



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA, 1945

WP(C) NO. 9268 OF 2024

PETITIONER:

M/S.NEERIKODE SERVICE CO-OPERATIVE BANK LTD.,
NEERIKODE P.O, ALANGAD, ERNAKULAM, REPRESENTED BY ITS
SECRETARY KAVITHA V.A., PIN - 683 511.

BY ADV S.ARUN RAJ

RESPONDENTS:

- 1 INCOME TAX OFFICER,
WARD-3, ALUVA, KAP COMMERCIAL COMPLEX, RS ROAD, ALUVA,
ERNAKULAM, PIN - 683 101.
- 2 THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, ERNAKULAM,
PIN - 682 018.
- 3 INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH, KENDRIYA BHAVAN, KAKKANAD, ERNAKULAM,
COCHIN, PIN - 682 030.

BY ADV JOSE JOSEPH, SC, INCOME TAX DEPARTMENT

SRI.CYRIAC TOM, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner has approached this Court challenging the common order in ITA No.954/Coch/2022 and Stay Application No.34/2023 filed in that appeal, on the ground of delay. A reading of Ext.P6 order of the Tribunal will indicate that the Tribunal proceeded on the basis that the appeal was filed with a delay of 317 days.

2. The learned counsel appearing for the petitioner would submit that considering the orders passed by the Supreme Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, the period of limitation for filing an appeal against Ext.P3 order would stand extended till 31.05.2022. It is submitted that if the delay is calculated from that date, the delay is only 156 days.

3. The learned Standing Counsel for the Department would submit that even if the delay is calculated to be only 156 days, there is substantial delay in filing the appeal. It is submitted that the Tribunal has given sufficient reason as to why the application for condonation of delay could not be allowed. It is submitted that in such circumstances, the challenge to Ext.P6 order is not sustainable.



4. The learned counsel appearing for the petitioner, in reply would submit that the factors considered by the Tribunal indicate that the Tribunal had considered the delay in the proceedings before the first appellate authority and the same may not be germane for consideration of an application for condonation of delay in filing an appeal against the first appellate order.

Having heard the learned counsel for the petitioner and the learned counsel appearing for the Department, I am of the view that there is considerable merit in the contention taken by the learned counsel appearing for the petitioner. The delay or non co-operation of the petitioner in the proceedings before the first appellate authority is not germane to the consideration of an application for condonation of delay by the appellate Tribunal. That apart, it must be noticed that the petitioner had time till 31.05.2022 to file an appeal against Ext.P3 order considering the orders passed by the Supreme Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020. If that is taken into consideration, the delay in filing the appeal is only 156 days and not 317 days as indicated in the order of the Tribunal. In that view of the matter, I am inclined to allow this writ petition by quashing



Ext.P6 order. The delay of 156 days in filing ITA No.954/Coch/2022 will stand condoned. ITA No.954/Coch/2022 and S.A.No.34/2023 filed in the said appeal shall stand restored to the file of the Income Tax Appellate Tribunal. The same shall be considered and disposed of on merits, in accordance with the law, after affording an opportunity of hearing to both sides.

Sd/-
GOPINATH P.
JUDGE

DK



APPENDIX OF WP(C) 9268/2024

PETITIONER EXHIBITS

- Exhibit P1** A TRUE COPY OF THE ASSESSMENT ORDER 31-12-2019 U/S 143 (3) OF THE ACT PASSED BY THE 1ST RESPONDENT FOR THE AY 2017-18
- Exhibit P2** A TRUE COPY OF THE FIRST APPEAL FILED BY THE PETITIONER BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS) FOR THE AY 2017-18 ON 8-1-2020
- Exhibit P3** A TRUE COPY OF THE FIRST APPELLATE ORDER DATED 26-10-2021 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS) FOR THE AY 2017-18
- Exhibit P4** A TRUE COPY OF THE APPEAL FILED ON 5-11-2022 ALONG WITH THE DELAY CONDONATION AFFIDAVIT AND PETITION
- Exhibit P5** A TRUE COPY OF THE STAY PETITION IN EXHIBIT P-4 APPEAL FILED ON 5-11-2022 FOR THE AY 2017-18 BEFORE THE 3RD RESPONDENT
- Exhibit P6** A TRUE COPY OF THE ORDER DATED 31-10-2023 IN ITA NO.954/COCH/2023 PASSED BY THE 3RD RESPONDENT, INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH FOR THE AY 2017-18