

In the High Court of Judicature at Madras

Dated: 06.01.2015

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR

and

The Honourable Mr.JUSTICE R.KARUPPIAH

Tax Case (Appeal) Nos.535 to 545 of 2014

& M.P.No.1 of 2014

Mrs.P.S.Rajeswari

....Appellant in T.C.(A)Nos.535 & 536/2014

Mr.E.V.Perumalsamy Reddy

.... Appellant in T.C.(A)Nos.537 to 539/2014

M/s.EVP Estates and Properties Development Ltd.

No.1015, "Z" Block, 6th Avenue,

Anna Nagar,

Chennai - 600 040.

.... Appellant in T.C.(A)Nos.540 to 543/2014

M/s.EVP Housing Chennai P. Ltd.

No.1015, "Z" Block, 6th Avenue,

Anna Nagar,

Chennai - 600 040.

.... Appellant in T.C.(A)Nos.544 & 545/2014

Vs.

Assistant Commissioner of Income Tax,

Central Circle -IV(2),

Chennai - 600 034.

.... Respondent in the above T.CAs

APPEALS under Section 260A of the Income Tax Act against the order dated 17.04.2014 made in I.T.A.Nos.2293, 2294, 2295 to 2297, 2298 to 2301 and 2302 and 2303/Mds/2013 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai.

preferred against the order made in (i) I.T.A.No.291 and 298 of 2009-2010 dated 27.10.2010 on the file of the Commissioner of Income Tax (Appeals)I Chennai-34 against the Assessment order dated 31.12.2009 on the file of the Assistant Commissioner of Income Tax, Central Circle IV (2) Chennai-34 for the Assessment year 2006-2007 and 2007-2008 in PAN/ACQPRO 638B) (in TC (A) No.535 & 536/14)

(ii) I.T.A.No.107-108/10-11 dated 20.12.2010 and I.T.A.No.299/09-10 dated 27.10.2010 on the file of the Commissioner of Income Tax Appeal (I) Chennai 34 against the Assessment order dated 31.12.2009 on the file of the Assistant Commissioner of Income Tax, Central Circle IV (2) Chennai-34 for the assessment year 2004-2005, 2006-2007 and 2007-2008 in PAN/GIR.No.AGMP5934D (T.C.(A) No.537 to 539 of 2014)

iii. ITA.No.294 to 297/09-10 dated 27.10.2010 on the file of the Commissioner of Income Tax Appeal I Chennai-34 against the Assessment order dated 31.12.2009 on the file of the Assistant Commissioner of Income Tax, Central Circle IV (2) Chennai-34 for the assessment year 2005-2006 to 2008-2009 in PAN:AABCE1517C (in TC (A))No.540 to 543/14.

iv. ITA.No.292 & 293/09-10 dated 27.10.2010 on the file of the Commissioner of Income Tax Appeal I Chennai-34 against the Assessment order dated 31.12.2009 on the file of the Assistant Commissioner of Income Tax, Central Circle IV (2) Chennai-34 for the assessment year 2006-2007 & 2008-2009 in PAN:AABCE4237H (in TC (A) No.544 to 545/14.

For Appellants : Mr.S.R.Rajagopal

For Respondent : Mr.T.R.Senthilkumar
Standing counsel for Income Tax

C O M M O N J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the assesseees, as against the order of the Income Tax Appellate Tribunal dated 17.04.2014, declining to condone the delay of 1100 days, raising the following substantial questions of law:

"1. Is not reasoning of the Tribunal failing to condone the delay of 1100 days in filing the appeal before it, is perverse and contrary to law?

2. Whether on facts and circumstances of the case, the Appellate Tribunal was right in dismissing the appeal on the point of limitation without appreciating the reasons stated in the affidavit filed by the appellant?

3. Whether the Appellate Tribunal is correct in not considering the "sufficient cause" for the delay which had been explained by the assessee in filing the appeal with condonation of delay?

4. Whether the finding of the Tribunal is perverse especially after admission of the main case and after granting interim relief dismissed the main case in condonation application by overlooking the earlier decision of another Bench?

5. Whether on the facts and circumstances of the case, the Tribunal was right in not considering the submission made by the counsel for the appellant at the time of argument?"

2. The brief facts relating to the above batch of appeals are as follows:

On 10.1.2008, search was conducted in terms of Section 132 of the Income Tax Act at the business place of the appellants. During the course of search, 432 documents, account books and papers were seized from the registered office of the business concern of the appellants. On 26.8.2008, the properties belonging to the appellants in Kocthiparai Village were attached by the respondent department. On 29.9.2008, notice under Section 153A of the Income Tax Act was issued for block assessment proceedings in respect of the searched persons. On 24.11.2008 it appears that the appellants had made a representation requesting to release the original documents so as to sell the property and pay the dues to the respondent. Further, in response to the notice, the appellants have filed their return of income on 05.08.2009 admitting their income for each assessment year, however, the admitted tax has not been paid.

3. After scrutinising the return of income filed and after affording opportunity to the appellants, the Assessing Officer passed an order of assessment by making additions in respect of all the above appellants. The Assessing Officer also levied interest and penalty.

4. Aggrieved by the order of assessment, the appellants/assessee filed appeals before the Commissioner of Income Tax (Appeals), who, by order dated 27.10.2010 after following the decisions of this Court in the case of S.Alagirisamy V. Income Tax Officer reported in 296 ITR 43 and Commissioner of Income Tax V. Smt.G.A.Samanthakamani reported in 259 ITR 215, dismissed the appeals in limine, on the ground that the appellants have not paid taxes on the admitted income. According to the assessee that between January and April, 2010, they have paid certain amount towards admitted tax.

5. Aggrieved by the orders of the Commissioner of Income Tax (Appeals), the assessee pursued the matter before the Income Tax Appellate Tribunal by filing appeals along with petitions to condone the delay in filing the appeals. The details of the appeals filed by the appellants are as follows:

S.No	I.T.A.No.	Name of the Assessee	Number of days delay
1	2293 of 2013	Mrs.P.S.Rajeswari	1100
2	2294 of 2013	Mrs.P.S.Rajeswari	1100
3	2295 of 2013	E.V.Perumalsamy Reddy	1127

S.No	I.T.A.No.	Name of the Assessee	Number of days delay
4	2296 of 2013	E.V.Perumalsamy Reddy	1127
5	2297 of 2013	E.V.Perumalsamy Reddy	1127
6	2298 of 2013	M/s.EVP Estates and Properties Development Limited, Chennai.	1127
7	2299 of 2013	M/s.EVP Estates and Properties Development Limited, Chennai.	1127
8	2300 of 2013	M/s.EVP Estates and Properties Development Limited, Chennai.	1127
9	2301 of 2013	M/s.EVP Estates and Properties Development Limited, Chennai.	1127
10	2302 of 2013	M/s.EVP Housing Chennai Private Limited, Chennai.	1127
11	2298 of 2013	M/s.EVP Housing Chennai Private Limited, Chennai.	1127

6. The Tribunal, by a common order dated 17.4.2014 dismissed the appeals declining to condone the delay on the ground that the explanation given by the assesseees to condone the delay was untenable. The Tribunal in paragraph 3 of the order extracted the petition dated 27.12.2013 filed for condonation of delay. For better clarity, we extract the same as such.

"3. In this case, it is to be seen that the appeal is time barred by 1100 days delay in filing. The assessee has filed a condonation petition dated 27.12.2013 as under:-

"1. I am the Appellant herein and as such I am well acquainted with the facts of the case.

2. I humbly submit that I am the Director of the Company M/s. EVP.Estates and Property Development Ltd. and EVP Housing Chennai Pvt. Ltd., Chennai - 600 040. My husband Mr. E.V. Perumalsamy Reddy is the Managing Director of the above companies and my son Mr. E. V. P. Santhosa Reddy is the Director of the above said companies. On 01-01-2008 the Income Tax Department conducted search u/ s.132 and subsequently served a notice u/ s. 153A of the IT Act. In fact I was planning for filing the return of the income in the month of January 2008 for all the assesseees. Accordingly I have filed the return of income and the same has been accepted by the authorities concerned.

3. I humbly submit that the Income Tax Department has seized all the original documents on 10-01-2008. My return of income for the assessment year 2006-2007 and 2007-2008 was duly accepted and filed within the due

date as per the provisions of the Income Tax Act. Therefore penalty levied by the Assessing Officer u/s. 271 (1) (c) of the Income Tax Act 1961 is erroneous. Therefore I have filed appeal before the Commissioner of Income Tax (Appeals-I). The said appeal was dismissed in limine on 27-10-2010 on the short ground for non-payment of tax amount.

4. I submit that the entire original documents were seized. Therefore I was not in a position to mobilise the funds for the payment of the tax amount.

5. I submit that my husband underwent bypass surgery and was under treatment for Diabetes Mellitus Associated with Hypertension for the period from November 2010 to November 2013. He was strictly advised by the Doctors that any little strain may cause anxiety to his life itself. Therefore we did not inform him about the legal proceedings and we were not in a position to consult our Lawyer.

6. In the circumstances the Government of TamilNadu had deposited the Award amount a sum of Rs.16,79,59,743/- on October 2012 on the file of Learned Sub-Court, Kancheepuram in the LAOP No.2 of 2011 for the land acquired from the EVP estates and properties development ltd, Chennai 600 040. However the Tax Recovery Officer has attached the said award amount under the provisions of Section 226(4) and Rule 31(11 Schedule) of the Act 1961 towards the tax liabilities of:-

(i) E.V.P. Estates and Properties Development Ltd., (the Appellant herein) PAN : AABCE1517C

(ii) E.V.P. Housing Chennai Pvt.Ltd. PAN : ACQPR0638B

(iii) Mr. E.V.Perumalsamy Reddy, PAN: AGMPP5434D

(iv) Mrs. P.S. Rajeswari, PAN: ACQPR0638B and

(v) Mr. E.V.P. Santhosa Reddy, PAN: AGYPR3116N

We filed a writ petition in W.P.No.35073 of 2013 before the Hon'ble High Court of Madras for the following relief:-

"To' issue a Writ of Mandamus directing the Respondents to lift the attachment proceedings initiated by the 3rd Respondent u/s.226(4) in Form No.LT.C.P.10 under Rule 31 of the Second Schedule of Income Tax Act, 1961 in respect of the deposit amount of Rs.16,79,59,743/- (Rupees Sixteen Crores Seventy Nine Lakhs Fifty Nine Thousand Seven Hundred and Forty Three only) made by the Special Tahsildar SIPCOT, Sriperumpudur, in favour of the Petitioner in L.A.o.P.No.2 of 2011 on the file of Sub-Court, Kancheepuram to enable the Petitioner to pay the returned tax. amount payable totally a sum of Rs.10,06,41,779/- (Rupees Ten Crores Six Lakhs Forty One Thousand Seven Hundred and Seventy Nine only) for the Assessment Years 2005 - 2006 to 2008-2009 of the Assessee viz. (1) the Petitioner, (2) EVP Housing

Chennai Pvt. Ltd., (3) E.V. Perumalsamy Reddy (4) Mrs. P.S.Rajeswari, and (5) E. V:P. Santhosa Reddy to the Respondents"

7. I submit that in view of the proceedings passed by the recovery officer in TRC.No.102/CR-IV(2)/10-11 dated 06-11-2013 we have filed affidavit before the Recovery Officer giving consent to adjust the compensation awarded for land acquisition lying in the Hon'ble Sub-Court, Kancheepuram against the arrears of Tax for the Appellant and other assessee viz. E.V.P. Housing Chennai Pvt. Ltd. PAN:ACQPR0638B, Mr. E.V.Perumalsamy Reddy, PAN: AGMPP5434D, Mrs. P.S.Rajeswari, PAN No.ACQPR0638B and Mr. E.V.P. Santhosa Reddy, PAN:AGYPR3116N a sum of Rs.10,06,41,779/- Hence the Appellant is entitled to contest this appeal on merit. Now the Tax Recovery Officer conducted survey u/s.133A(3)(ia) of IT Act. Hence I am advised to file this appeal. Now there is a delay of 1127 days in filing this appeal. The delay is not wilful or wanton. It is only due to the reasons stated above. Hence this application to condone the delay of 1127 days in filing this appeal. If the said delay is condoned no prejudice would be caused to the Respondent and on the other hand if the delay is not condoned I would be put to irreparable loss and grave hardship. I have prima facie case and balance of convenience is in my favour. Under the said circumstances the delay of 1127 days in filing the above appeal against the order dated 20-12-2010 passed by the Learned Commissioner of Income Tax(Appeals-I) in I.T.A.No.29J /09-10 may be condoned. It is therefore, prayed that this Hon'ble Court may be pleased to condone the delay of 1127 days in filing the appeal against the order dated 27-10-2010 passed by the Respondent i.e. Learned Commissioner of Income Tax (Appeals-I) in I.T.A.No.291 /2009-10 and thus render justice."

In this backdrop, the assessee submits that since delay of 1100 days stands explained and the issue of payment of admitted tax has been adjudicated in writ proceedings before the hon'ble jurisdictional high court, the matter be restored back to the CIT(A) for decision on merits."

7. It is seen that during the year 2010, the Government of Tamil Nadu had acquired the lands of the appellants for the purpose of expansion of the Chennai Airport under the Tamil Nadu Acquisition of Lands for Industrial Purposes Act and the Government of Tamil Nadu had deposited a sum of Rs.16,79,59,793/- to the credit of the proceedings pending in LAOP No.2 of 2011 on the file of the Sub-Court, Kancheepuram. Thereafter, on 03.11.2010, demand notices were sent to the appellants for recovery of tax. On 25.2.2011, the Tax Recovery Officer wrote a letter under Section 226(4) of the Income Tax Act, to the Subordinate Judge, Kancheepuram requesting to hold the amounts deposited and lying before the Sub-Court, Kancheepuram

in respect of the properties belonging to the appellants. The letter dated 25.2.2011 reads as follows:

"Date:- 25-02-11

To
The Hon'ble Judge,
Sub-Court,
Kancheepuram.
Sir,

Where as M/s.E.V.P.Group Chennai has not paid the arrears amounting to Rs.2839.35 Lakhs and specifically E.V.P.Estates & Properties Developments Ltd. has not paid the arrears amounting to Rs.852.24 in respect of certificate Nos.98 to 104/CR-IV(2)/10-11 dt.3-11-2010 drawn up by the under signed and the interest payable under section 220(2) of the Income-tax Act, 1961 and the undersigned desires to attach sums of moneys or other property, now in your custody.

I request that you will hold the said money or property and any interest or dividend becoming payable thereon subject to the further order of the undersigned."

8. On 25.4.2011, one EVP Santhosha Reddy, Managing Director of EVP Group addressed a letter to the Assistant Commissioner, Income Tax Central Circle (1V) 2 seeking release of documents seized by the Income Tax Department stating that the EVP group has no regular income and therefore they wanted to sell the property to pay the tax. In that letter, he further stated that the value of the properties was worth more than Rs.1000 crores and they were also willing for attaching the land acquisition amount awarded/deposited by the Government. Further assurance was given in the letter to pay the tax dues by way of monthly installment of Rs.75.00 lakhs. The details of the said letter reads as follows:

"We request u to Release your original Documents seized by income tax Department from our office and house. we have filled our returns to department. Since we have no regular income we have to sell the property and pay the tax. Our tax due is approximately 9 crore for which we request u to have our Chembarampakkam Land and Delhi Land worth more than Rs.1000 crores. And we also axcept to Attach our Rs.15.4 cr. which is awarded by Govt. we also give assurance to pay Monthly installment of Rs.75 Lakhs once our theam park is open."

9. In the meanwhile, 11 appeals have been filed along with petitions to condone the delay before the Income Tax Appellate Tribunal, Chennai as against the order of the Commissioner of Income Tax (Appeals) dated 27.10.2010 as stated earlier.

10. Pending the appeals, the appellants pursued the matter with the Department for release of the documents to enable them to sell the same for tax payment. On 26.12.2013, the assessee had filed an affidavit giving consent to adjust the compensation amount awarded in the land acquisition proceedings, which amount is in

deposit before Sub-Court, Kancheepuram, as against the tax arrears to the tune of Rs.10,06,41,779/-. Since payments were not made, the Tax Recovery Officer on 24.1.2014, attached the properties, namely, Land and Building at New No.23, Old No.15, Sir Thiyagaraya Road, T.Nagar, Chennai - 600 017 measuring total extent of 4804 sq.ft. and Land and Building at No.55, 55A, 55B, 56 and 56A, Old Peria Chetty Street, Chengalpet, Kancheepuram Taluk measuring 5323 sq.ft., belonging to the appellants and fixed the date of auction as 10.02.2014.

11. Challenging the said auction proceedings, Writ Petitions have been filed before this Court in W.P.Nos.3431 and 3432 of 2014. This Court, by order dated 10.2.2014, granted an order of interim stay on condition that the entire garnishee amount of Rs.16,79,59,793/- and interest thereon lying to the credit of LAOP No.2 of 2011 on the file of the Sub Court, Kancheepuram has to be adjusted towards demand made by the Income Tax Department.

12. In the meanwhile, the Tribunal by order dated 14.2.2014, granted an order of interim stay of recovery of penalty and interest till 30.6.2014. However, it is pointed out by the learned Standing Counsel appearing for the Revenue that appeals were filed before the Tribunal challenging only the quantum of tax demanded and not the levy of penalty and interest. That issue has become academic at present as we are now dealing with the issue of condonation of delay, which the Tribunal declined.

13. Thereafter, the Tribunal, by order dated 17.4.2014 dismissed all the appeals along with the condonation delay petitions filed by the assesseees holding that the explanation for the delay of over 1100 days in each case has not been properly explained, even though the appellants have knowledge of the proceedings of the Commissioner of Income Tax (Appeals). The Tribunal held that the explanation offered by one of the assesseees Mrs.P.S.Rajeswari, based on medical certificate dated 16.11.2013 issued by Mohan Nursing Home, Chennai, was untenable. The Tribunal further held that the plea of illness between November, 2010 and November, 2013 and sudden regaining of health was not supported by any evidence. That Mrs.P.S.Rajeswari herself could have pursued the legal remedies during the period of treatment. Consequently, the Tribunal came to hold that the delay has not been properly explained; the assesseees have failed to act with due diligence and the explanation given was not satisfactory. Accordingly, the Tribunal dismissed the appeals holding that there was no ground to condone the delay. For better clarity, the relevant portion of the order of the Tribunal, viz., the explanation given by the assessee for condonation of delay and the reasoning given by the Tribunal, is extracted hereunder:

"5. We have heard both parties and gone through the case file. We find that while framing assessment in order dated 31.12.2009 in furtherance of a 'search' conducted on 10.01.2008, the Assessing Officer had made addition of M25 lakhs as 'unaccounted' investments. The assessee filed

appeal. The CIT(A) has dismissed her appeal in limine on the ground of non payment of admitted tax. Before us, the assessee has filed the abovesaid condonation. A perusal thereof makes it clear that this is not the case that she herself or her husband Shri. E.V. Perumalsamy Reddy was not aware of the CIT(A) order under challenge. So, it is not a case of lack of knowledge about the CIT(A) 's order. The assessee's averments in the condonation petition read that her husband had undergone bypass surgery and treatment of diabetes mellitus associated with hypertension from November, 2010 to November, 2013. She supports this by way of a medical certificate dated 16.11.2013 issued by Mohan Nursing Home, Chennai. However, this only appears to be an untenable explanation. Her contention about Shri.Reddy's sudden illness November, 2010 to November, 2013 and sudden regaining of health is not supported by any evidence that she herself could not have pursued legal remedies in the treatment period. In this regard, the nursing home's certificate only appears to be an after-thought exercise in absence of other details. Moreover, in 'tribunal's proceedings, the assessee's/her husband's personal appearance is not required. Coupled with this, she fails to explain each and every day's delay from 16th November, 2013 till the date of filing the appeal i.e. 30.12.2013 as she is supposed to act with due diligence. Therefore, we hold that the assessee has failed to satisfactorily explain 1100 days delay in filing of this appeal. It is a trite preposition of law that in delay matters, liberal and lenient approach to be adopted. But in this case, there is no plausible explanation much less a satisfactory one. In these circumstances, delay of 1100 days does not deserve to be condoned on mere asking. Therefore, this assessee's appeal ITA 2293/Mds/2013 is dismissed as suffering from delay and laches.

6. Same order to follow in ITAs Nos.2294 to 2303/Mds/2013.

7. To sum up, all appeals are dismissed as time barred."

14. Aggrieved by the order of the Tribunal, the present appeals have been filed by the assessees raising the substantial questions of law mentioned supra.

15. The respondent was put on notice and Mr.T.R.Senthil Kumar, learned Standing Counsel takes notice for the respondent.

16. Subsequent to the hearing of the appeals, M.P.No.1 of 2014 has been filed by the appellants seeking to furnish the medical records in support of the certificate dated 16.11.2013 issued by Mohan Nursing Home, Chennai. The said certificate reads as follows:

"This is to certify that I have examined Mr.E.V.Perumal Swami Reddy, aged about 57years, sex-Male resident of No-53, 7-block, Annanagar, Chennai-600040 is diabetic with Coronary Artery Bypass Grafting (CABG) with LV remodeling,

presented with unstable angina with liable ECG changes and Gallbladder Surgery (Cholecystectomy) was under treatment for recent onset angina and long standing co-morbid condition like diabetes mellitus associated with hypertension. He was under my treatment from 02-Nov-2010 till 15-Nov-2013 with the consultation of respective specialists. In view of the above condition I have advised him to avoid physical and mental stress and complete bed rest which is absolutely necessary. Any little strain may cause anxiety to his life itself."

17. The said Miscellaneous Petition has been filed under Order 41 Rule 27 of the Code of Civil Procedure seeking to produce additional documents in support of the treatment taken, as claimed in the certificate dated 16.11.2013, which was filed before the Tribunal.

18. The respondent has filed objection stating that new documents are sought to be filed.

19. Learned counsel appearing for the appellants submitted that Section 260A of the Income Tax Act provides that the provisions of the Civil Procedure Code will apply to the appeal filed before the Appellate Court. He further relies upon Order 41 Rule 27 of the Code of Civil Procedure and submitted that Rule 27 of the Code of Civil Procedure provides for production of additional evidence, if the same is relevant to the disposal of the case. He further submitted that the additional documents now filed are relevant to the facts of the case, as the same are in support of the medical certificate dated 16.11.2013, which was filed before the Tribunal.

20. In this connection, learned counsel appearing for the appellant relies on the judgment of Supreme Court in the case of Tek Ram (Dead) through LRs V. Commissioner of Income Tax, Faridabad in Civil Appeal No.6262 of 2013 dated 05.08.2013 and submitted that if additional documents are necessary to the disposal of the case, the same may be admitted.

21. Learned counsel appearing for the appellants also submitted that the Tribunal without taking into consideration the medical certificate produced by the assessee, dismissed the condonation petition. He also submitted that the explanation is two fold. One is on health ground and the other is non-release of original documents. Since the Department had not released the original documents sought for by the appellants, they are not in a position to sell the property to pay the dues. Moreover, Mr.E.V.Perumalsamy Reddy was not in a position to prosecute the case, since the Doctor had advised him to avoid physical and mental stress and any little strain may cause anxiety to his life itself. Hence, the appellants could not proceed with the matter any further. He further submitted that the Tribunal failed to see the medical condition of Mr.E.V.Perumalsamy Reddy while declining to condone the delay. Further, the appellants are not in a position to mobilise

funds, since the properties belonging to the appellants were attached by the Department and the original documents were seized during the course of search. He further submitted that in some of the appeals filed before the Commissioner of Income Tax (Appeals), admitted tax has been paid, but the same was overlooked by the Commissioner of Income Tax (Appeals). He also submitted that there was payment of tax by the orders of the Sub-Court, Kancheepuram, where the amount of approximately Rs.16.00 crores together with interest totalling to Rs.22.00 crores was taken over by the Department and therefore, there was no tax due as on date and hence, the appeals should have been taken by the Tribunal after condoning the delay.

22. Per contra, learned Standing Counsel appearing for the Revenue submitted that the appellants are now trying to produce new documents, which are not produced before the Tribunal. He further submitted that the appellants have yet not paid the entire tax due and the amount awarded in respect of the land acquisition proceedings was adjusted towards the tax arrears of the appellants on condition that if there is any third party claim, the same should be refunded to the Court forthwith. Hence, this payment was not in terms of the provisions of the Income Tax Act and it was only a temporary arrangement to secure the tax due. He further submitted that there was no reasonable explanation offered by the assesseees in not preferring the appeals in time before the Tribunal, even though the assesseees have the knowledge of the proceedings of the Commissioner of Income Tax (Appeals). He further submitted that according to the assesseees, Mr.E.V.Perumalsamy Reddy was admitted in the hospital in the month of November, 2012 only. But the Proceedings of the Commissioner of Income Tax (Appeals) is dated 27.10.2010. Before the Assessing Officer, the representative of the assessee has represented the case. Hence, the said representative could have represented the matter before the Tribunal also. Hence, the appellants have not satisfactorily explained the delay in not pursuing the matter before the Tribunal. Consequently, the order of the Tribunal is justified in declining to condone the delay.

23. Heard learned counsel appearing for the appellant and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

24. Before going into the merits of the case, it is relevant to look into the provisions relied on by the learned counsel appearing for the appellants.

25. Clause 7 of Section 260A of the Income Tax Act provides that the provisions relating to the Code of Civil Procedure may apply in the case of appeal filed under Section 260A of the Income Tax Act. The said provision reads as follows:

"260A. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case

involves a substantial question of law.

(2).....

(3).....

(4).....

(5).....

(6).....

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

(emphasis supplied)

26. Order 41 Rule 27(1) of the Code of Civil Procedure provides for production of additional evidence by the parties in appeal on certain conditions. Rule 27(1)(b) of the Code of Civil Procedure provides that if the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined. Clause (2) of Rule 27 provides for recording of reason for admission of such additional evidence.

27. Order 41 Rule 27 of the Code of Civil Procedure reads as follows:

"R.27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

28. In this connection, the decision relied on by the learned counsel appearing for the appellants needs to be seen. The Supreme Court, in the case of Tek Ram (Dead) through LR's V. Commissioner of Income Tax, Faridabad in Civil Appeal No.6262 of 2013 dated 05.08.2013, held as follows:

"3.

This Court, while issuing notice to the

respondent, by its order dated 03.02.2012, had passed the following order:

".....

Issue notice as to why the matter should not be sent back to the High Court as, today, learned counsel for the petitioner has placed before us number of documents which earlier were not placed before the High Court."

4. In our opinion, the documents, which the appellants have now filed before this Court are of some relevance and those documents should be looked into by the High Court before it comes to a conclusion whether the appeal requires to be allowed or to be rejected.

5. Taking that view of the matter, we set aside the order passed by the High Court and remand the matter back to the High Court for fresh disposal of I.T.A.No.109 of 2005, after accepting the documents that were/may be filed by the appellants."

29. Now addressing the first issue on the filing of Miscellaneous Petition seeking to furnish additional documents, we find that Order 41 Rule 27 of the Code of Civil Procedure provides the party to the appeal to produce additional evidence, whether oral or documentary, in the Appellate Court only on two contingencies, namely,

"(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed."

30. In the present case, no material has been filed by the appellants to show that these documents were refused to be admitted by the Tribunal or that the appellants even after the exercise of due diligence could not produce such evidence before the Tribunal. Therefore, the applicability of clause (1) of Rule 27 of Order 41 of the Code of Civil Procedure does not arise. Hence, the Miscellaneous Petition filed by the appellants cannot be countenanced. Nevertheless, taking note of the certificate dated 16.11.2013 issued by Mohan Nursing Home, Chennai (extracted supra), this Court, in exercise of power under clause (b) of Rule 27(1) of Order 41 of the Code of Civil Procedure, inclined to admit the documents now produced, so as to enable us to arrive at a decision, as we find that these documents are in relation to the treatment said to have been undergone by one of the appellants, namely, E.V.Perumalsamy Reddy for the period November, 2010 to November, 2013. The certificate dated 16.11.2013 states that Dr.C.Mohan Reddy of Mohan Nursing Home, Chennai had given treatment to Mr.E.V.Perumalsamy Reddy between this period and therefore, it will

be necessary to go into these records to find out whether there was sufficient cause in not preferring the appeals before the Tribunal in time. Therefore, in exercise of power under Clause (b) of Rule 27(1) of Order 41 of the Code of Civil Procedure, we admit the production of additional documents. Accordingly, M.P.No.1 of 2014 in T.C.(A)No.535 of 2014 seeking to produce the additional documents is allowed.

31. The next question that arises for consideration is whether the Tribunal is justified in declining to entertain the appeals on the ground that the delay has not been satisfactorily explained.

32. At the outset, we perused the medical records, which appears to be a prime reason for seeking condonation of delay. Paragraph 5 of the petition dated 27.12.2013 extracted in paragraph 3 of the order of the Tribunal (extracted supra) states that the husband of one of the appellants, viz., P.S.Rajeswari underwent bypass surgery and was under treatment for Diabetes Mellitus associated with Hypertension for the period from November 2010 to November 2013 and the doctor advised him that any little strain may cause anxiety to his life itself. Hence, they did not inform to him about the legal proceedings and they were not in a position to consult their lawyer. This is backed up by the certificate dated 16.11.2013.

33. We have perused the additional documents filed by the appellants and the following factors emerge from the said documents.

34. The certificate dated 15th November, 2012 issued by Dr.K.N.Reddy reads as follows:

"November 15, 2012

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr.E.V.Perumalsamy Reddy, aged 58 years, is a known case of Coronary artery disease, underwent Coronary artery bypass graft (CABG) surgery with Endoventricular Patch Plasty on 13.11.2003. He was admitted with history of recent onset angina (unstable angina) and dyspnea on exertion. At present, he is undergoing intensive medical treatment and evaluation in Coronary care unit of Vijaya Heart Foundation - Vijaya Hospital. In view of his cardiac condition and past history of CABG with ventricular re-modeling surgery, he is not in a fit condition to shift out of the ICU."

35. From the above certificate, it is evident that surgery was performed in the year 2003. Shri.E.V.Perumalsamy Reddy was given treatment in November, 2012 for a brief period. Thereafter, there are series of test reports. There is also a list of reports from December, 2012. From 1st January, 2013 till December, 2013, except medicine bills, there appears to be no evidence showing that the said E.V.Perumalsamy Reddy had taken any treatment. Further, the certificate, which was produced before the Tribunal dated 16.11.2013 states that Dr.C.Mohan Reddy had given treatment from 02nd November,

2010 till 15th November, 2013. Therefore, the primary document produced before the Tribunal is a certificate. There is, however, absolutely no record to show that Dr.C.Mohan Reddy had given treatment for the period November,2010 to November, 2013. Hence, the Tribunal was correct in stating that the explanation offered by the assessee is untenable and the certificate is an after thought exercise in the absence of other details. The medical reports now furnished clearly show that the said Doctor, Dr.C.Mohan Reddy never treated the patient for such an extended period of time. A few medical test reference is pointed out. It, however, does not reveal that the said Shri.E.V.Perumalsamy Reddy is seriously ill and was continuously hospitalised as pleaded.

36. Taking into consideration the submissions made by the learned counsel appearing for the appellants, we went through the additional documents filed, which contains medical reports and medical bills, running to 431 pages. From the additional documents, all that we find is that from the year 2003, after the date of surgery, till March, 2005, there was no medical record. In the year 2005, we find that there are certain routine medical tests. Thereafter in the year 2006, there is absolutely no record to show that medical treatment was taken by the said E.V.Perumalsamy Reddy. Therefore, it is clear that there was no serious ailment to complaint in the year 2006. In the month of February, 2007, series of medical tests were taken, but there is nothing on record that he was hospitalised or was under any medical management for serious problem. The series of medical tests show that they are routine check ups. Similarly in the year 2008 also, there is a brief medical admission and series of tests during January, February, August and December, 2008, these are nothing but routine tests as per the reports. These tests appear to be periodical checkup. In the year 2009, i.e., after a period of six months, in June 2009, some tests have been done. These tests are also periodical in nature. Thereafter from August, 2010, there is no treatment or medical management till third month of 2011. Thereafter, medical bill for the month of July, September and December, 2011 have been enclosed. From January, 2012 to March, 2012, there is no medical record or proof for having taken any treatment. Then in the month of June, 2012, again regular health check up was done. For October, 2012, there is no proof or medical treatment or record for taking such treatment. During the months of November and December, 2012, series of medical tests have been done, which, on verification, are routine in nature. From January, 2013 to December, 2013, except medicine bills, no medical record is produced by the appellants.

37. A perusal of the entire record shows that after the surgery undergone by E.V.Perumalsamy Reddy in the year 2003, there has been periodical medical management, but no where it has been stated that his physical and mental condition is so bad and that he is completely bed-ridden. Therefore, the medical records now produced by the appellants by way of additional documents do not show that it

is a case of incapacity of Sri.E.V.Perumalsamy Reddy to perform usual duties. In any event, for the period November, 2010 to November, 2013, there appears to be no serious health issue. Hence, the records and the medical certificate dated 16.11.2013 are inconsistent.

38. It is relevant to note that Mrs.P.S.Rajeswari, who is one of the appellants, has no reason to state why she was unable to file an appeal before the Tribunal. On the contrary, we find that all these appellants have filed appeals before the Commissioner of Income Tax (Appeals). If in the month of October, 2010 they can prosecute the matter before the Commissioner of Income Tax (Appeals), there is no justification for not choosing to file an appeal before the Tribunal in time. It is seen that all the issues raised by the appellants are relating to payment of tax as per the requirement of the Act and the non-return of original documents as per the request made at various point of time by the appellants before the Department. If they had filed the appeal in time before the Tribunal and canvassed the issue, the Tribunal would have gone into the merits of the case including the plea of inability to make the deposit of admitted tax. Having failed to file an appeal in time, the appellants cannot now raise a plea that E.V.Perumalsamy Reddy was not well during the relevant period of time. Further more, it has to be pointed out that even in April, 2011, in a letter dated 25.4.2011 addressed to the Assistant Commissioner, Income Tax, by E.V.P.Santhosha Reddy, there was no mention about the ill health of the said E.V.Perumalsamy Reddy and at no point of time, this plea of ill health was taken except before the Tribunal.

39. Therefore, the Tribunal was justified in stating that sufficient cause has not been shown and that the plea of delay, on the ground of ill health of E.V.Perumalsamy Reddy between November, 2010 and November, 2013, is not supported by any cogent material. The findings of the Tribunal that the Nursing Home Certificate appears to be an after thought exercise, apparently, is correct. On verification of the additional documents, which contain medical records, we find that no major treatment was given by Dr.C.Mohan Reddy to justify the certificate dated 16.11.2013. Therefore, on the face of it, the inordinate delay cannot be brushed aside on the basis of the certificate. The certificate dated 16.11.2013, apparently, is a document prepared for the purpose of seeking condonation of delay. If reasonable cause is shown by E.V.Perumalsamy Reddy on health grounds for not pursuing the matter, this Court may consider the plea, for condoning the delay. But, on verification of the additional documents now filed, we find that these medical records are mere routine medical examinations and there is nothing on record showing that there was prolonged serious illness between November, 2010 and November, 2013 as alleged in the certificate dated 16.11.2013 produced before the Tribunal to plead for condonation of delay in all cases. Further, except E.V.Perumalsamy Reddy, other appeal could have been filed by Mrs. P. S. Rajeswari and by authorised persons of the company or firm. For this lapse, there is no explanation.

40. In the decision reported in 2013 (5) CTC 547 (Esha Bhattacharjee V. Managing Committee of Raghunathpur, Nafar Academy and others, the Supreme Court while dealing with the issue on the delay of seven years in filing an appeal, held as follows:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking

recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

41. In the present case, the inordinate delay of approximately more than 1100 days calls for a strict approach and the principles or guidelines given by the Supreme Court in the above-said decision on the conduct that cannot be favourably considered are clearly attracted to the facts of the present case. The further guidelines issued in paragraph 16 of the above-said decision are breached by the appellants and we extract below the same as such.

"16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

42. In the present case, we find that the appellants have been lackadaisical in their approach and in a nonchalant manner they have tried to seek condonation of delay. The Supreme Court in the decision referred supra has deprecated such practice of showing leniency in condoning the delay. The parameters laid down by the Supreme Court when not to condone delay get squarely attracted to the facts of the present case and we find no reason to condone the delay and the Tribunal was correct in dismissing the appeal on that score. The plea of illness, payment of tax at some point of time, adjustment of payment before the Sub-Court, Kancheepuram are all matters on merit. That stage has not come. In any event, we are not inclined to go into such issue, as we are now concerned only with the plea of condonation of delay of approximately more than

1100 days in filing the appeal before the Tribunal in each one of the case.

43. A faint plea has been made by the learned counsel appearing for the appellants that attachment orders have not been served on the appellants and therefore, there is a breach of law and the said issue has not been raised and considered by the Tribunal. The appellants can agitate this issue before an appropriate forum, if legally permissible. At present, we are only concerned with the issue of condonation of delay and this Court, after detailed consideration, finds that the appellants have not shown sufficient cause for condoning the delay. The parameters laid down by the Supreme Court in the above-said decision when not to condone delay gets attracted to the facts of the present case. Therefore, we are not inclined to interfere with the order of the Tribunal.

In the light of the above, we find no question of law much less any substantial question of law arises for consideration in these appeals. Accordingly, the above batch of Tax Case (Appeals) stand dismissed. No costs. The connected P are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Income Tax Appellate Tribunal 'C' Bench, Chennai
2. The Commissioner of Income Tax (Appeals)-I, Chennai.
3. The Assistant Commissioner of Income Tax, Central Circle IV(2), Chennai.

2 ccs to M/s. S.R. Rajagopal, Advocate, sr. 1113
2 ccs to M.T.R. Senthilkumar, Advocate, Sr. 533
9 ccs to M/s. S.R. Rajagopal, Advocate, sr. 1118 , 1115, 1114

T.C.(A) Nos.535 to 545 of 2014
& M.P.No.1 of 2014

RSI (CO)
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