

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.810/Coch/2024
Assessment Year: 2016-17

Shobha Ramakrishnan Nair Karthika Sebipuram Ernakulam Manjapra SO Kerala 683581 PAN NO :AWRPR5406L	Vs.	ITO Ward-2 Aluva
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Smt. Leena Lal, Sr. D.R.

Date of Hearing	:	30.01.2025
Date of Pronouncement	:	02.04.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id. CIT(A)/NFAC dated 22.12.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059003947(1) for the AY 2016-17 passed u/s 250 of the Income Tax Act, 1961 (in short "The Act").

2. The assessee has raised the following grounds of appeal:

1. The order of the Commissioner of Income tax(Appeals) NFAC, Delhi, dated 22-12-2023, dismissing my appeal *in limine* without condoning the delay in filing the appeal, which was on genuine grounds, and without considering the submissions and evidences filed by the appellant and also without admitting the additional evidence filed before him, on flimsy grounds, is in violation of the provisions of rule 46 A of the Income tax rules, and is opposed to law, facts and evidences of the case.

2. The learned CIT(A) erred in holding at para 2 page 12 of his order, that the appellant has not filed any condonation of delay petition with regard to the delay in filing the appeal. In form 35 in the relevant columns 14 and 15 of the assessee had filed the grounds for condonation of delay. The appeal ought to have been heard on merits as held in the following decisions

- (i) ITA No. 852/ Coch/2023(a.y.2017-18) of Hon.ITAT,Cochin, dated 16-05-2024, T.Suma vs ITO ward -1, Kalpetta, Wayanad, wherein, the Hon. Bench relying on the Supreme Court decision in Saroj Aggarwal vs CIT (1985) 156 ITR 297 condoned a delay of 144 days in filing appeal before CIT (A).
- (ii) (II) ITA No 6240/M/2007 (Asst. year 1999-2000)of Hon.ITAT, Mumbai, dated 2-3-2010,
- (iii) Phoenix Mills Ltd. vs ACIT,Circle-7(1), Mumbai, wherein the Hon. Bench relied on the Supreme Court decision in the case of Mela Ram and sons vs CIT 29 ITR 607(SC).

3. The learned CIT (A) ought to have seen that this was not a case of non representation before him and he ought to have condoned the delay and admitted the appeal. The Hon ITAT, Cochin has held that even in a case of non response from the assessee, an assessment grossly inconsistent with the facts of the case is not justified and had ordered the appeal to be heard on merits by the CIT(A). ITA no 886/Coch/ 2022(Asst. year 2017-18) dated 28-05-2024- K T Johny V ITO ward 2 (2), Thrissur

4. The learned CIT (A) erred in not considering the submissions ,with proof, raised by the appellant assessee that the learned A.O. failed to notice that the

email address of the assessee was changed in the Income tax portal in the year 2018 itself. However the emails were being sent to the old e mail address .The first notice was issued on 30-03-2021, 31 months after the change of email address was accepted by the Department and changed in the Income-tax portal. The recipient of the e mail was a staff of the assessee, and she never informed the assessee about the receipt of e mails from the Department. Hence the notice under section 148 dated 30-03-2021 stated to have been issued to the assessee at the wrong e mail address and the consequent assessment under section 147 r.w.s. 144 read with section 144B is **void ab initio** and deserves to be quashed. In support of this contention appellant relies on the following decision of the HON. ITAT, wherein several decisions of various High courts are quoted.

1) Girirajakripa Developers Pvt. Ltd. Vs ITO ward 3(2), Jaipur (ITA No. 168/JP/2020 dated 11-09-2020 of ITAT, Jaipur.

2) Om Parkash Kukreja Vs Department of Income-tax (ITA nos. 335 and 336 /CHD/2015 dated 08-04-2016 of ITAT, Chandigarh)

5. The CIT(A) erred in confirming the Order of the A.O. dated 29/03/2022 under section 147 r.w.s 144 and r.w.s section 144B of the Income-tax Act , which is bad in law and is *void ab initio*, as none of the notices, communications etc. , including the notice under section 148 of the Income-tax Act ,stated to have been served on the assessee were served on the assessee, nor was she aware of such notices/ communications till she received a notice dated 04-08-2022 from the local jurisdictional Assessing Officer. The CIT(A) also) erred in confirming the incorrect finding of the assessing officer that the notices/ communications etc. addressed to the wrong e mail address were served on the assessee. She was given temporary license to be a stamp vendor from 25-11-2015 to 31-3-2016), which was subsequently extended as the original licensee was unwell. Being the first year of business, she was unaware of the provisions of the Income-tax law. Moreover, she did not have taxable income during this period and was under no obligation to file her return of income for the asst year 2016-17.

6. The CIT(A) erred in not considering the evidences filed before him showing remittances to the Sub- Treasury account of the entire sale proceeds

from sale of stamp papers of Government of Kerala through bank. The assessee only gets a commission of 2 per cent to 4 per cent from sale of stamps The Department could have easily verified this from the Kerala Government Treasury office records.

7. Notwithstanding the submission that the assessment is bad in law, the CIT(A) erred in not considering the fact that the learned assessing officer erred in holding that the entire amount deposited as cash in her bank account is unexplained money under section 69A of the income-tax Act. When the very basis of issuing notice under section 148 were the credits in the bank account, the debits also should have been considered and verified from the copy of the bank account available with the A.O. There is no law against depositing cash in the bank account if the source can be explained, for which the assessee did not get an opportunity as she was not served with the notice under section 148 of the Income tax Act. The learned assessing officer and the CIT (A) erred in not noticing that almost the entire amount deposited as cash in the assessee's bank account had been deposited to the Treasury account of Government of Kerala. It is humbly submitted that the assessee should not be made to pay for the fault of the income tax Department and for no fault of her. At no time was she able to participate in the assessment proceedings and hence the CIT(A) erred in not considering the submission of the assessee that assessment is bad in law.

8. Assuming ,but not admitting, that the notice under section 148 and subsequent notices are valid, assessing the entire credits' in the bank account without considering the fact that almost the entire credits received through sale of stamp paper were deposited through bank into the KERALA GOVERNMENT TREASURY ACCOUNT, is totally unjustified and incorrect.

9. For these and other grounds that may be raised at the time of hearing ,the order of the Assessing Officer NFAC, New Delhi and of the CIT (A) NFAC may be quashed, since the notice issued is *void ab initio* and hence assessment is bad in law

3. There is a delay of 202 days in filing the appeal before this Tribunal. The assessee has filed a petition for condonation of delay in filing appeal along with a detailed affidavit dated 07.09.2024 explaining the reason for delay which is reproduced below for ease of reference and convenience:

भारतीय गैर न्यायिक
बीस रुपये
रु. 20
INDIA
INDIA NON JUDICIAL

GOVERNMENT OF KERALA
REVALIDATED TO
Rs. 100
(HUNDRED RUPEES)
RUPEES
SIGNATURE OF THE PROPER OFFICER WITH DATE

കേരളം കേരल KERALA 25AA 862685

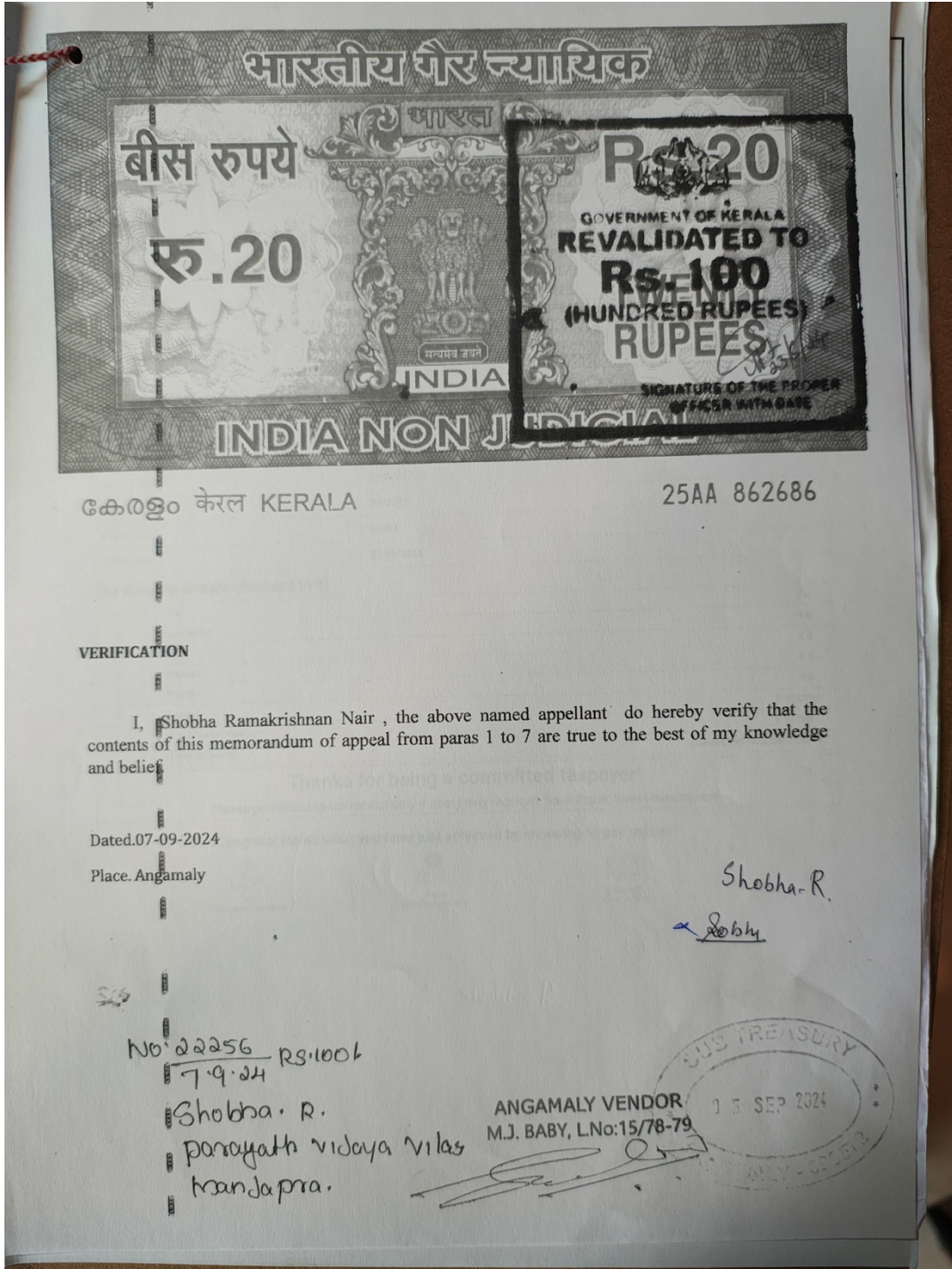
Affidavit for Condonation of delay in filing Appeal
Before The Honorable Income-tax Appellate Tribunal ,Cochin Bench
In the matter of Shobha Ramakrishnan Nair , Parayath Vijaya Vilas, Manjapra 683581,
for the Assessment Year 2016-17.
Affidavit of Mrs. Shobha Ramakrishnan Nair.aged 56 years, w/o Mr. Venugopal (late)

1. Mrs. Shobha Ramakrishnan Nair , the Appellant, is fully conversant with the facts submitted below:
2. That the appellant received the order of CIT(A) on 22 12 2023
3. That appeal was to be filed by 20 2 2024.
4. That the appellant was unwell from 15-02-2024 and was under the treatment of Dr. Vishnu Prasad who advised me complete rest up to 15-07-2024, and further treatment under Dr. C.A. Mukundan who also advised rest from 19-7-24 to 28-8-2024. That in view my illness and bed rest, I had omitted to check my e mail, which in any case is not regularly used by me.
5. That the appellant is filing the appeal on 09-09-2024 along-with petition for condonation of delay and medical certificates.
6. That in this way there is a delay of 202 days for which an application has been filed along with the appeal before the Honourable ITAT, Cochin
7. That the delay in filing the appeal is because of illness of the appellant for which the appellant may not please be held responsible.

Appellant Shobha R.

No. 22255 Rs.100/-
07.9.24
Shobha R.
Parayath Vijaya Vilas.
Manjapra.

Page 2 (Continued...)
ANGAMALY VENDOR
M.J. BABY, LNo:15/78-79



3.1 On going through the affidavit as above, we are of the opinion that the explanation towards the delay on medical grounds is bonafide and it is a good and sufficient reason to condone the delay of 202 days in filing the appeal before us. It is noted that there is no malafide intention on the part of the assessee in not filing the

present appeal within time. In these circumstances, it cannot be said that assessee is very callous in its approach in filing the appeal before us.

3.2 At this stage, it is appropriate to refer to the judgment of Hon'ble Supreme 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.

3.3 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 non-deliberate delay. 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 legalize 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 legalizing 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 authorized by an authority of law. Therefore, if we refuse to condone the delay, it would amount to legalize an illegal and unconstitutional order passed by the lower authority. In our opinion, this is a fit case to condone the delay of 202 days in filing the appeal before this Tribunal. Accordingly, the delay is condoned and the appeal is taken up for adjudication on merits.

4. Now the brief fact of the case are that as per the information, the assessee has made substantial cash deposit of Rs. 1,84,54,000/- in his saving account number 30360061935 in State Bank of India, Angamali Branch during the FY 2015-16 relevant to AY 2016-17 but has not filed his return of income for the AY 2016-17 u/s. 139(1) or u/s. 139(4) of the Act. In view of this, the case of the assessee was re-opened u/s. 147 of the Act and accordingly, notice u/s. 148 of the Act dated 30.03.2021 was issued. The assessee had also not filed any return of income in response to notice u/s. 148 of the Act. Thereafter, notices u/s. 142(1) of the Act requesting to furnish the details such as bank accounts, source of cash deposit and proof of the same were issued on three instances along with ex-parte show cause notice u/s. 144 of the Act dated 02.02.2022, however, the assessee has neither responded nor filed any reply to any of the notices. The AO therefore, had no other

option than to add the total cash deposits of Rs. 1,84,54,000/- to the total income of the assessee u/s. 69A of the Act as unexplained money.

5. Aggrieved by the assessment completed u/s. 147 r.w.s. 144 r.w.s. 144B of the Act dated 29.03.2022, the assessee preferred an appeal before the CIT(A)/NFAC

6. The ld. CIT(A)/NFAC dismissed the appeal of the assessee in limine by not condoning the delay of 5 months in filing the appeal as requested by the assessee in column 14 & 15 of form no. 35 filed on 28.09.2022 on the reasons that assessee has not shown any sufficient cause.

7. Aggrieved by the order of ld. CIT(A)/NFAC dated 22.12.2023, the assessee has filed the present appeal before this Tribunal.

8. None appeared on behalf of the assessee, however the assessee in his written submission stated that the assessee is a stamp vendor, holding temporary State license from 25-11-2015 on behalf of Smt. Radha, the original Licensee, since Smt. Radha was unwell. She gets a commission of 2% to 4% from sale of stamp paper. From this Commission she has to pay some amount to the original Licensee. She did not file her return of income for the asst. year 2016-17, as she did not have any taxable income during the relevant financial year 2015-16. The assessee did not receive any notice or communications from the Department regarding issue of notice under section 148 or 142 (1) of the Act, or any other communications, including copy of the assessment order. She realized that an assessment has been completed in her case only when she received a show cause notice dated 04-08-2022, from the

Income tax Officer, ward 2, Aluva, proposing levy of penalty under section 271(1)(c) of the Act. It appears that all notices/communications addressed to her were sent to the earlier email id, which belonged to her staff, who had left the job in 2018. The email id was changed and updated on the income tax e filing portal on 28-08-2018. The entire amount of Rs 1,84,54,000/-, deposited in her bank account with SBI, has been assessed as her income, under section 69A of the Act as unexplained money, without taking into account the fact that almost the entire amount has been deposited to the Treasury account of Government of Kerala. The assessment for the subsequent asst. year 2017-18, was completed under section 143 (3) of the Act on 15-11-2019, by the Income-tax officer, Ward 3 , Aluva, on a total income of Rs. 3,15,580/-, accepting the income returned, which included commission from sale of stamps.

8.1 Further, the assessee stated that the Id. CIT(A)/NFAC grossly erred in not condoning the delay of 5 months in filing the appeal and dismissed the appeal in limine. Further, the Id. CIT(A)/NFAC had also ignored bank statement and ledger copies, and evidence in the form of letter from the Sub treasury showing details of Commission received.

9. The Id. DR on the other hand supported the order of the authority below and submitted that the Id. CIT(A)/NFAC rightly dismissed the assessee's appeal in limine without condoning the delay in filing the appeal as the delay was substantial without being the sufficient cause for Delay. The delay was only due to the negligence of the assessee as echoed during the course of assessment proceeding as well as appellate proceedings including before this Tribunal.

10. We have heard the rival submissions and perused the material on record. On going through the order of the Id. CIT(A)/NFAC, we find that Id. CIT(A)/NFAC dismissed the appeal in limine by not condoning the delay of 5 months in filing the appeal before him on the reason that the assessee has not shown any sufficient cause. We have also gone through the reasons explained by the assessee in filing the appeal belatedly before the Id. CIT(A)/NFAC as stated in Column no. 15 of Form 35. The main reason as stated by the assessee in filing the appeal belatedly before the Id. CIT(A)/NFAC is that none of the notices were served on the assessee as they were all sent to the wrong email-id and accordingly, the assessee was unable to participate in the assessment proceedings. The assessee became aware of the assessment only when the jurisdictional assessing officer issued a show cause notice dated 04.08.2022 proposing to levy penalty u/s. 271(1)(c) of the Act. Thereafter, on becoming aware of the assessment, the assessment order was obtained on 04.09.2022. It is not the case that the assessee has not cited any reasonable cause for filing appeal belatedly. The Id. CIT(A)/NFAC on the ground that the assessee has not shown any sufficient cause has not condoned the delay in filing appeal. On going through the facts of the case, we find force in the assessee's contention. In our opinion, it cannot be said that assessee is very callous in its approach in filing the appeal belatedly before the Id. CIT(A)/NFAC. Moreover, no counter affidavit was filed by the revenue denying the allegation made by the assessee. It is not a case of the revenue that the assessee has deliberately filed the appeal belatedly. Further, the revenue has also not brought on record any adverse material / inferences to refute the claim of the assessee.

10.1 Being so, as discussed above, 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 non-deliberate delay. Accordingly, the delay in filing the appeal before the Id. CIT(A)/NFAC by five months has to be condoned and is accordingly condoned.

11. Now coming to the totality of the fact of the case, we find that the assessee could not represent its case before the AO as none of the assessment notices were served upon the assessee as they were all sent to the wrong email-id. Further, Id. CIT(A)/NFAC has also not considered the case on merit and had not considered the details like bank statement and ledger copies, and evidence in the form of letter from the Sub treasury showing details of Commission received. Further we also take a note of the fact that the assessment in the case of the assessee for the subsequent Asst. year 2017-18 is concluded u/s 143(3) of the Act on 15/11/2019 by the AO on a total income of Rs.3,15,580/- accepting the returned Income. Further, we also take a note of the fact that the AO in his assessment order after perusal of the returns filed for the Asst. years 2017-18, 2018-19, 2019-20 & 2020-21 has also observed that the assessee is a stamp vendor and has shown income from business activities. In view of the above, we are of the considered opinion that in the interest of justice and fair play, it is proper to remit back the issue in dispute in its entirety to the file of AO to consider the case afresh in accordance with the law. Needless to say, a reasonable opportunity of being heard must be granted to the assessee. The assessee is also directed to update the email id, contact number and addresses in the Income Tax portal and cooperate with the proceeding before the concerned authorities. The assessee is also directed to file all the necessary documents /

records / information as required by the AO and satisfy him regarding the genuineness of the transaction made by the assessee. We make it clear that in case of further default, the assessee shall not be entitled for any leniency. It is ordered accordingly.

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

Order pronounced in the open court on 02nd April, 2025

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated: 2nd April, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Cochin.