

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

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

**ITA Nos. 371 & 372/Coch/2025
& SA Nos. 51 & 52/Coch/2024
Assessment Years: 2017-18 & 2021-22**

The Aroor Central Service Co-op. Bank Ltd. Appellant
Aroor, Cherthala, Alappuzha 688534
[PAN: AADAT1753B]

vs.

The Income Tax Officer, Ward-5, Alappuzha Respondent

Appellant by: Shri Suresh Kumar Varma, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 30.05.2025
Date of Pronouncement: 23.06.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against different orders of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 20.03.2024 & 22.03.2024 for Assessment Years (AY) 2017-18 and 2021-22, respectively. The appellant had also filed Stay Petitions in SA Nos. 51 & 52/Coch/2024 for stay of collection of outstanding demands.

2. Since identical issues and facts are involved in these appeals, they are heard together and disposed of by this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 271/Coch/2025 for AY 2017-18 are stated herein.

4. Brief facts of the case are that the appellant is a co-operative society registered under the Kerala State Co-operative Societies Act, 1969. It is classified as primary agricultural credit co-operative society. The appellant is engaged in the business of providing credit to its members. No regular return of income under the provisions of section 139(1) of the Income Tax Act, 1961 (the Act) was filed by the appellant. The ITO, Ward-5, Alappuzha (hereinafter called "the AO"), based on the information that the appellant made substantial cash deposits in the bank account during demonetisation period, formed an opinion that income escaped assessment to tax. Accordingly, notice u/s. 143(1) of the Act was issued calling upon the appellant to file return of income. The appellant had not complied with the notice u/s. 142(1) of the Act. In the circumstances, the AO proceeded to hold that the appellant is not entitled for deduction u/s. 80P as there was no claim was made in the return of income in terms of provisions of section 80AC of the Act. Accordingly, disallowed the claim for deduction u/s. 80P after making several disallowances. The AO assessed income of Rs. 94,66,941/- under the head 'business'.

5. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order dismissed the appeal placing reliance on

the decision of the Hon'ble Jurisdictional High Court in the case of Nileshwar Range Kallu Chethu Vyavasaya Thozihilali Sahararana Sangham [2023] 459 ITR 730 (Ker).

6. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

7. At the outset we find that there is delay in filing this appeal before the Tribunal of 361 days. The appellant filed a petition along with affidavit seeking condonation of delay, which reads as under: -

“1, Meera U Pillai, Principal Officer, The Aroor Central Service Co-operative Bank, Aroor, Cherthala, Alappuzha 688534, do hereby solemnly affirm and state as follows:-

1. I am the appellant in the accompanying appeal and petitioner in the above petition for stay. I am well acquainted with the facts of the case and am competent to swear to this affidavit.

2. The above appeal is filed against the order of the CIT(A), NFAC, Delhi u/s 250 dated 20.03.2024 vide DIN ITBA/NFAC/S/250/2023-24/1063017274(1)) since the first appeal was dismissed.

3. The petitioner is a Primary Agricultural Credit Society (PACS) and filed Return of Income belatedly dated 29-10-2019 by claiming deduction u/s 80P of the Income tax act, 1961 of Rs. NIL for the A.Y.2017-18. The assessment completed u/s 143(3) dt.16-12-2019 by disallowing the deduction u/s 80P of the act and the assessed total income amounting to Rs.94,99,444 /- by adjustments to Provisions and Reserves to Net Profit as per Audited Accounts and disregarding the total income arrived at by the Petitioner before claim of 80P deduction amounting to Rs. 71,19,276/-. The disallowance was based on two Jurisdictional High

Court decisions highlighting the provision that, for a valid claim of 80P deduction the return of income ought to be filed within the due date u/s 139(1) of the act. Whereas, the legal aspect of claim of 80P in the return of income is mandatory and timing of claim is directory only is not considered, which itself would justify the claim of the Petitioner valid and justified since such return being filed belatedly but before completion of the assessment. Further, the total income assessed with a total demand of tax plus interest amounting to Rs. 47,33,896/-.

4. The appellate order dated 20-03-2024 was not received by the appellant hardcopy and not e-mail notices/communication in its uploaded appeal application Form No.35 on the possibility of not getting it received /downloaded/communicated by the Tax Consultant CA office. The E-Mail address as noted in the Form No.35 and the return of income was rajanunni.n@gmail.com pertained to Tax Consultant Office. Therefore, any mails sent to this mail address could not be responded unless the Tax Consultant communicated it to the appellant. It is respectfully submitted that Hearing Notice dated 01-02-2024 sent by the First Appellate Authority was duly communicated and accordingly the same was entrusted to the Chartered Accountant dealing with Appeal Matters and accordingly Hearing Note dated 24-02-2024 uploaded which is reproduced in the Appellate Order also (Pages-20 to 23).

5. Further the Appellant could not get to know the status of the Appeal till enquiry of tax demands from the jurisdictional assessing officer for all other assessment years including the A.Y.2017-18 and immediately the appellant contacted the CA looking after the appeal matters during the first week of May 2025. On his advice the Appellant thought to prefer appeal and entrusted him, further to prepare and submit the appeal application without any delay. The date of communication of order appealed against is taken as order date uploaded in

the income tax site since no hardcopy or e-mail of appellate order is received by the appellant.

6. The time for filing appeal being 60 days ended on 20-05-2024. The appeal now filed is delayed by 358 days (that is from 20-05-2024 to till 13-05-2025). It is respectfully submitted that the above stated reasons may please be considered in the Petitioners' case for establishing reasonable cause, which prevented it from filing the appeal within the due date. Thus, the delay happened is due to reasons beyond the control of the petitioner and due to unavoidable reasons.

7. It is respectfully submitted that delay is not willful or intentional, but due to reasons beyond control. There were no lapses or omission on the part of the appellant. If the delay is not condoned and the appeal is not admitted for consideration on merits, it will cause serious and irreparable hardship and monetary loss to the petitioner.

8. In the above circumstances, the petitioner most humbly prays that the Hon'ble Income Tax Appellate Tribunal may kindly be pleased to condone the delay about 358 days in filing the appeal, accept the same on file and render justice.

9. A separate petition praying for the above relief is submitted herewith and the same may be allowed.

All the facts stated above are true to the best of my knowledge and belief."

8. On a mere reading of the above affidavit it is clear that the only reason given by the appellant co-operative society for the delay is that email address given in Form 35 belongs to the Tax Consultant and the Tax Consultant has failed to communicate to the appellant about the order passed by the CIT(A). The appellant is only trying to shift to the shoulders of the Tax Consultant the negligence in

approaching this Tribunal. Furthermore, the appellant cannot be permitted to take advantage of its own mistake by giving the email ID of the Tax Consultant. The appellant is not a rustic villager but a co-operative society well versed with all the procedures in pursuing alternative remedy. Therefore, this practice of shifting to the shoulders of the counsel the negligence in approaching the Tribunal is very much depreciated by the Hon'ble Delhi High Court in the case of Rahul Mavai v. Union of India & Ors in W.P.(C) 17440/2024 dated 18.12.2024. This appellant had failed to explain sufficient cause for the delay in filing the present appeal.

9. Further, the Hon'ble Delhi High Court in the case of Finolux Auto Pvt. Ltd. Vs Finolex Cables Ltd., 136(2007) DLT 585(DB), held as under:

"6. In this regard, we may refer to a decision of the Supreme Court in P.K. Ramachandran vs State of Kerala, IV(1997) CLT 95 (SC). In the said decision, the Supreme Court has held that unless and until a reasonable or satisfactory explanation is given, the inordinate delay should not be condoned. In para 6 of the judgment, the Supreme Court has laid down in the following manner:

"Law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in

the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."

10. The Hon'ble Apex Court in the case of Pundlik Jalam Patil (dead) by LRs vs Executive Engineer Jalgaon Medium Project, (2008) 17 SCC 448, held that basically the laws of limitation are founded on public policy and the courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, and (iii) that persons with good causes of action should pursue them with reasonable diligence. It was observed that the statutes of limitation are often called as statutes of peace insofar as an unlimited and perpetual threat of limitation creates insecurity and uncertainty which are essential for public order.

11. In the light of the above legal position the delay in filing the appeal cannot be condoned. The appeal stands dismissed.

12. Since identical issues are involved in ITA No. 372/Coch/2023, the above findings are mutatis mutandis apply to this appeal also.

13. As the appeals of the assessee are dismissed, the corresponding stay applications become infructuous.

14. In the result, the appeals and stay applications filed by the assessee stand dismissed.

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

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 23rd June, 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