



2024/KER/46477

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MURALI PURUSHOTHAMAN

TUESDAY, THE 25TH DAY OF JUNE 2024 / 4TH ASHADHA, 1946

WP (C) NO. 21866 OF 2024

PETITIONER:

THE MEENACHIL TALUK COOPERATIVE EMPLOYEES COOPERATIVE
SOCIETY LIMITED,
KURISUPALLY JUNCTION, PALA P.O.
KOTTAYAM DISTRICT,
REPRESENTED BY ITS SECRETARY,
SRI. BIJUKUMAR. G, PIN - 686575

BY ADVS.
G.MINI (1748)
A.KUMAR (SR.)
P.J.ANILKUMAR
P.S.SREE PRASAD
BALASUBRAMANIAM R.

RESPONDENTS:

- 1 COMMISSIONER OF INCOME TAX (APPEALS)
INCOME TAX DEPARTMENT,
NATIONAL FACELESS APPEAL CENTRE (NFAC),
MINISTRY OF FINANCE, GOVT. OF INDIA,
NEW DELHI, PIN - 110001
- 2 INCOME TAX OFFICER,
INCOME TAX OFFICE, PUBLIC LIBRARY BUILDING,
SHASTRI ROAD, WARD 3, KOTTAYAM, PIN - 686001
R BY SR.JOSE JOSEPH SR.SC
R BY SRI.CYRIAC TOM, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**'CR'****JUDGMENT**

The petitioner, a Co-operative Society, is an assessee under the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short). The petitioner filed its return of income for the assessment year 2017-18 and claimed deduction under Section 80P of the Act. The 2nd respondent, the Assessing Officer, completed the assessment and passed Ext. P1 order under Section 143(3) of the Act. The Assessing Officer disallowed the deduction claimed by the petitioner under Section 80P.

2. Against Ext. P1, the petitioner preferred Ext. P2 appeal under Section 246A of the Act in Form No. 35 before the 1st respondent, the Commissioner of Income Tax (Appeals). In Ext. P2, the petitioner has



stated that there is delay of 12 days in filing the appeal and the ground for condonation of delay is shown as under;

“Delay of 12 days due to the non availability of our legal consultant who was out of station due to some personal reasons.”

3. The 1st respondent, by Ext. P3 order, refused to condone the delay and dismissed the appeal *in limine* stating that the application does not explain the reasons, much less demonstrate sufficient cause for condoning the delay, whereas it is settled position of law that the assessee is duty bound to explain each day's delay after the last date of limitation. Referring to various decisions of the Income Tax Appellate Tribunals, the High Courts and the Hon'ble Supreme Court, the 1st respondent has held as under:

“5.8 In view of the foregoing discussion,



factual matrix and the judicial precedents, I find that no case has been made out by the assessee for existence of sufficient cause in the application for condonation of period of delay of 11 days in filing of appeal. I also find that it is also a settled position of law that the delay is un-excusable unless sufficient cause is shown. I further find that proper explanation and reasons for delay have not been given. Therefore, I am of the view that in the absence of existence of reasonable cause and also in the absence of proper explanation and reasons, without being supported by proper evidence, the appeal filed by the assessee late by 11 days, the delay is not condonable. Hence, the appeal of the assessee is not admitted and the same is dismissed in *limine*."

4. Ext. P3 order is impugned in the writ petition contending, *inter alia*, that dismissing the statutory



appeal *in limine* by refusing to condone the delay of 11 days is arbitrary and illegal and that the appellate authority went wrong in relying on judgments which are irrelevant and not applicable to the facts of the case. It is also contended that Ext. P3 has been passed in total disregard to the principles of natural justice.

5. Heard Smt. Mini. G, the learned counsel for the petitioner and Sri. Cyriac Tom, the learned Standing Counsel for the respondents.

6. Against an order passed by the assessing authority under Section 143(3), an appeal lies to the Commissioner (Appeals) under Section 246A of the Act. Section 249 (2) of the Act provides that where the appeal relates to any assessment or penalty, the appeal shall be presented within thirty days of service of the notice of demand relating to the assessment or



penalty. Section 249 (3) of the Act provides that the Commissioner (Appeals) may admit an appeal after the expiration of the period provided under Section 249 (2), if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

7. The reason stated by the petitioner for condoning the delay of 11 days in filing the appeal is the non availability of their legal consultant. The 1st respondent has refused to accept this reason, observing that the non availability of legal consultant and the appellant's unawareness of the appeal proceedings are not valid excuses, as the time allowed under the Act is based on all such factors.

8. Filing an appeal in tax matters may require legal and technical assistance. The taxation laws and



the procedures involved in filing an appeal may be beyond comprehension for a layman assessee. Therefore, in my view, the reason advanced by the petitioner for condoning the delay in filing the appeal is sufficient, and the delay should have been condoned by the 1st respondent.

9. Rejection of appeal on technical grounds amounts to violation of principles of natural justice. The judicial precedents referred to in Ext. P3 order appear to have been misapplied by the 1st respondent. The Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others** [AIR 1987 SC 1353: (1987) 2 SCC 107: 1987 KHC 911], referring to the power of the Courts under the Indian Limitation Act, 1963, has laid down the following six principles for dealing with



applications for condonation of delay.

“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 out 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 common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, 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 non deliberate 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 judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

Summarising and enumerating the legal position relating to limitation and condonation of delay, the Hon'ble Supreme Court in **Pathapati Subba Reddy Athapati Subba Reddy (Died) by L.Rs. & Ors. v. The Special Deputy Collector (LA)** [2024 SCC OnLine SC 513: 2024 KHC OnLine 6197] laid down the following eight principles;

“(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to



remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is



established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

Tested on the touchstones of the above principles, I find that there is sufficient cause for not presenting Ext. P2 appeal within the time provided under Section



249 (2) of the Act. Ext. P3 order is therefore set aside. The delay of 11 days has to be condoned and the appeal has to be admitted and adjudicated on merits. Accordingly, there will be a direction to the 1st respondent to consider Ext. P2 appeal on merits within a period of two months from the date of receipt of a copy of this judgment, after affording an opportunity of hearing to the petitioner. Till such time the appeal is disposed of, there shall not be any recovery steps pursuant to Ext. P1.

The writ petition is disposed of accordingly.

Sd/-
MURALI PURUSHOTHAMAN
JUDGE

SB



APPENDIX

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE ASSESSMENT ORDER DATED
17/12/2019

Exhibit P2 TRUE COPY OF THE MEMORANDUM OF APPEAL DATED
28/01/2020

Exhibit P3 TRUE COPY OF THE ORDER OF THE APPELLATE
AUTHORITY DATED 28/05/2024