IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 68 OF 2013
WITH
ITA/69/2013

UTTAM BHAGWANRAO JADHAV
VERSUS
INCOME TAX APPELLATE TRIBUNAL 'A' BENCH PUNE AND ANOTHER
...
Advocate for Appellant : Mr. M K Kulkarni
Advocate for Respondents: Mr. Alok Sharma
...
CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.
Dated: March 02, 2015
...

PER COURT :-

1. In these appeals only the question that arise for our consideration is 'whether the Appellate Tribunal committed gross error and took a perverse view while condoning the delay of four and half years in filing of the appeals.' Relevant portion of the Judgment is as under :-

> "2. At the outset of hearing, the Ld. Departmental Representative for Revenue pointed out that there is a delay of about 4 and 1/2 years in filing Revenue appeal for A.Y.2003-2004 and A.Y.2002-2003. The Ld. Departmental Representative drew our attention to its condonation application dated 12.04.2011 wherein delay in filing of the appeal is attributed to inadvertent mistakes of concerned revenue authorities. We are aware that in a big department like Income Tax Department, there is a possibility of communication gap due to various administrative reasons and cause of Revenue should not suffer for such inadvertent mistakes committed due to communication gap between the

> concerned revenue authorities. Taking liberal approach, we condone the delay. Similar view has been taken by Hon'ble Supreme Court in the case of Lanka Venkateswarlu (Deceased) through legal heirs Vs. State of Andhra Pradesh (2011) 4 SCC 363, in the case of Balwant Singh (Deceased) through legal heirs Vs. Jagdish Singh and Ors. AIR 2010 SC 3043. We have also taken into consideration the case of Post Master General and Others Vs. Living Media India Ltd. and Another reported in (2012) 3 Supreme Court Cases 563, wherein the Hon'ble Supreme Court held that condonation of delay is an exception and should not be used as an anticipated benefit for Government departments and offering usual explanation that file was kept pending due to procedural red tape. The case before us is not a case of procedural red tapism but of inadvertent mistake on part of Revenue officers. Inadvertent mistake can be attributed to so many facts. Taking overall view of the situation, we condone the delay in both the years and appeals are being decided on merit."

2. The learned counsel for the appellant took strong exception to the manner in which the delay is condoned. He asserted that the Tribunal rather casually condoned the delay. He also pointed out that, even the application seeking condonation of delay was not supported with an affidavit. He further highlighted the words 'inadvertent mistake' used in the application and asserted that unless there is an explanation coming from the department, such mistakes cannot be condoned. He, then placed

reliance on two judgments 1) Postmaster General and others Vs. Living Media India Limited and Another reported in (2012) 3 SCC 563 and 2) Commissioner of Income Tax Vs. Harinagar Sugar Mills reported in (2014) 1 DTR judgment page 129 (Bombay). We perused both the judgments, but we are not inclined to take another view. We might have taken another view had such application for condonation of delay was made before us. Having regard to other aspects of the case, we are inclined to hold that at least in the facts and circumstances of this case, the order condoning the delay does not appear to be bad. It does not give rise to any substantial question of law. Besides, the appellant is given an opportunity to go before the Assessing Officer to claim and get exemption on alternative ground which was not discussed earlier in his case. We do not find it necessary to admit these appeals. Income Tax Appeals are disposed of.

(V.K. JADHAV, J.) **(A.V. NIRGUDE, J.)**

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aaa/-