

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM**

**ITA No. 787/Coch/2024
Assessment Year: 2015-16**

Mallelil Industries Pvt. Ltd. Appellant
Attachakkal P.O., Pathanamthitta 689691
[PAN: AAFCM0761Q]

vs.

ACIT, Circle-1, Thiruvalla Respondent

Appellant by: Shri Surendran, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 05.06.2025
Date of Pronouncement: 31.07.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 24.08.2022 for Assessment Year (AY) 2015-16.

2. Brief facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacture of rock aggregates and running a quarry. The return of income for AY 2015-16 was filed on 22.09.2015 declaring income of Rs. 2,54,10,720/-. Survey

operations u/s. 133A of the Income Tax Act, 1961 (the Act) were carried out in the business premises of the appellant on 09.02.2016. During the course of survey proceedings, undisclosed sales were unearthed and additional income of Rs. 1,75,00,000/- was found. Subsequent to the survey the appellant revised the return of income at a total income of Rs. 4,29,10,720/- by disclosing additional income of Rs. 1,75,00,000/-. Against the said return of income, the assessment was completed by the by the ACIT, Circle-1, Thiruvalla (hereinafter called "the AO") via order dated 30.12.2016 accepting the returned income of Rs. 2,49,10,720/-. Subsequently the learned Principal Commissioner of Income Tax (PCIT), Kottayam, in exercise of power vested with him u/s. 263 of the Act, had set aside the assessment order with the direction to pass fresh assessment order on the issues discussed in the order after affording and opportunity of hearing to the assessee. The consequential order to the order passed u/s. 263 was passed on 23.12.2019 at a total income of Rs. 4,40,91,435/-. The disparity between the original assessed income and the income in the consequential order u/s. 263 is on account of disallowance of excess depreciation of Rs. 11,80,715/-. The AO also initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of income in the remand proceedings, since the return of income was revised consequent to detection made by the department during the course of survey proceedings based on the direction of the ld. PCIT in the order u/s. 263 of the Act. A penalty

of Rs. 56,77,875/- was levied u/s. 271(1)(c) vide order dated 12.01.2022.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal with a delay of 676 days. The appellant had filed a petition seeking condonation of delay by stating as under: -

“The appellant's auditors who also attended to the tax matters during the relevant financial years was M/s K. Varghese and Company, Kollam. However, the auditors withdrew from the assignment on 15.09.2018. Subsequently, the audits were carried out from the financial years 2017-18 by another firm of Chartered Accountants M/s Suresh & Issac, Ernakulam. The tax audit and other tax advisory services were also entrusted to them. This firm of auditors in turn, used to avail the services for one advocate on their behalf in the appeal proceedings. The engagement of advocate and the handing over of required documents and details was done by the auditors themselves. Though the order of Commissioner (Appeals) was received on 24.08.2022 the appellant was not aware that no action was initiated by the tax auditors who usually carried out the task of filing the appeal against such order within the due date. The fact of the non-filing of the appeal came to the attention of the appellant only when the department followed up the tax demand and directed the appellant to make the payment of the amount. The said firm had not intimated the appellant regarding non-filing of the appeal on time and on coming to know of the same the appellant initiated immediate action and engaged a new tax consultant to file the appeal forthwith. The said tax auditors

have withdrawn from the audit assignment and fresh firm of auditors have been appointed to carry out the tax audit from the financial year 2017-18. There has been a delay of about 676 days in filing of the appeal. The delay was unintentional and was caused due to genuine and bonafide reasons as explained above. The delay was caused only due to reasons beyond our control. It is hence prayed that the Honourable Tribunal may kindly condone the delay of 676 days in filing the appeal and admit the appeal for adjudication.”

5. From the averments made in the petition seeking condonation it is clear that the appellant company simply blamed the processionalists for not filing the appeal within time. The appellant company is an incorporated entity having the benefit of engaging services of professionals on legal matters. The appellant had failed to explain the reasons for the inordinate delay of 676 days in filing the appeal before us. Recently the Hon'ble Delhi High Court in the case of Rahul Mavi in WP(C) 17704/2024 dated 18.12.2024 has deprecated the practice of shifting the burden to the shoulders of the Counsel, the negligence in approaching the court. The relevant observation made by the Hon'ble High Court is as under: -

“4. We also disapprove the unwholesome practice of seeking to explain away inordinate delay and laches on approaching the Court on the mere ground that the Counsel who had been dealing with, or entrusted, the matter, was tardy, negligent, or indolent. At times, this assertion is sought to be supported by an assertion that the litigant has approached the Bar Council concerned against the counsel.

5. We emphatically disapprove of this practice of shifting, to the shoulders of the Counsel, the negligence in approaching the Court. It is easy, in such circumstances, to file a complaint

before the Bar Council and seek to explain away the delay. We deprecate this. A litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.

6. That said, if, in fact, the Counsel has been negligent, the litigant would have to place, on record, material to indicate that she, or he, has been in touch with the Counsel during the entire period of delay, and that the Counsel has been misleading her, or him. This material must be acceptable, and convincing. The Court has to be satisfied that, in fact, the Counsel has been misleading the client, and that this explains the entire period of delay in approaching the Court. Of course, if the Court is so satisfied, and an innocent litigant has been led up the garden path by an unscrupulous Counsel, the court would not allow injustice to be done, and would, in an appropriate case, condone the delay.”

6. Recently the Hon'ble Supreme Court in H. Guruswamy & Ors v. A. Krishnaiah Civil Appeal No. 317 of 2025 dated 8th January, 2025 observed as under: -

13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

7. In view of the principles enunciated by the Hon'ble Supreme Court, we are of the considered opinion that it is not a fit case to condone the delay of 580 days as the appellant failed to offer any bona fide explanation for the delay. Thus, we are of the considered opinion that we are not convinced that the appellant had explained the entire delay of 580 days in presenting the appeal before this Tribunal. Accordingly the appeal is dismissed on the ground of delay and laches.

8. Even on merits we find that the revised return of income was filed offering additional income after detection of concealment of income by the department. Therefore the appellant is guilty of concealment of income and the AO rightly levied penalty u/s. 271(1)(c) of the Act.

9. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 31st July, 2025.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 31st July, 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