

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.107 of 2017
Date of decision: 24-05-2017**

Shri Subodh Parkash

...Appellant

Vs.

Joint Commissioner of Income Tax, Yamuna Nagar

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Ruchesh Sinha, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961(in short, “the Act”) against the order dated 12.8.2016, Annexure A.6 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, “the Tribunal”) in ITA No.898/CHD/2015, for the assessment year 2009-10, claiming following substantial questions of law:-

“(i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in not condoning the delay of 1050 days in filing the appeal and holding the same to be time barred?

(ii) Whether on the facts and circumstances of the case, the order of the Income Tax Appellate Tribunal is not perverse as the Income Tax Appellate Tribunal has not considered all the reasons stated in the affidavit/revised affidavit filed by the appellant in support of the delay in coming to the conclusion that the appeal is time barred?

(iii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal has taken a hyper technical view of the matter and has failed to consider the issue holistically?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant, an individual is engaged in the business of transportation and trading of rice, flours and molasses. He is placed at Yamuna Nagar. The books of account of the appellant-assessee were rejected by the Assessing Officer by invoking the provisions of Section 145(3) of the Act. The Assessing Officer applied the net profit rate of 4.51% of the carriage and handling charges received in the case of the business of transportation (M/s Citizen Roadlines) and applied the net profit rate of 2% on the gross turnover in respect of the trading business (M/s Astha Trading Company) and determined the income of the assessee, vide assessment order dated 29.12.2011, Annexure A.1. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 15.10.2012, Annexure A.2, the CIT(A) dismissed the appeal. Still not satisfied, the assessee filed an appeal before the Tribunal. The order was passed by the CIT(A) on 15.10.2012 and the same was received by the assessee on 30.11.2012. The appeal was to be filed before the Tribunal within sixty days of the receipt of the order passed by the

CIT(A). The last date for filing the appeal was 30/31.1.2013. However, the same was filed on 15.12.2015 by the counsel for the assessee and hence there was a delay of 1050 days in filing the appeal. At the time of hearing, the assessee submitted his revised affidavit and a compilation of paper book containing the relevant papers in support of the delay caused in filing the appeal. It was inter alia submitted by the assessee that after the marriage of his daughter was solemnized at Faridabad, there was continuous matrimonial dispute and her daughter was physically abused several times by her in-laws. Thus, the assessee was not in stable condition of mind and could not check whether the appeal had been timely filed before the Tribunal or not. He further submitted that during the relevant period, he suffered huge losses in the business and his assets were taken over by the HDFC Bank. Vide order dated 12.8.2016, Annexure A.6, the Tribunal dismissed the appeal on the ground of delay holding that there was no correlation between the late filing of the appeal by the assessee and the matrimonial dispute of his daughter as the marriage was solemnized prior to the filing of the appeal before the Tribunal and thus, the delay could not be condoned. Hence the instant appeal by the assessee before this court.

3. We have heard learned counsel for the appellant-assessee.

4. Admittedly, the assessment order was passed under section 143(3) of the Act on 29.12.2011. The appeal was filed by the assessee before CIT(A) on 24.1.2012 which was decided on 15.10.2012. The copy of the order was received by the assessee on 30.11.2012. The appeal before the Tribunal could be filed within sixty days from the date of receipt of a copy of the order. The last date for filing the appeal was 30/31.01.2013. However, the same was filed on 15.12.2015 and thus

there was a delay of 1050 days in filing the appeal. The reasons given by the assessee regarding matrimonial dispute of his daughter and huge loss in his business were not found to be satisfactory by the Tribunal. The marriage of the daughter of the assessee was solemnized on 29.11.2010. It was categorically recorded by the Tribunal that when the assessee could file the appeal before the CIT(Appeals) having the same reason earlier, there was no reason to believe that the assessee was prevented by sufficient cause in not filing the appeal before the Tribunal within the period of limitation. After considering the matter, the Tribunal rightly concluded that the assessee failed to explain the delay in filing the appeal due to sufficient cause and dismissed the appeal. The relevant findings recorded by the Tribunal read thus:-

“5. We have considered rival submissions on the point of limitation. In this case the assessment order under section 143(3) of the Act has been passed on 29.12.2011. The assessee preferred appeal before the learned CIT(Appeals) on 24.1.2012 and the learned CIT(Appeals) decided the appeal of the assessee on 15.10.2012. The date of marriage of the daughter of the assessee on 29.11.2010, thus, has no relevance and correlation with the above dates. According to the learned counsel for the assessee, the date of marriage of the daughter of the assessee is 29.11.2010 and soon after her marriage, there was a trouble in her family matters. When the marriage of the daughter of the assessee was solemnized prior to filing of the appeal before learned CIT(Appeals) and according to the version of the assessee, the matrimonial discord started soon after marriage, such reason was also there with the assessee at the time of filing of the appeal before learned CIT(Appeals) because the assessee filed appeal before learned CIT(Appeals) on 24.1.2012, therefore the dispute in the family of daughter of the assessee has no relevance with the delay in filing the appeal before Tribunal.

The assessee successfully filed appeal before learned CIT(Appeals) on 24.1.2012 challenging the assessment order and also prosecuted appeal before learned CIT(Appeals) during the same period and the learned CIT(Appeals) decided the appeal of the assessee on 15.10.2012. Therefore, physical abuse of daughter of the assessee and marital discord and ultimately registration of FIR in matrimonial matter has no relevance and concern whatsoever with the litigation of the assessee in tax matter. When assessee could file the appeal before learned CIT(Appeals) having same reason earlier, there was no reason to believe that assessee was prevented by sufficient cause in not filing the appeal before the Tribunal within the period of limitation. Further, in the application for condonation of delay the assessee submitted that when impugned order was received on 30.11.2012, assessee had requested his counsel to file the appeal before Tribunal but the counsel did not file the appeal due to some confusion. It would, therefore, clearly prove that assessee was aware of the fact that after receipt of the impugned order, assessee was required to file appeal before the Tribunal within limitation so as to challenge the rejection of the books of account and application of higher NP rate in appeal before the Tribunal. Contradictory stand is taken in application of condonation of delay. Therefore, there was no reason to believe that assessee was later on prevented by any sufficient cause for not filing the appeal before the Tribunal within the period of limitation. Thus, the explanation given by the assessee does not inspire confidence and would not disclose any sufficient and good reason for explaining the delay in filing appeal before the Tribunal.

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7. Considering the above discussion, we are of the view the assessee failed to explain the delay in filing appeal was due to sufficient cause therefore appeal of the assessee shall have to be dismissed being time barred. The application for

condonation of delay is accordingly dismissed. Resultantly, appeal of the assessee is treated as time barred and is accordingly dismissed.”

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, “the 1963 Act”), it may be observed that the Supreme Court in ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another***, (2010) 5 SCC 459 laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. 15. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-***Collector (L.A.) v. Katiji N.***

Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.

6. It was further noticed by the Apex Court in ***R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892*** as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”

It was also recorded that:-

“For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone

the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Apex Court in ***Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)*** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.”

9. Learned counsel for the assessee has not been able to point out any error in the findings recorded by the Tribunal or to controvert the applicability of the decisions given by the Apex Court as mentioned above to the facts of the present case. The explanation tendered by the assessee does not satisfy the test of sufficient cause as required under

Section 5 of the 1963 Act. Consequently, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

May 24, 2017

(Harinder Singh Sidhu)

‘gs’

Judge