

HC denies to condone delay due to death of counsel as assessee delayed to appeal by 4 years after death of counsel

Summary – The High Court of Kerala in a recent case of Kerala Tourism Infrastructure Ltd., (the Assessee) held that Death of counsel before matter was heard could not be a sufficient reason for delay of another 4 years in challenging an ex parte order of Tribunal

Facts

- The assessee derived some income from property, which they claimed as 'income from business'. The Assessing Officer, however, treated same as 'income from other source'.
- On appeal, the Commissioner (Appeals) found that the same was 'income from house property'.
- On second appeal, the Tribunal reversed order of Commissioner (Appeals) and restored order of Assessing Officer. The assessee decided not to file appeal, as assessee's exigibility to tax would be same, whether it be 'income from business' or 'income from other sources'.
- Later on, the assessee filed three miscellaneous applications before Tribunal, seeking re-hearing of appeal after expiry of four years which was rejected by the Tribunal.
- On writ:

Held

- On going through miscellaneous applications, the only reason stated is that, the counsel was indisposed on account of serious illness and later on passed away and hence, the appeals were not attended to. The assessee also claims that such circumstance was beyond the control of the assessee.
- Definitely, the non-appearance of the assessee or his representative or a counsel on the date of hearing was not beyond the control of the assessee. The Counsel passed away three months before the appeal was taken up and a diligent litigant should have followed up the matter. In any event, the death of the Counsel before the matter was heard does not explain the circumstance of the petitioners assessee having slept over the matter for another four years.
- It is pointed out that in the circumstance of the income being treated as 'income from other sources', the assessee would not be entitled to many of the deductions, which are allowable under the head 'business income.'
- The assessee was earlier of the opinion that no appeal need be filed from the order of the Tribunal, but later on changed their opinion and for the purpose of claiming deductions, decided to file an appeal. Change in opinion was motivated by the orders passed by First Appellate Authority which gave effect to the Tribunal's order.

- That however, cannot be a sufficient reason for the long delay occasioned in challenging order of Tribunal. For all the above reasons, the Tribunal cannot be faulted for having refused to exercise discretion to condone the delay of more than 4 years. There was no circumstance to persuade interference therewith.