

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos. 341 to 345/Coch/2018
Assessment Years : 2013-14 & 2014-15

Catholic Syrian Bank Ltd., Pandalam Branch, P.B. No. 3, Sankarathil Buildings, M.C. Road, Pandalam, Pathanamthitta, Kottayam-689501. [PAN/TAN: TVDTO1129C]	Vs.	The Deputy Commissioner of Income-tax (TDS), CPC, Ghaziabad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. Nos. 346 to 352/Coch/2018
Assessment Years : 2013-14 & 2014-15

Catholic Syrian Bank Ltd., Kumbanad Branch, Leejoy Buildings, Kumbanad P.O., Pathanamthitta, Kottayam-689547. [PAN/TAN: AABCT 0024D]	Vs.	The Deputy Commissioner of Income-tax (TDS), CPC, Ghaziabad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. Nos. 353 to 359 /Coch/2018
Assessment Years : 2013-14 & 2014-15

Catholic Syrian Bank Ltd., Nezhooor Branch, Kaduthuruthy Elanji Road, Kottayam-686612 [PAN/TAN: TVDTO1253A]	Vs.	The Deputy Commissioner of Income-tax (TDS), CPC, Ghaziabad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. Nos. 360 to 367 /Coch/2018
Assessment Years : 2013-14 & 2014-15

Catholic Syrian Bank Ltd., Poothiyottu Buildings, Thattarambalam, Mavelikara, Alleppey-690 103. [PAN/TAN: TVDTO0997D]	Vs.	The Deputy Commissioner of Income-tax (TDS), CPC, Ghaziabad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. Nos. 368 to 372 /Coch/2018
Assessment Years : 2013-14 & 2014-15

Catholic Syrian Bank Ltd., Thiruvalla R.S. Road Branch, Railway Station Road, Chilanka Jn. Thiruvalla, Pathanamthitta-689101 [PAN/TAN: TVDTO0993G]	Vs.	The Deputy Commissioner of Income-tax (TDS), CPC, Ghaziabad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. Nos. 373 to 380 /Coch/2018
Assessment Years : 2013-14 & 2014-15

Catholic Syrian Bank Ltd., Manjadikuttiyil Building, Choonad, Elippakulam P.O., Alappuzha-690503 [PAN/TAN: TVDTO0997F]	Vs.	The Deputy Commissioner of Income-tax (TDS), CPC, Ghaziabad.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri C. Naresh, CA
Revenue by	Smt. A.S. Bindhu, DR

Date of hearing	03/10/2018
Date of pronouncement	08 /10/2018

ORDER

Per CHANDRA POOJARI, AM:

These appeals filed by the assessee are directed against the different orders of the CIT(A), Kottayam relating to late filing of fee u/s. 234E of the Act and pertain to 2013-14 and 2014-15.

2 Primarily, there was a delay in filing these appeals before the CIT(A) which is enumerated hereinbelow:

S. No	Branch Name	Appeal No.	AY	Form	Qtr	Date of filing appeal before CIT(A)	No of days delay	Amount involved
1	Pandalam	ITA 341/COCH/2015	2013-14	24Q	Q4	18-02-2016	666	60,400.00
2		ITA 342/COCH/2018	2013-14	27Q	Q3	18-02-2016	638	5,000.00
3		ITA 343/COCH/2018	2014-15	24Q	Q1	15-02-2016	663	5,500.00
4		ITA 344/COCH/2018	2014-15	24Q	Q2	18-02-2016	663	17,000.00
5		ITA 345/COCH/2018	2014-15	24Q	Q3	18-02-2016	663	13,000.00
6	Kumbanad	ITA 346/COCH/2015	2013-14	24Q	Q2	26-02-2016	913	3,000.00
7		ITA 347/COCH/2018	2013-14	26Q	Q3	26-02-2016	913	2,300.00
8		ITA 348/COCH/2018	2013-14	27Q	Q2	26-02-2016	913	9,392.00
9		ITA	2013-	27Q	Q3	25-02-2016	913	21,500.00

		349/COCH/2013	14					
10		ITA 350/COCH/2015	2014- 15	24Q	Q1	26-02-2016	787	1,500.00
11		ITA 351/COCH/2018	2014- 15	26Q	Q1	26-02-2016	731	670.00
12		1TA 352/COCH/2018	2014- 15	27Q	Q1	26-02-2016	787	17,400.00
13	Neezhoor	ITA 353/COCH/2018	2014- 15	24Q	Q1	08-02-2016	588	21,000.00
14		ITA 354/COCH/2018	2014- 15	24Q	Q2	08-02-2016	588	27,500.00
15		ITA 355/COCH/2018	2014- 15	24Q	Q3	08-02-2016	588	24,000.00
16		ITA 356/COCH/2018	2014- 15	26Q	Q4	08-02-2016	588	1,000-00
17		ITA 357/COCH/2018	2014- 15	27Q	Q4	08-02-2016	588	1,000.00
IS		ITA 358/COCH/2018	2014- 15	27Q	Q2	08-02-2016	588	5,320.00
19		ITA 359/COCH/2018	2014- 15	27Q	Q3	08-02-2016	588	25,000.00
20			ITA 360/COCH/2018	2013- 14	27Q	Q2	17-02-2016	687
21		ITA 361/COCH/2018	2014- 15	24Q	Q1	22-01-2016	751	17,500.00
22		ITA 362/COCH/2018	2014- 15	24Q	Q2	22-01-2016	751	7,600.00
23		ITA 363/COCH/2018	2015- 16	24Q	Q2	17-02-2016	421	5,000.00
24		ITA 364/COCH/2018	2015- 16	26Q	Q2	17-02-2016	421	7,000.00
25		ITA 365/COCH/2018	2015- 16	26Q	Q3	17-02-2016	311	5,250.00
26		ITA	2015-	27Q	Q3	22-01-2016	285	1,930.00

		366Coch/2018	2016					
27		ITA 367/COCH/2018	2015- 16	27Q	Q2	17-02-2016	395	7,000.00
28	Thiruvalla RS Road	ITA 368/COCH/2018	2013- 14	26Q	Q4	24-02-2016	729	12,200.00
29		ITA 369/COCH/2018	2013- 14	24Q	Q4	24-02-2016	729	12,200.00
30		ITA 370/COCH/2018	2013- 14	27Q	Q4	24-02-2016	594	12,200.00
31		ITA 371/COCH/2018	2014- 15	24Q	Q1	24-02-2016	670	10,200.00
32		ITA 372/COCH/2018	2014- 15	27Q	Q1	24-02-2016	785	5,960.00
33		Choonad	ITA 373/COCH/2018	2013- 14	24Q	Q2	08-02-2016	750
34	ITA 374/COCH/2018		2014- 15	24Q	Q1	08-02-2016	656	4,000.00
35	ITA 375/COCH/2018		2014- 15	24Q	Q2	08-02-2016	664	1,500.00
36	ITA 376/COCH/2018		2014- 15	24Q	Q3	08-02-2016	656	3,000.00
37	ITA 377/COCH/2018		2014- 15	26Q	Q1	08-02-2016	664	3,800.00
38	ITA 378/COCH/2018		2014- 15	26Q	Q2	08-02-2016	664	24,000.00
39	ITA 379/COCH/2018		2014- 15	26Q	Q3	08-02-2016	664	5,800.00
40	ITA 380/COCH/2018		2014- 15	27Q	Q1	08-02-2016	653	8,020.00
Total								5,05,142.00

3. The assessee filed affidavits before the CIT(A) which are similar in nature in all these appeals. The assessee explained the reason for the delay in filing these appeals before the CIT(A) that the officer handling the TDS issues was

transferred from the concerned Branch and subsequently, noticed by the Head Office and the appeals were filed.

3.1 The Ld. AR further pleaded before us that the assessee is having a good case on merit and the issue in dispute was covered in favour of the assessee by way of the decision of this Tribunal in the case of Little Servants of Divine Providence vs. ITO in ITA No. 258/Coch/2016 for the assessment year 2006-07 vide its order dated 09/09/2016. As seen from the records, the reason advanced by the assessee before the CIT(A) was that the delay was due to transfer of the officer concerned in the Branch. Further, the assessee has not explained as to why such a long time was taken in handing over the matter by one person to another person and in all Branches how the same thing has happened. In fact, there is even no attempt to explain the same. The person who is handling the matter would undoubtedly be conscious of the fact that the time to file the appeals is running against the assessee and there must be proper explanation in the condonation petitions that it was taking steps to expedite the filing of the appeals before the CIT(A). The reason explained by the assessee in these condonation petitions is too general and it does not explain the delay except stating that the delay was due to transfer of the concerned officer in the Branch with whom the papers were pending for preparation of the appeals. Thus, we are not satisfied with the reasons set out in the affidavits filed before the CIT(A) so as to condone the delay in filing the appeals.

4. The Apex Court in the case of Office of the Chief Post Master General and Others vs. Living Media India Ltd, and Another, reported in (2012) 348 ITR 7 (SC) while dealing with the condonation of delay application by the State, has observed as under :-

"12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the

Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."

5. The Ld. AR placed reliance on the order of this Tribunal in the case of Midas Polymer Compounds Pvt. Ltd. In ITA No. 288/Coch/2017 dated 25/06/2018 wherein this Tribunal condoned the delay of 2819 days. In so far as the reliance by the Ld. AR on the decision of the Tribunal in the case of Midas Polymer Compounds Pvt. Ltd. cited supra is concerned, we are of the view that the Tribunal condoned the delay on the part of the assessee in filing the appeals by observing that the Chartered Accountant who was handling the matter failed to take proper steps to file the appeals and the Chartered Accountant filed affidavit stating that the appeals for AY 1999-2000 to 2004-05 in respect of the group concern and appeal for the AY 2005-06, 2007-08 and 2008-09 of the assessee were filed and represented by the Chartered Accountant at Cochin and he was under the impression that the appeal for the AY 2006-07 was also filed by that Chartered Accountant in Cochin. It was also stated that the issue in all these appeals were covered in favour of the assessee by the order of the High Court of Kerala for the assessment years 2005-06 to 2008-09. The non-filing of the appeal was noted only when the Assessing Officer had enquired about the status of the case and payment of tax in the last week of May, 2017. The assessee was under the impression that the Chartered Accountant had already made arrangements for filing the appeal and as so many appeals were pending before the ITAT, he was under the impression that the appeal for this year also was filed. It was submitted that the non-filing of the appeal was due to an

inadvertent omission on his part in handing over the file to the AR at Cochin. Hence, it was prayed that the delay of seven years and 263 days caused in filing the appeal may be condoned.

6. In the present case, there were no affidavits from the concerned persons who are handling the impugned issues and who are required to take proper steps in filing the appeals before the CIT(A). In our opinion, the decision of the coordinate Bench is without doubt binding upon us and we are bound to follow it. However, in the present case, the order of the Tribunal, cited supra does not give any such blanket direction as submitted by the Ld. AR to condone the delay as it does not in any way fetter the Tribunal from exercising its discretion to condone or not to condone the delay in filing the appeals. The condonation petition will have to be case specific and the order of the Tribunal cited by the Ld. AR cannot be read so as to ignore the facts and circumstances of the present cases. Thus, the submission of the assessee's Counsel cannot be accepted that the delay in filing the appeals by the assessee has to be condoned. Therefore, according to us, each case for condonation of delay would have to be decided on the basis of the explanation offered for the delay, i.e. is it bonafide or not, concocted or not or does it evidence negligence or not. Further, in the present case, the assessee is a scheduled bank supported by a large number of personnel and also assisted by qualified Chartered Accountants and Advocates. The reason as come out from the condonation petitions filed by the assessee, as

stated earlier, is that there was transfer of the officer who was handling the issue. We cannot accept such proposition as it cannot be considered as good and sufficient reason to condone the delay. It was submitted that the delay is to be condoned since the issue on merit covered in favour of the assessee. This submission ignores the fact that the object of the law of limitation is to bring certainty and finality to litigation. This is based on the Maxim "interest reipublicae sit finis litium i.e. for the general benefit of the community at large, because the object is every legal remedy must be alive for a legislatively fixed period of time. The object is to get on with life, if you have failed to file an appeal within the period provided by the Statute. It is for the general benefit of the entire community so as to ensure that stale and old matters are not agitated and the party who is aggrieved by an order can expeditiously move higher forum to challenge the same, if he is aggrieved by it. As observed by the Apex Court in many cases, the law assist those who are vigilant and not those who sleep over their rights as found in the Maxim "Vigilantibus Non Dormientibus Jura Subveniunt". In our opinion, merely because the assessee is not vigilant, it cannot follow that the assessee is bestowed with a right to the delay being condoned. We are conscious of the fact that the period of limitation should not come as an hindrance to do substantial justice between the parties. However, at the same time, a party cannot sleep over its right ignoring the statute of limitation and without giving sufficient and reasonable explanation for the delay, except its appeal to be entertained merely because the assessee is a Bank.

Appeals filed beyond a period of limitation have been entertained by us where the delay has been sufficiently explained such as in cases of bonafide mistake. Thus the assessee should be well aware of the statutory provisions and the period of limitation and should pursue its remedies diligently. It cannot expect their appeals be entertained because they are after all the assessee, notwithstanding the fact that delay is not sufficiently explained. Hence, the delay is not condoned and the appeals are unadmitted.

7. In the result, all the appeals filed by the assessee are dismissed as unadmitted.

Order pronounced in the open Court on this 8th October, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 8th October, 2018

GJ

Copy to:

1. Catholic Syrian Bank Ltd., Pandalam Branch, P.B. No. 3, Sankarathil Buildings, M.C. Road, Pandalam, Pathanamthitta, Kottayam-689501.
2. Catholic Syrian Bank Ltd., Kumbanad Branch, Leejoy Buildings, Kumbanad P.O., Pathanamthitta, Kottayam-689547.
3. Catholic Syrian Bank Ltd., Nezhooor Branch, Kaduthuruthy Elanji Road, Kottayam-686612.
4. Catholic Syrian Bank Ltd., Poothiyottu Buildings, Thattarambalam, Mavelikara, Alleppey-690 103.
5. Catholic Syrian Bank Ltd., Thiruvalla R.S. Road Branch, Railway Station Road, Chilanka Jn. Thiruvalla, Pathanamthitta-689101
6. Catholic Syrian Bank Ltd., Manjadikuttiyil Building, Choonad, Elippakulam P.O., Alappuzha-690503.

7. The Deputy Commissioner of Income-tax(TDS), CPC, Ghaziabad.
8. The Commissioner of Income-tax(Appeals), Kottayam.
9. The Commissioner of Income-tax (TDS), Kochi.
10. D.R., I.T.A.T., Cochin Bench, Cochin.
11. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin