

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No. 123 of 2017 (O&M)

Date of Decision: 9.2.2017

Gurpal Singh Brar

....Appellant

Versus

Income Tax Officer, Ward-6(4), Mohali

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. S.K. Mukhi, Advocate and
Mr. Rajiv Sharma, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 25.11.2011 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 1352(CHD)/2010 and the consequential order dated 30.10.2012 (Annexure A-3) in MA 1/CHD/2012, for the assessment year 2006-07, claiming the substantial questions of law as mentioned in para 14 of the appeal.

2. The facts necessary for adjudication of the present appeal as narrated therein may be noticed. The appellant filed his return of income on 28.7.2006 declaring the income at ₹ 1,77,770/-. His case was taken up for scrutiny and notice under Section 143(2) of the Act was issued on

28.7.2007. The appellant filed reply to the said notice. The Assessing Officer vide assessment order dated 30.12.2008 (Annexure A-1) framed the assessment under Section 143(3) of the Act at ₹ 61,29,770/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”] on 7.1.2009. The CIT(A) vide order dated 15.7.2010 (Annexure A-2) dismissed the appeal. Still not satisfied, the assessee filed an appeal before the Tribunal. The said appeal came up for hearing on 3.10.2011 and on the request of the parties, the matter was adjourned to 4.10.2011. The appellant engaged M/s Ved Jain and Associates, Chartered Accountants at New Delhi to represent him in the appeal before the Tribunal on 4.10.2011 who moved an application for adjournment before the Tribunal. However, the Tribunal vide order dated 4.10.2011 rejected the said application. Finally, the Tribunal vide order dated 25.11.2011 (Annexure A-3) partly allowed the appeal of the assessee and remanded the matter to the Assessing Officer to re-adjudicate his claim regarding deposit of ₹ 5 lakhs. Thereafter, the appellant moved an application bearing MA No. 1/CHD/2012 for recalling the order dated 25.11.2011. However, the Tribunal vide order dated 30.10.2012 dismissed the said application. Hence, the present appeal. As the appeal is barred by limitation, CM No.2980-CII of 2017 under Section 5 of the Limitation Act, 1963 (in short, the “1963 Act”) has been filed for condonation of 326 days' delay in filing the appeal whereas CM No. 2981-CII of 2017 has been filed for condonation of 1334 days' delay in refiling the appeal.

3. We have heard learned counsel for the appellant.

4. The preliminary question that arises for consideration in this appeal is whether there is sufficient cause for condonation of delay of 326

days in filing and 1334 days in refiling the appeal.

5. Examining the legal position relating to condonation of delay under Section 5 of 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. According to the learned counsel for the appellant, after the disposal of the appeal on 25.11.2011 by the Tribunal, the appellant moved an application for recalling the order dated 25.11.2011 before the Tribunal. The said application was dismissed by the Tribunal. Thereafter, the appellant filed the present appeal which was belated by 326 days. Further, there was a delay of 1334 days in reifling the present appeal. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing as well as in refiling the appeal. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 326 days in filing and 1334 days in refiling the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The Tribunal had decided the matter on 25.11.2011. However, the appeal before this Court was required to be filed within the stipulated period of limitation. However, the appellant instead of filing the appeal within time, filed an application bearing MA No.1/CHD/2012 which was dismissed by the Tribunal vide order dated 30.10.2012. But the appellant filed the appeal on 27.2.2013 before this Court after the delay of 326 days and lastly refiled on 7/8.2.2017 after a colossal delay of 1334 days.

The plea of the appellant would not satisfy the test of sufficient cause. The explanation of the appellant praying for condonation of delay in filing and refiling the appeal, as noticed hereinabove, is bereft of sufficient cause for delay caused in filing the appeal. Further, a stale matter cannot be revived by approaching the Court belatedly.

11. In view of the above, finding no merit in the applications for condonation of 326 days' delay in filing and 1334 days' in refiling the appeal, the same are hereby dismissed and consequently, the appeal is dismissed as time barred.

(AJAY KUMAR MITTAL)
JUDGE

February 9, 2017
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes