. Brief facts of the are that the appellant is an individual carrying on the business of trading in steel rods in the name and style of M/s. Giant Steels. The appellant filed return of income for AY 2010-11 on 08.10.2010 declaring total income of Rs. 3,66,520/-. The ACIT, Circle 2(1), Thiruvananthapuram (hereinafter called "the AO") initiated penalty proceeding proceedings u/s. 274 r.w.s. 271B of the Income Tax Act, 1961 (the Act) on noticing that the appellant had failed to submit the prescribed audit report as envisaged under provisions of section 44AB of the Act. In respect of show cause notice the appellant could not file any explanation. In the circumstances the AO had proceeded with levy of penalty of Rs. 1,00,000/- for AY 2010-11 vide order dated 26.11.2019.

4. Being aggrieved, an appeal was filed before the CIT(A), with a delay of 1463 days. It was submitted that the delay had occurred as the show cause notice as well as the penalty orders were served on the erstwhile Chartered Accountant, who had failed to inform the appellant. Subsequently it is only during the Covid-19 pandemic period the appellant came to know about passing of penalty orders for AYs 2010-11 to 2014-15. Immediately he approached another Chartered Accountant who passed away on 22.09.2022. Finally the appeal came to be filed on 38.12.2023 through another Chartered Accountant. Thus, it was explained that the appellant was prevented by reasonable cause in filing the appeal before the CIT(A). However, the CIT(A) dismissed the appeal in limine on the ground of delay by holding that the appellant was guilty of negligence.

5. Being aggrieved, the appellant is in appeal before me in the present appeal.

6. I heard the rival contentions of both the parties and perused the material available on record. The solitary issue that arises for my consideration is whether the CIT(A) was justified in refusing to condone the delay. At the outset I find that the date of the order levying penalty cannot be presumed to be the date of service of the order. It is now settled law as held by the Hon'ble Delhi High Court that the limitation period would be from the date the appellant had knowledge of the order, which has to be reckoned for the purpose of computing the limitation period, not the date of service. Further I find that the CIT(A) had failed to give a finding on the bona fides of the explanation given for the delay in filing the appeal before him. The tenor of the order of the CIT(A) would indicate that he simply got carried away by the length of the delay. It is settled position of law that for the purpose of condonation of delay the length of delay does not matter. What is to be considered is whether there is sufficient cause for the delay or not. In the circumstances I am of the considered opinion that in order to meet the ends of justice the matter requires remand to the file of the CIT(A) for de novo disposal of the appeal after affording opportunity of being heard to the appellant.

7. The above discussion and find shall mutatis mutandis apply to the appeals for AYs 2011-12 to 2014-15.

8. In the result, appeals filed by the appellant stand allowed for statistical purposes.

Order pronounced in the open court on 23rd January, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 23rd January, 2025

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