

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

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

ITA No.186/Coch/2019 : Asst.Year 2000-2001  
ITA No.187/Coch/2019 : Asst.Year 2001-2002  
ITA No.188/Coch/2019 : Asst.Year 2002-2003  
ITA No.189/Coch/2019 : Asst.Year 2003-2004  
ITA No.190/Coch/2019 : Asst.Year 2004-2005

|                                                                                                                                                                                 |     |                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------|
| M/s.United Tropicana Veneers<br>Private Limited,<br>C/o.Thomas Cherian, FCA<br>Keralapuram Building<br>Sreenivasa Ayyar Road<br>Kottayam – 686 001.<br><b>PAN : AAACV2579F.</b> | Vs. | The Asst.Commissioner of<br>Income-tax, Circle – 1<br>Thiruvalla. |
| (Appellant)                                                                                                                                                                     |     | (Respondent)                                                      |

Appellant by : Sri.M.S.Venkitachalam, CA  
Respondent by : Sri.Mritinjaya Sharma, Sr.DR

|                                     |                                               |
|-------------------------------------|-----------------------------------------------|
| <b>Date of Hearing : 14.01.2020</b> | <b>Date of<br/>Pronouncement : 14.02.2020</b> |
|-------------------------------------|-----------------------------------------------|

**ORDER**

**Per George George K, JM :**

These appeals at the instance of the assessee are directed against five orders of the CIT(A), all dated 19.01.2018. The relevant assessment years are 2000-2001 to 2014-2015. The orders of the CIT(A) arise out of the orders passed u/s 271(1)(c) of the I.T.Act.

2. These appeals were filed by the ex-Directors of the assessee-company with a delay of 329 days. Petitions for condonation of delay were filed by the ex-Directors along with affidavits of the ex-Managing Directors stating therein that the quantum assessments and penalty orders were passed

subsequent to their retirement and was not aware of the assessments and penalty proceedings till the ex-Directors received the recovery notices for penalty imposition u/s 271(1)(c) of the I.T.Act. At the insistence of the Bench, the present management of the assessee-company filed revised Form No.36 along with condonation petitions and affidavits of the present Managing Directors stating therein the reasons for belated filing of appeals. The reasons stated by the present Managing Directors for belated filing of the appeals read as follow:-

*(i) The company has been incurring continuous losses since its' inception and as on 31.03.2000 the aggregate loss of the Company stood at Rs. 1,07,78,890/-.*

*(ii) The net worth of the Company was almost eroded and there was no cash left with the Company for carrying out its day to day functions.*

*(iii) The Assessment for the impugned assessment year, consequent to which the penalty has been levied, resulted out of a search made in the premises of the Company by the Central Excise Department on 08.07.2003. Prior to May 2003, the company was managed by a set of Directors named Shri. K.S. Simon, Smt. Mariamma Kuruvilla and Shri. Simon Kuruvilla. They retired in the months of April and May 2003 and a new set of Directors, including the undersigned had taken over the management with a hope of reviving the Company. However the present Directors were also unable to turn around the Company despite their best efforts.*

*(iv) The assessment for the impugned assessment year was made on an estimate basis, without rejecting the books of accounts. The Company had diligently pursued appeals against such assessment culminating in a Tribunal Order dated 24.07.2009.*

*(v) Order levying penalty under Section 271 (1) (c) was passed on 24.03.2010 and despite extreme difficulties the Company had filed an appeal before the Commissioner of Income-Tax, without any delay. However due to our inability to appoint a proper counsel, because of the dire financial condition, no representations could be made before the Learned CIT(A), when the matter was posted for hearing.*

(vi) *By the time the order of penalty was passed viz. 19.01.2018, the Company was facing proceedings under the SARFAESI Act and the Debt Recovery Tribunal had already issued recovery notices. Apart from this, the Company was facing great labour unrest, disabling the Directors from entering the premises and overseeing the day to day work.*

(vii) *The Honorable High Court of Kerala through an order dated 11.08.2015 had appointed an Advocate Commissioner to assess the value of the property of the Company for meeting its liabilities and thereafter through an order dated 10.11.2017 directed sale of the property. Thus during the years 2015 to 2019 the Company faced formidable difficulties, disabling the Directors from carrying out the regular work.*

(viii) *The Honorable High Court of Kerala through its' order dated 20th March 2018 in W.P. ( C ) No. 17019 of 2014 allowed one Shri. George Thomas Alias Tony, son of Mohan K Varkey to acquire the property of the Company. A copy of the order is annexed and this order clearly demonstrates the difficulties faced by the Company disabling it from filing the appeal against the impugned penalty order, in time.*

(ix) *Thus the delay in filing the appeal was caused due to the inability of the Directors to access the Company offices and on account of the great financial difficulties and labour unrest.*

(x) *If the delay is not condoned and the appeal against the ex-parte order passed by the CIT (A), not admitted the Company as well as its' former and present directors will be put to irreparable loss and damage.*

4. *Considering the above it is prayed that the Honorable Tribunal may be kind enough to condone the delay and admit the appeal and dispose it on merits."*

3. We have perused the material on record and heard the rival submissions on the delayed condonation petition. We are of the view the delay in filing these appeals are on account of difficulties faced by the assessee-company such as financial crises, labour unrest etc. These facts are borne out from the material placed on record. Therefore, no latches can be

attributed to the assessee-company for the belated filing of these appeals. Hence, the delay in filing these appeals are condoned and we proceed to dispose of the same on merits.

4. Identical grounds are raised in these appeals and they read as follow:-

*"1. Assessment was done not on the basis of any books of accounts, but purely on estimation basis.*

*2. The Appellant had not concealed any particulars of Income.*

*3. The Appellant is not aware about the reason for the excess cash or other incriminating documents seized from the Company at the time of raid.*

*4. Till the date of director's resignation, the appellant company had maintained the books of accounts, records and related documents properly and were flawlessly updated.*

*5. Ex- Directors of the appellant Company are facing severe financial crisis. The imposition of penalty at this stage would create genuine hardship to the Directors.*

*On the basis of above, and other grounds and arguments that may be presented at the time of hearing, we request that the order of the Assessing Officer may be cancelled."*

5. The brief facts of the case are as follow:-

The assessee is a private limited company engaged in manufacture and sale of decorative veneer, commercial plywood etc. The Central Excise Department conducted a search at the business premises of the assessee and the residence of the Directors. According to the Department, the search had revealed that the assessee-company was indulged in under-invoicing of sales and realizing the differential amount in cash. It was also noticed by the Department that the assessee was involved in suppression of production.

Consequent to the information received from the Excise Authorities, the Assessing Officer issued notice u/s 148 of the I.T.Act and completed the assessments u/s 143 r.w.s. 147 of the I.T.Act for assessment years 2000-2001 to 2014-2015. On quantum assessments, the appeals were preferred by the assessee before the first appellate authority, who partly allowed the appeals of the assessee. On further appeals by the assessee before the Tribunal, the view taken by the CIT(A) was confirmed.

6. Subsequent to the dismissal of appeals filed by the assessee with regard to the quantum assessments, the Assessing Officer issued notice u/s 274 of the I.T.Act for assessment years 2000-2001 to 2014-2015 and imposed penalty u/s 271(1)(c) of the I.T.Act. The details of the penalty imposed are as follows:-

| Asst.Year | Penalty amount<br>u/s 271(1)(c) |
|-----------|---------------------------------|
| 2000-01   | 5,45,376                        |
| 2001-02   | 6,45,864                        |
| 2002-03   | 3,79,442                        |
| 2003-04   | 6,73,970                        |
| 2004-05   | 5,58,809                        |
| Total     | 28,03,461                       |

7. Aggrieved by the orders imposing penalty u/s 271(1)(c) of the I.T.Act, the assessee preferred appeals to the first appellate authority. There was no representation by the assessee before the first appellate authority. The CIT(A)

dismissed the appeals filed by the assessee for the assessment years 2000-2001 to 2014-2015.

8. Aggrieved by the orders of the CIT(A) confirming the penalty imposed u/s 271(1)(c) of the I.T.Act, the assessee has preferred these appeals before the Tribunal. The learned AR relied on the grounds raised. The learned Departmental Representative, on the other hand, strongly supported the orders passed by the Income Tax Authorities.

9. We have heard the rival submissions and perused the material on record. The earlier Directors of the assessee-company had resigned on 09.04.2003. After the resignation of the earlier Directors, the Central Excise Department had conducted a search at the premises of the assessee-company on 08.07.2003. The earlier Directors were not associated with the assessee-company's matters subsequent to their retirement and were not aware of the assessments completed and consequent penalty levied. Being unaware, the ex-Directors did not represent the matters either in quantum proceedings or in penalty proceedings. The present Directors of the assessee-company has faced financial difficulties and labour unrest, and the same is evident from the documents produced before the Tribunal. Consequent to labour unrest and the financial difficulties faced by the present Directors, they also could not represent before the first appellate authority as regards the penalty imposed u/s 271(1)(c) of the I.T.Act. The penalty proceedings initiated are separate from the quantum assessments and if the assessee can prove in penalty proceedings that the additions in the quantum

assessments are not warranted, necessarily, the penalty imposed has to be deleted. Since the assessee has not been represented before the first appellate authority with regard to the penalty proceedings, in the interest of justice and equity, we are of the view that as a last chance, the assessee should be granted one more opportunity of being heard. The assessee shall cooperate with the Department and furnish necessary documents and evidences to prove its case. For the above said purpose the issue is restored to the CIT(A). It is ordered accordingly.

10. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced on this 14<sup>th</sup> day of February, 2020.

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

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

Cochin ; Dated : 14<sup>th</sup> February, 2020.  
Devadas G\*

**Copy of the Order forwarded to :**

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

BY ORDER,

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