CMP.Nos.1524 & 1525 of 2018 respectively in
TCA(SR) Nos.106977 and 106979 of 2014

T.S.SIVAGNANAM,J,
AND
V.BHAVANI SUBBAROYAN,J

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J)

On 28.6.2019, we passed the following order :

"These petitions have been filed by the Revenue seeking to condone the delay of 1089 days in representing the appeals.

2. The miscellaneous petitions are supported by respective affidavits filed by the learned Senior Standing Counsel, who has filed these appeals. Since the stand taken in the affidavits filed in support of both the miscellaneous petitions is identical, we take up the averments set out in the affidavit filed in support of CMP.No.1524 of 2018.

3. In the affidavit in support of CMP.No.1524 of 2018, the learned Senior Standing Counsel stated that the appeals ought to have been represented on or before 29.12.2014. However, the appeals were represented only on 20.12.2017 with a delay of 1089 days. The reason for the delay is explained by stating that the office of the learned Senior Standing Counsel was affected by rain water seepage and following the same, the office was infested with white termites during December 2014. This had forced the learned Senior Standing Counsel to re-locate all the case *bundles, books and furniture to an alternate place and in that process, the papers relating to the present appeals were mixed up with other papers and also with the disposed of bundles. Subsequently, the papers were located and they had been represented. 4. It is further stated that the clerk attached to the office of the learned Senior Standing Counsel abruptly left the job and the new clerk, who was appointed, took some time to locate the papers. The learned Senior Standing Counsel would submit that there was a change of counsel and their respective jurisdiction by the Income Tax Department. Hence, the related records could not be produced to the Standing Counsel to prepare the tax case appeals.*

5. With these reasons, it is prayed that the delay in representation, being neither willful nor wanton, be condoned. It is further submitted that there are substantial questions of law involved in these appeals, that the revenue involved is also substantial, that the Department would be put to severe hardship if the delay in representation is not condoned and that a meritorious case would be lost on technicalities causing great hardship to the Revenue.

6. The learned Senior Standing Counsel for the Revenue has also relied upon the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag Vs. Katiji [reported in AIR 1987 SC 1353] and submitted *that the Hon'ble Supreme Court held that ordinarily a litigant does not stand to benefit by lodging an appeal belatedly and that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. It was further pointed out by the Hon'ble Supreme Court that as against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. It was also pointed out that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preserved for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay. The Hon'ble Supreme Court further held that there is no presumption that the delay had occasioned deliberately or on account of culpable negligence or on account of mala fides and that a litigant does not stand to benefit by resorting to delay and that it must be grasped that Judiciary is respected not on account of its power to legalize injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.*

7. The learned Senior Standing Counsel appearing for the petitioner submits that identical affidavits were filed by him in more than 28 cases and a Division Bench headed by the Hon'ble Chief Justice found the reasons to be satisfactory and *the delay was condoned and a bunch of such orders dated 20.3.2018 is placed before us.*

8. Mr.N.V.Balaji, learned counsel appearing for the respondent submits that the respondent – assessee has vehemently opposed the condonation of delay. The whole time director of the respondent – assessee namely one Mr.Kasturi Rangan filed counter affidavits and the averments in the counters need to be taken into consideration.

9. We have perused the averments in the counter affidavits filed by the said Mr.Kasturi Rangan and to say the least, it is an act of perversion. The whole time director of the respondent – assessee wants the learned Senior Standing Counsel to produce proof to show that his office was infested with white termites during December 2014. Furthermore, he would state that there was no rain in Chennai in the month of December 2014.

10. It cannot be disputed that on all occasions, the assessees do not file appeals within time and that there are cases where the assessees slept over their rights and filed appeals belatedly. Even those appeals, which were filed belatedly, when returned by the Registry for rectifying the defects, were not represented within time. However, the Courts have been consistently taking a liberal approach in those matters and in order to render substantial justice, the delay in representation is normally condoned. Admittedly, *the said Mr.Kasturi Rangan does not point out in his counters that there is any mala fide intention on the part of the learned Senior Standing Counsel in representing the papers belatedly.*

11. The delay in representation is purely between the petitioner and the Court. Probably, in this matter, because notice was ordered, the respondent is required to be heard. Even if it is so, we are of the opinion that the respondent cannot interfere with the discretion to be exercised by this Court in the absence of any allegation of mala fides or the allegation that the case papers were belatedly represented with some ulterior motive. Hence, we outrightly reject the averments in the counter affidavits. In the light of the attitude of the respondent, we are of the considered view that this is a fit case where cost has to be imposed on the respondent.

12*. Accordingly, the delay is condoned and these petitions are ordered. The respondent is directed to pay costs of Rs.10,000/- (Rupees ten thousand only) in each appeal payable to the Tamil Nadu State Legal Services Authority within a period of one week from the date of receipt of a copy of this order. In the event the respondent fails to comply with the order passed by us, the Registrar – General is directed to take coercive steps for recovery of the said amount."*

2. Before the said order could be signed, Mr.N.V.Balaji, learned counsel for the respondent mentioned before us requesting that the said order may be recalled. On the said representation, we heard Mr.N.V.Balaji, learned counsel for the respondent and gave an option to Mr.E.H. Kasturi Rangan – the whole time director of the respondent – assessee to file an affidavit so that the breach pointed out by us in our order dated 28.6.2019 can be rectified.

3. Today, the matter is listed under the caption 'for being spoken to'. We are informed by Mr.N.V.Balaji, learned counsel for the respondent - assessee that he does not have any instructions from his client to withdraw the counter affidavits filed in the delay condonation petitions, but his client is willing to file an affidavit to explain as to under what circumstances, the counter affidavits had to be filed.

4. We are not agreeable to the stand taken by the learned counsel for the respondent – assessee before us today as brought to our notice by the learned counsel for the respondent – assessee. In our order dated 28.6.2019, we deprecated the manner, in which, the counters were drafted and the averments made therein. It is not uncommon for assessees to file appeals belatedly and many a time, appeals are filed belatedly as the papers represented by the Registry are not represented within time. The Courts seldom reject the prayer for condonation of delay in representation. This is so because it is between the petitioner and the Court and the respondent has no

say in the matter. However, when the delay is inordinate, the respondent is put on notice. Hence, we can always perceive a situation where the respondent – assessee before us will be in such a piquant situation no sooner and the tables may turn. In the light of the above, we do not propose to either modify or recall our order dated 28.6.2019 and the same is confirmed.

5. The respondent is directed to pay costs of Rs.10,000/- (Rupees ten thousand only) in each of the appeals payable to the Tamil Nadu State Legal Services Authority on or before 29.7.2019 and if there is any failure to comply with the same, the Registrar General is empowered to take coercive action to recover the amounts. List on 30.7.2019 for reporting compliance.

(T.S.S.J.) (V.B.S.J.)
23.7.2019

Office to Note :
Issue today

RS

T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

RS

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23.7.2019