

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

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.600/Coch/2017 : Asst.Year 2012-2013

M/s.Kosamattom Finance Private Limited Thekkekaryan Towers Kosamattom Chambers Kanzhikuzhi, Mutayambalam Kottayam – 686 004. <b>PAN : AACCK4277A.</b>	Vs.	The Asst.Commissioner of Income-tax, Central Circle Kottayam.
(Appellant)		(Respondent)

Appellant by : Sri. T.M.Sreedharan

Respondent by : Sri.Santham Bose

<b>Date of Hearing : 20.08.2019</b>	<b>Date of Pronouncement : 05.09.2019</b>
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**ORDER**

**Per Chandra Poojari, AM :**

This appeal by the assessee is directed against the order of the Commissioner of Income-tax dated 30.11.2016, passed u/s 263 of the I.T.Act. The relevant assessment year is 2012-2013.

2. The assessee has raised following grounds:-

*"1. The order of the Commissioner of Income Tax (Central), Cochin, u/s 263 of the I.T. Act, 1961 dated 30.11.2016 for the asst. year 2012-13, is opposed to law, facts and circumstances of the case.*

*2. The Commissioner of Income Tax (Central), went wrong in proceeding on the assumption that the asst. order passed by the Assistant Commissioner of Income Tax, Central Circle, Kottayam u/s.143(3) for 2012-13 dated 28.2.2015 is erroneous in so far as it is prejudicial to the interest of Revenue coming within the purview of section 263 of the Act. The above assumption is unsustainable in law and on the facts of the appellant's case.*

*3. It is respectfully submitted that the notice dated*

27.10.2016, by which the Commissioner proposed to invoke section 263 of the Act and the revised asst. Order contained mere allegations/opinion and did not contain any cogent and reliable material or evidence to come to a conclusion that the order passed by the assessing officer is erroneous and prejudicial to the interest of Revenue. A true copy aforesaid notice dated 27.10.2016 is produced herewith and marked as Annexure-A.

4. In this connection, the appellant respectfully submits, without prejudice, that the allegations contained in the notice Annexure-A are properly explained through the reply dated 22.11.2016 by pointing out that based on the facts of the case and the principles of law governing the issue both in regard to the merits of the case, as regards the alleged error or prejudice and in regard to the settled principles of law and that :-

i) "the expenditure and cost incurred for issue of debentures is a statutorily admissible claim in the year of issue in which such expenditure is incurred without resorting to amortization of such expenditure.

ii) the interest accrued on the debentures were claimed and allowed proportionately for each year during the period of the debentures from 2012-13 to 2016-17

iii) the payment of interest has suffered deduction of tax at source which are remitted in Government Account fulfilling the legal requirements; and

iv) all transactions pertaining to receipts from debenture holders and repayment thereof as also interest thereon are fully by way of bank transactions.

5. In this connection, a true copy of the detailed reply submitted by the appellant to the Commissioner vide letter dated 22.11.2016 is produced herewith and marked as Annexure-B. It is humbly prayed that the grounds urged therein may be treated as part of these grounds.

6. Without prejudice, it is respectfully submitted that a perusal of the order u/s.263 impugned herein would show that there is failure on the part of the respondent to consider the objections contained in Annexure-B fairly and judiciously but the issues were decided summarily, thus violating the principles of natural justice.

7. Without prejudice, it is submitted that the Commissioner

*of Income Tax is also unjustified in pre-deciding the issue so as to interfere with the adjudicating powers of the assessing officer in making assessment u/s.143(3). There is thus excessive exercise of jurisdiction by the adjudicating Authority, which would invalidate the impugned order.*

*For these and other grounds that may be urged at the time of hearing, it is humbly prayed that the Hon'ble Income Tax Appellate Tribunal, Cochin Bench, Cochin, may kindly be pleased to set aside the order passed u/s 263 dated 30.11.2016 and restore the assessment already made u/s 143(3). allow the appeal and render justice."*

3. At the outset, we noticed that there was a delay of 288 days in filing this appeal. The learned AR drew out attention to the condonation petition filed before us explaining the delay, which reads as under:-

*"2. The above appeal is filed against the order u/s 263 of the Income Tax Act, 1961 passed by the Assistant Commissioner of Income tax, Central Circle, Kottayam, vide order dated 30.11.2016, for the Assessment Year 2012-13. By order u/s 263, the Assessment Order passed u/s 143(3) by the Assistant Commissioner of Income Tax, Central Circle, Kottayam, dated 28.02.2015 for 2012-13 was set aside by directing the Assessing Officer to make fresh assessment. The order u/s 263 was passed on 30.11.2016 and was communicated to the petitioner on or about 3.12.2016. The time for filing the appeal being 60 days from the date of service of the order, the due date for filing the appeal was 1/2/2017. The appeal now filed against the order u/s 263 is, therefore, delayed by 288 days.*

3. The petitioner respectfully submits that upon receipt of the order u/s 263, the same was handed over to the Chartered Accountant, M/s Cheeran Varghese & Company, Thrissur within a reasonable time thereafter. The order u/s 263 concluded in paragraph-10 by recording the finding that

*"The order of the Assessing Officer is set aside on the issue mentioned in the earlier part of the said order 'for the limited purpose on verification and examination of the above relevant facts. 'A decision on the eligibility for deduction, would be arrived at by the Assessing Officer after granting the assessee an opportunity of being heard".*

*The appellant bonafide believed that the above finding was confined to verification of books of account already accepted by the Assessing Officer when the Assessment Order passed*

*vide order dated 28.02.2015. The appellant was not aware, nor was informed that the order u/s 263 is an appealable order before this Hon'ble Tribunal. The Assessing Officer passed order dated 31.08.2017 by giving effect to the order u/s 263 by making various observations and finding in the fresh Assessment Order resulting in huge demand. The petitioner contacted the Advocate for filing appeal against the fresh Assessment Order and for obtaining stay against recovery. It is only at the time of discussion with the Advocate, the Advocate enquired as to whether the appeal is filed against the order u/s 263. The petitioner came to know that the order u/s 263 by itself is appealable. The petitioner also came to understand that the adverse finding in the order u/s 263 is independently appealable to this Hon'ble Tribunal. The petitioner is advised to seek remedy by way of appeal against the order before this Hon'ble Tribunal so as not to cause any prejudice in the future proceedings for not filing appeal against the adverse findings. In such circumstances, this appeal is filed against the order u/s 263 seeking rederessal of grievance.*

*4. It is respectfully submitted that the delay in filing the appeal is unintentional and bona fide and that in the aforesaid circumstances, the, appellant was prevented by sufficient cause in not filing the appeal against the adverse order passed u/s 263 of the Act within the time limitation. In this connection, it is also respectfully submitted that during the course of the proceedings before the Commissioner of Income Tax, pursuant to notice u/s 263, the petitioner was not informed of his right of appeal to this Hon'ble Tribunal against the order u/s 263. According to the petitioner, there is reasonable chance of success in the appeal. If the delay is not condoned and the appeal is not admitted and disposed of on merit, it would cause serious and irreparable hardship and prejudice to the petitioner.*

*5. In the above circumstances, it is just and necessary and accordingly, it is humbly prayed that the Hon'ble Income Tax Appellate Tribunal, Cochin Bench, may kindly be pleased to condone the delay of 288 days in filing the appeal and to accept the same on file and render justice."*

4. Further it was submitted that the assessee had all the intention to file the appeal before this Tribunal, however, it was failed to file the appeal before the Tribunal due to ignorance of law and necessity of filing appeal was came to the knowledge of the assessee only when it was consulted Advocate for filing the appeal against the giving effect order

dated 31.08.2017 to the order u/s 263 of the Act, by the Assessing Officer. According to the learned AR, there is a reasonable cause for not filing the appeal in time before this Tribunal. Once the assessee had come to know about the necessity of the appeal against the impugned order, immediately the assessee acted upon and filed this appeal before the Tribunal. According to the learned AR, there is no reason to believe, even for a moment that the assessee was not careful enough to file the appeal in time in this case. He submitted that the Tribunal may admit the appeal after the expiry of the relevant period of limitation, if it is satisfied that there was sufficient cause for not presenting it within that period. The learned Senior Counsel highlighted the thrust on the intention of the law reflected in section 255(5) of the Act. He stated that the law is similarly concerned "sufficient cause" in matters relating to belated appeal. According to him, the length of the delay is not relevant and submitted that there is a sufficient cause for delay and this delay is of no fetter in condoning the delay and admitting the same in view of the ignorance of the assessee to file the appeal in time.

5. On the other hand, the learned Departmental Representative submitted that here was a delay of 288 days, which was occurred only on the reason that the assessee was not aware nor it was informed that order u/s 263 of the Act is an appealable order before this Tribunal. According to the learned DR, it is nothing but ignorance of assessee to take remedial measure against the order passed by the CIT u/s 263 of the Act and that ignorance of assessee cannot be constituted as sufficient cause to condone this long delay of

288 days and it should not be condoned. Further, it was submitted that the assessee is a private limited company, which was assisted by group of Advocates and Chartered Accountants and in such circumstances it cannot be said that the assessee is not aware of the necessity of filing the appeal against the order passed by the CIT u/s 263 of the Act, and it cannot be said that the case of this appeal alone was slipped away from the assessee's mind and he could not take remedial measure to file appeal before this Tribunal. According to the learned DR, originally the assessee had no intention to file an appeal in the present case as such only after the Assessing Officer passed order on 31.08.2017, giving effect to the order passed u/s 263 of the Act, the assessee thought of filing this appeal and which is only an afterthought and for that the reason the delay cannot be condoned.

6. We have heard the rival submissions and perused the material on record. It is seen from the facts of the assessee's case, the assessee received the order passed u/s 263 of the Act on 03.12.2016, the time for filing the appeal being 60 days from the date of service of the order, due the date of filing the appeal was on 01.02.2017. The appeal was actually filed on 16.11.2017. Thus, there was a delay of 288 days in filing the appeal before the Tribunal, but the assessee attributed the delay is on account of assessee's ignorance to file an appeal before this Tribunal. It was submitted that only after receipt of giving effect order passed by the A.O. on 31.08.2017, the assessee has consulted his Advocate, who has advised the assessee to file appeal against the impugned order of the CIT passed u/s 263 of the Act. It was submitted

that at that point only the assessee thought of filing this appeal before this Tribunal. It appears that originally the assessee had no intention to file an appeal against the order passed by the CIT u/s 263 of the Act. We find that giving effect order passed by the Assessing Officer on 31.03.2017 alone is the provocation of filing the appeal before this Tribunal with the delay of 288 days against the order passed by the CIT u/s 263 of the Act. We find that this does not constitute sufficient cause for the delay caused in filing the appeal before us. In our opinion, the assessee cannot indefinitely wait for the fate of the consequential order to be passed by the A.O. against the order passed by the CIT u/s 263 of the Act. The assessee herein wants to take the benefit of its wrong doing which is evident from the above narrated facts in detail. The assessee has not explained proper reason for such a delay of 288 days in filing the appeal before the Tribunal and it cannot be said that the assessee was diligent in filing appeal before the Tribunal. It is the primary duty of the assessee to establish sufficient cause in not filing the appeal in time. The reason advanced by the assessee is very vague and cannot be said that the assessee is actually interested in pursuing the issue before this Tribunal. Thus, in the present case, there is no sufficient cause for presenting the appeal belatedly before the Tribunal. Accordingly, we decline to condone the delay of 288 days.

7. Further in the case of M/s.Fathima Educational & Charitabe Trust v. Asst.Director of Income-tax in ITA No.84/Coch/2016 (order dated 25.07.2016), the assessee came in appeal before this Tribunal, wherein there was a

delay of 1964 days in filing the appeal before the Tribunal against the order of the Commissioner of Income-tax, Trivandrum, dated 30.09.2010, passed u/s 12AA of the I.T.Act and pleaded before the Tribunal that due to circumstances emerged from the legal complexities in understanding the relevant procedure envisaged in the Act by the professional of the assessee. That assessee realized the importance of filing of appeal only on the rejection of the plea of registration of the Trust. However, the Tribunal has not condoned the delay by observing as under:-

*“4. We have heard the rival contentions and perused the facts of the case. The undisputed fact is that the appeal has been filed late by 1964 days before the Tribunal. In the affidavit filed by the assessee-Trust, it was stated that the appeal has been filed late because of the professional advise given by the professionals and in understanding the legal complexities of the Income Tax Act. It was also stated that the assessee was under the bona fide belief that the entire income is exempt under the provisions of the Income Tax Act and the importance of filing of the appeal was realized only on the rejection of the plea for registration, even though the assessee was filing the return of income.*

*5. At the outset, the understanding of the legal complexities by the professionals itself is not a sufficient or reasonable cause for not filing the appeal late by a long period of 1964 days. Such an inordinate delay of 1964 days has to be satisfactorily explained which has not been done so in the present case. Moreover, there is no affidavit filed by the professionals which has been admitted by the Ld. Counsel of the assessee that the same is missing.*

*6. The grounds stated in the affidavit by the assessee-Trust cannot be termed as sufficient reasons for condonation of delay. The Ld. CIT(DR) has relied upon the decision of the ITAT, Cochin Bench dated 19/12/2008 in the case of Kerala Cricket Association (supra) and the relevant part of the decision is reproduced hereinbelow for the sake of convenience:*



*“3. We have considered the rival submissions and perused the material available on record including the precedents. The delay of 445 days is, in our view, quite inordinate and there is no reason for such a long delay. The quantum of delay is not material, if it is supported with sufficient reason. The Court can take a pragmatic approach to the honest litigant and the Court cannot help a dormant person who slept over the order of the Commissioner who denied registration under section 12A(a) to the Kerala Cricket Association. If they are vigilant enough that the denial of the registration benefit has so much injurious effect on their interest, then they should have approached the Tribunal within the reasonable time. The flimsy grounds stated in the petition are not sufficient reasons so as to condone the delay. As rightly contended by the learned Departmental Representative, without sufficient cause or sufficient reasons, delay cannot be condoned. There must be a reason convincing to the Tribunal to condone the delay. The Courts have already held that the delay has to be explained properly and there should be sufficient cause which prevented the assessee from filing the appeal. The reasonable and sufficient cause are absent, except flimsy grounds urged in the petition for condonation of delay which is not sufficient for condonation of delay. Under the above circumstances, we are unable to accept the prayer of the ld. Chartered Accountant for the assessee for condonation of delay of 445 in filing the appeal before the Tribunal. Hence, the appeal is not admitted and is rejected.”*

*The said decision of the ITAT, Cochin Bench in the case of Kerala Cricket Association (supra) has been confirmed by the Hon’ble High Court of Kerala in the case of Kerala Cricket Association in I.T.A. 588/2009 dated 31/10/2014 and the relevant findings are reproduced hereinbelow for the sake of convenience:*

*“4. Aggrieved by the order dated 17/10/2006, the appellant filed an appeal before the Tribunal with an application to condone the delay of 445 days. The Tribunal declined to condone the delay and accordingly, the appeal was also dismissed. It is aggrieved by the order of the Tribunal, which was passed on 19.12.2008, I.T.A. No. 1529/2008 is filed”*

*“7. Condonation of delay is not a matter of right. Delay can be condoned by the Tribunal only if it is satisfied that the delay has been satisfactorily explained by the appellant. Reading of*

*the order passed by the Tribunal shows that the appellant failed in providing any satisfactory explanation for the inordinate delay of 445 days. It was therefore that the Tribunal declined the prayer.”*

*“8. Having gone through the order passed by the Tribunal and the period of this appeal, we fully endorse the conclusions of the Tribunal regarding absence of reasonable cause for condonation of delay. Therefore, we see absolutely no reason to interfere with the order passed by the Tribunal declining to condone such inordinate delay.”*

*7. Reliance has also been placed on the decision of the Hon’ble High Court of Bombay in the case of Raju Ramchandra Bhangde (supra) where the Hon’ble Court has held as under:*

*“Held*

*It is not as if that every mistake of counsel affords a sufficient cause for condonation of delay. All depends upon facts and circumstances of each case. It is obvious that application u/s. 35 for rectification was wholly misconceived under the circumstances. Having regard to the entire background of the case and the fact that the counsel happened to be natural father of the assessee, it is difficult to hold that any error of law has been committed by the Tribunal in refusing to condone the delay.”*

*8. In the circumstances and facts of the case and the decisions relied upon hereinabove, we do not find any sufficient cause for condonation of such an inordinate delay of 1964 days and accordingly, the appeal of the assessee is not admitted and the same is rejected. Also, we do not think it fit to decide the issue on merit. Thus the appeal of the assessee is dismissed.*

*9. In the result, the appeal of the assessee in I.T.A. No.84/Coch/2016 is dismissed.”*

8. This view of the Tribunal was confirmed by the Hon’ble jurisdictional High Court in Writ Petition (C) No.31709 of 2016, dated 12<sup>th</sup> January, 2017, by observing as under:-

*“The petitioner is aggrieved with the order at Ext.P7 of the Income Tax Appellate Tribunal, Cochin Bench, Cochin. The short facts to be noticed are that the petitioner filed an*

*application under Section 12AA of the Income Tax Act, 1961 claiming registration as a charitable institution. The same was once dismissed by Ext.P1 dated 03.03.2009. A subsequent application was made which was also rejected as per Ext.P4 dated 30.09.2010. A 3<sup>rd</sup> application is also said to have been made, which is said to be pending.*

*2. While so, the petitioner approached the Tribunal with a delay of 1964 days. The Tribunal by a detailed order refused to condone the delay. The only ground raised in the affidavit accompanying delay condonation application was the lack of understanding of the assessee with respect to the relevant procedure and the provisions of the Act. It is trite that ignorance of law is not an excuse and lack of understanding would also be akin to ignorance; which cannot validly be taken up. The delay is also huge coming to 1964 days. This Court does not find any reason for condoning the delay and is unable to persuade itself to interfere with the order of the Tribunal.*

*The writ petition would stand dismissed leaving open the remedy of the petitioner to agitate the third application filed before the appropriate authority, which shall be applicable only to the future years, if at all.”*

9. In view of the above, we are of the opinion that the assessee being a private limited company, which was assisted by group of Advocates and Chartered Accountants and in such circumstances it cannot be said that the assessee is not aware of the necessity of filing the appeal against the order passed by the CIT u/s 263 of the Act, and it cannot be said that the case of this appeal alone was slipped away from the assessee's mind and he could not take remedial measure to file appeal before this Tribunal.

10. However, the learned AR pleaded before us that adjudication may be given on merits, even if the appeal is dismissed on condonation, to complete the legal proceedings. At this stage, we are refraining from going into the merits of

the ground raised by the assessee on the addition proposed by the CIT. Accordingly, this plea of the learned AR is also rejected.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 05<sup>th</sup> day of September, 2019.

Sd/-  
**(George George K)**  
**JUDICIAL MEMBER**

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Cochin ; Dated : 05<sup>th</sup> September, 2019.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT (Central) Kochi
4. The Pr.CIT Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**