

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

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

**ITA Nos. 171 to 173/Coch/2025 &
SA Nos. 26 to 28/Coch/2025
Assessment Years: 2013-14, 2014-15 & 2016-17**

Koothery Narayanan Vijayan Appellant
12/A Sastha Nagar, Pudussery, West Kanjikode
West S.O., Palakkad 678621
[PAN: ABNPV1151H]

vs.

The Income Tax Officer Respondent
Non-Corporate Ward (4) & TPS, Kochi

Appellant by: Shri Vishnu Vijayan, Advocate
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 30.05.2025
Date of Pronouncement: 30.05.2025

ORDER

Per Bench:-

1. These appeals and stay applications filed by the assessee are directed against the order of the Commissioner of Income Tax (Exemptions), Kochi, dated 19.02.2024 for Assessment Year (AY) 2013-14, 2014-15 and 2016-17, against the levy of penalty u/s 271B of the Income Tax Act(herein after referred to as Act for the sake of convenience).

2. Since they are arising from the same order in respect of the same assessee we are deciding these appeals by this common order for the sake of convenience.
3. At the outset it is observed that there is a delay of 236 days in these appeals, counsel for the assessee while explaining the cause of delay in these appeals has drawn the attention of bench towards the petition for condonation of delay and argued that the assessee is an old person having sever back ache in those days and secondly the Tax consultant failed to take note of the orders of the CIT(A)
4. Ld DR appearing on behalf of the revenue pointed out that there is no evidence in support of the medical conditions for the relevant period of the assessee and further relied on the judgment of Rahul malvi W.P Number 17440 of 2024 dated 18.12.2024 (Del), for the proposition that it is not permissible to blame the professional every time without there being any action against such professionals, in terms of their governing bodies.
5. After considering the rival submissions, we observe that it is pertinent to note that the documents produced by the assessee were not in strict sense the medical certificates rather medical prescription of the assessee, we would further like to mention

certain dates which goes to the root of the matter, for judging whether the contention of assessee of keeping ill health is correct or not. A perusal of the Medical Prescription dated 17.12.2023 would show that the assessee was having some problems in his spine and the doctor advised him for 3 weeks bed rest. Three weeks probably end by 08.01.2024, afterwards the other medical prescription dated 02.02.2024 and 06.06.2024 would nowhere show that the assessee was advised complete bed rest. The order of the CIT(A) is dated 19.02.2024. Which means period of limitation for filing the appeals was ending on 18.04.2024, during this period the assessee was absolutely fine as evident from the fact that the assessee had visited the doctor on 06.06.2024. Second contention of the assessee is that the tax consultant Mr Madhu failed to take note of the order of the CIT(A). However there is no separate affidavit from Mr Madhu supporting the contention of the assessee, neither the assessee has made any complaint to any statutory body. It is settled position of law that power to condone delay should be exercised having regard to the facts of the case, the power cannot be exercised to frustrate the substantial law of limitation as held by the Apex Court recently in the case of H. Guruswamy Vs A.Krishna Civil appeal number 317 of 2025. The Hon'ble Apex Court in yet another case of Mool Chandra v. Union of India, 2024 SCC OnLine SC 1878, decided on 5-8-2024] has held that

it is not the length of the delay rather the cause behind the delay, which is to be seen while condoning the delay. In the case of Commissioner, Nagar Parishad, Bhilwara v. Labour Court, Bhilwara, (2009) 3 SCC 525, it was opined that while deciding an application for condonation of delay the High Court ought not to have gone into the merits of the case. **“If negligence can be attributed to the appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court deserves to be accepted. However, if no fault can be laid at the doors of the appellant and cause shown is sufficient then we are of the considered view that both the Tribunal and the High Court were in error in not adopting a liberal approach or justice-oriented approach to condone the delay”**. In the present case the cause responsible for the delay would not fall under the ambit of “reasonable cause”. Therefore, we are not convinced with the reasons given by the assessee for condonation of appeal, and hence, the present appeal is dismissed as barred by limitation.

6. Before parting we would like to observe that the assessee herein before is a contractor having receipt of Rs 44.65 Crore (as per the rectification order of the AO dated 13.09.2022 for AY 2014-15), and has gone to the Hon’ble High Court against the order of the AO in writ petition number 41882 of 2022 and

challenged the order of the AO. In view of these facts it cannot be assumed that the assessee is not conversant with the nitty-gritty of the tax laws.

7. In the result, the appeals filed by the assessee stands dismissed on the ground of limitation itself.
8. Since we have already decided the main appeals the stay applications filed by the assessee become infructuous.

Order pronounced in the open court on 30th May, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Cochin, Dated: 30th May, 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

By Order

Assistant Registrar
ITAT, Cochin