Cool Minds Technologies Private vs Assistant Commissioner Of Income Tax

ID: F2J-C-2312 **Court:** Kerala High Court
Case: I.T.A.NO.31 OF 2025 **Date:** 2025-06-16

Kerala High Court Cool Minds Technologies Private ... vs Assistant Commissioner Of Income Tax on 16 June, 2025 Author: A.K.Jayasankaran Nambiar Bench: A.K.Jayasankaran Nambiar 2025:KER:42605

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

MONDAY, THE 16TH DAY OF JUNE 2025/26TH JYAISHTA, 1947

I.T.A.NO.31 OF 2025 AGAINST THE ORDER DATED 18.03.2025 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN

APPELLANT(S):

COOL MINDS TECHNOLOGIES PRIVATE LIMITED A-5, 2ND FLOOR, TAPASYA, INFOPARK, KAKKANAD, KOCHI A-5, 2ND FLOOR, TAPASYA, INFOPARK, KAKKANAD, KOCHI A-5, 2ND FLOOR, TAPASYA, INFOPARK, KAKKANAD, KOCHI PAN - AABCD6457G, (FORMERLY COOL MINDS TECHNOLOGIES PVT. LTD., 6TH FLOOR, CHERUPUSHPAM BUILDING, SHANMUGHAM ROAD, KOCHI 682301), PIN - 682030

BY ADV.SRI.ABRAHAM JOSEPH MARKOS BY ADV.SRI.V.ABRAHAM MARKOS BY ADV.SRI.ISAAC THOMAS BY ADV.SRI.P.G.CHANDAPILLAI ABRAHAM BY ADV.SRI.ALEXANDER JOSEPH MARKOS BY ADV.SRI.JOHN VITHAYATHIL

RESPONDENT(S):

1 ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE-1(1), AAYAKAR BHAWAN, I.S.PRESS ROAD, KOCHI, PIN - 682018

2 PRINCIPAL COMMISSIONER OF INCOME TAX CIRCLE-1(1), AAYAKAR BHAWAN, I.S.PRESS ROAD, KOCHI, PIN - 682018

BY SRI.SRI.JOSE JOSEPH, STANDING COUNSEL

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 16.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: I.T.A.No.31/25 :: 2 ::

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JUDGMENT

Dr. A.K. Jayasankaran Nambiar, J.

This I.T. Appeal impugns the order dated 18.03.2025 of the Income Tax Appellate Tribunal, Cochin Bench in I.T.A.No.375/COCH/2016 relevant to the assessment year 2007-08.

2. The brief facts necessary for disposal of this I.T. Appeal are as follows:

The appellant is engaged in software development and export of IT enabled services, for which, it had claimed deduction under Section 10B of the Income Tax Act [hereinafter referred to as the "I.T. Act"] as a 100% EOU. For the assessment years 2007-08 and 2008-09, the claim for deduction was denied. In the first appeal, the appellant raised an alternate contention for deduction under Section 10A of the I.T. Act, in the event, the claim under Section 10B was not allowed. This alternate ground was allowed by the First Appellate Authority for the assessment year 2008-09, but was rejected by the same authority for the assessment year 2007-08.

3. Against the rejection by the First Appellate Authority, the appellant preferred an appeal before the Income Tax Appellate I.T.A.No.31/25 :: 3 ::

2025:KER:42605 Tribunal. The said appeal however came to be dismissed for non-prosecution. It is the case of the appellant that he received neither the notice of hearing before the Appellate Tribunal nor the dismissal order of the Appellate Tribunal. When he eventually got a copy of the said dismissal order of the Appellate Tribunal, he preferred an application for restoration of the appeal, but the said application was also dismissed as belated.

4. Aggrieved by the orders dismissing his appeal and the restoration application, the appellant approached this Court through W.P.(C).No.9100 of 2020, which was dismissed by a learned Single Judge. The learned Single Judge, although noticed the provisions of Section 254 of the I.T. Act, read with Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963, to find that the Appellant Tribunal was statutorily obliged to consider the appeal on merits, and did not have the power to dismiss the appeal filed before it for non-prosecution, nevertheless proceeded to dismiss the writ petition on the ground that the miscellaneous application preferred by the appellant for restoration of the appeal, was itself belated.

5. In the Writ Appeal preferred by the appellant before this Court, a Division Bench of this Court, of which one of us is a party [Dr. Justice A.K.Jayasankaran Nambiar], found that in view of the earlier Division Bench judgment of this Court in Uzhuva Service Co-operative Bank Ltd. v. Income Tax Officer and others - [2020 I.T.A.No.31/25 :: 4 ::

2025:KER:42605 (5) KHC 615], the Appellate Tribunal was statutorily obliged to consider all appeals on merits, and the dismissal for non-prosecution, without considering the merits of the appeal, was legally unsustainable. The Writ Appeal was therefore allowed by setting aside the impugned judgment of the learned Single Judge as also the orders of the Income Tax Appellate Tribunal that were impugned in the writ petition and a direction was issued to the Appellate Tribunal to restore the appeal [I.T.A.No.375/COCH/2016] on its file, and pass orders on merits after hearing the appellant, within an outer time limit of six months from the date of receipt of a copy of the judgment. We are informed that against the said judgment of the Division Bench, no further proceedings were initiated by the Revenue, and hence, the said judgment has become final and binding on the Appellate Tribunal.

6. It would appear that pursuant to a remand by this Court with a specific direction to consider and dispose the appeal on merits, the Appellate Tribunal has now, in gross disregard of the said direction, once again dismissed the appeal preferred by the appellant by purportedly considering a delay condonation application in the said appeal and dismissing the same as devoid of merit. The appeal was thus dismissed, yet again, without considering the merits of the matter. It is the said order passed by the Appellate Tribunal, dismissing the appeal after dismissing the delay condonation application, that is impugned before us in this proceedings by raising the following substantial questions of law: I.T.A.No.31/25 :: 5 ::

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(a) Whether on the facts and in the circumstances of the case and in the

light of Annexure A judgment the Appellate Tribunal is right in dismissing the Appeal on the ground of delay ? (b) Whether, on the facts and circumstances and in the light of the affidavit filed for condonation of delay there is any material or evidence on record to justify the finding of the Appellate Tribunal that the delay in filing the appeal cannot be condoned ? (c) Whether on the facts and in the circumstances of the case, the Appellant's unit licensed by the Software Technology Park of India as a 100% EOU is entitled to deduction under Section 10B or alternatively under Section 10A for Assessment Year 2007-08 ?

7. At the very outset we must observe that we are quite surprised, not to mention moderately irked, by the blatant disregard of our directions by the Income Tax Appellate Tribunal. We find the action of the Income Tax Appellate Tribunal [Cochin Bench comprising of Shri. Inturi Rama Rao (Administrative Member) & Shri. Keshav Dubey (Judicial Member)] to be in breach of the judicial discipline that must inform its actions in a hierarchical system of adjudication. Its action of considering a delay condonation application that was never restored before it for consideration, and a non-consideration on merits of the appeal that was, smacks of impertinence and tantamounts to a blatant disregard of the directions issued from this Court. The Appellate Tribunal would do well to avoid such indiscretions in the future, and adhere to a standard of conduct befitting a quasi-judicial authority under our legal system.

8. We therefore set aside the impugned order of the Income Tax Appellate Tribunal, and direct the Tribunal to pass orders on merits of I.T.A.No.31/25 :: 6 ::

2025:KER:42605 I.T.A.No.375/COCH/2016 that shall stand restored forthwith for their consideration. The Tribunal shall also pass final orders in the appeal within two months from the date of receipt of a copy of this judgment, after hearing the appellant. The I.T.A. is therefore allowed, by answering question nos.(a) and (b) in favour of the appellant/assessee and against the Revenue and without answering question no.(c), which pertains to the merits of the appeal before the Appellate Tribunal.

The Registrar of this Court shall cause a copy of this judgment to be sent to the President of the Income Tax Appellate Tribunal with a request to the said authority to take such measures as would avoid such unpleasant situations in future.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR JUDGE Sd/-

P.M.MANOJ JUDGE prp/17/6/25 I.T.A.No.31/25 :: 7 ::

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APPENDIX OF I.T.A.NO.31/2025

PETITIONER'S ANNEXURES:

ANNEXURE A TRUE COPY UDGMENT DATED 04.06.2024 IN WA NO. 717/2024 BY A DIVISION BENCH OF THIS HONOURABLE COURT ANNEXURE B TRUE COPY OF THE ORDER DATED 24.10.2016 OF THE APPELLATE TRIBUNAL IN ITA NO.375/

COCH/2016 FOR THE ASSESSMENT YEAR 2007-08 ANNEXURE C TRUE COPY OF THE ORDER DATED 23.08.2019 DISMISSING MISCELLANEOUS PETITION NO.

64/COCH/2019 DATED 09.04.2019 FILED BY APPELLANT FOR RESTORING THE APPEAL ANNEXURE D TRUE COPY OF THE ASSESSMENT ORDER DATED 22.02.2013 ISSUED TO THE PETITIONER ANNEXURE E TRUE COPY OF THE ORDER OF THE COMMISSIONER (APPEALS) DATED 23.09.2014 ANNEXURE F TRUE COPY OF THE APPEAL DATED 01.09.2016 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL ANNEXURE G TRUE COPY OF APPLICATION FOR CONDONATION OF DELAY OF 580 DAYS DATED 01.09.2016 FILED BY THE APPELLANT ANNEXURE H TRUE COPY OF ADDITIONAL PAPER BOOK DATED 15-11-2024 FILED BY THE APPELLANT ANNEXURE I TRUE COPY OF THE ADDITIONAL AFFIDAVIT BEFORE THE INCOME TAX APPELLATE TRIBUNAL DATED 14.12.2024 TO SUPPORT THE PETITION FOR CONDONATION OF DELAY ANNEXURE J TRUE COPY OF THE IMPUGNED ORDER DATED 18-03-2025 OF THE INCOME TAX APPELLATE TRIBUNAL RESPONDENT'S ANNEXURES: NIL.

//TRUE COPY// P.S. TO JUDGE