

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-133-2019 (O&M)

Date of Decision: 25.3.2019

Jagpal

....Appellant.

Versus

Commissioner of Income Tax, Panchkula and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Abhilaksh Grover, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of bunch of three appeals bearing ITA Nos. 133 to 135 of 2019 as according to the learned counsel for the appellant similar issues are involved therein. For brevity, the facts are being extracted from ITA-133-2019.

2. ITA-133-2019 has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 27.10.2016 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 330/Chd/2016, for the assessment year 2011-12, claiming the following substantial questions of law:-

- i) Whether in the facts and the circumstances of the case, the ITAT was justified in not allowing the appeal filed by the Appellant, especially when in identical cases, the same relief has been granted?

- ii) Whether the learned Tribunal erred in not considering the settled law as laid down by the Hon'ble Supreme Court in Ghanshyam Dass (supra)?
- iii) Whether interest received received on enhanced compensation under Section 28 of the Land Acquisition Act is in the nature interest or whether it is a part of the compensation itself?
- iv) Whether the interest received on enhanced compensation is liable to be taxed under the head "Income from Other Sources"?
- v) Whether the Tribunal has acted arbitrarily in not granting relief to the Appellants, but having allowed identical cases of similarly situated persons?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee received enhanced compensation along with interest amounting to ₹ 9,64,57,703/- including the interest of ₹ 4,77,53,426/- from the Haryana Urban Development Authority (HUDA) for compulsory acquisition of agricultural land. He filed his return of income for the year under consideration on 18.11.2011 declaring total income at ₹ 8,17,872/- besides agricultural income of ₹ 4,00,000/-. The case of the assessee was selected for scrutiny and a notice under Section 143(2) of the Act was issued. The Assessing Officer added 50% of the interest, i.e. ₹ 2,38,76,713/- to the total income of the assessee.

Feeling aggrieved, by the assessment order, the assessee filed an appeal

before the Commissioner of Income Tax (Appeals) [for brevity “the CIT (A)”]. The CIT(A) vide order dated 10.2.2016 (Annexure A-2), dismissed the said appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 27.10.2016 (Annexure A-1), affirmed the findings of the CIT(A) and dismissed the appeal. Hence, the present appeals. Since, the appeals were barred by limitation, the applications have been filed under Section 5 of the Limitation Act, 1963 (in short “the 1963 Act”) for condonation of delay in filing the appeals.

4. We have heard the learned counsel for the appellant.

5. The primary question that arises for consideration in these appeals is whether there was sufficient cause for condonation of delay of 733 in ITA Nos. 133 and 134 of 2019 and 739 days in ITA-135.

6. 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 and 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.**”

7. 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....”

8. 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.

9. 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/appellant 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.

10. According to the learned counsel for the appellant, the appellant is engaged in agriculture in the village of Haryana and being not educated, was not fully aware of the rights and remedies available to him for the redressal of his grievances. The appellant was unable to file the appeal on time as he had come to know about the same only from the order dated 4.10.2018 passed by the Tribunal in identical cases. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before this Court. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

11. We do not find any ground to condone the colossal delay of 733 and 739 days in filing the appeals. 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 into 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. However, the appeal was required to be filed within the stipulated period of limitation of 120 days. But the appellant filed the appeal before this Court on 27.2.2019, after a delay of 733 days. The plea of the appellant as mentioned above would not satisfy the test of sufficient cause. The explanation of the appellant is bereft of justification for the delay caused in filing the appeal keeping in view the totality of facts and circumstances of the present case.

12. In view of the above, finding no merit in the applications for condonation of delay in filing the appeal, the same are hereby dismissed and consequently, the appeals are also dismissed as time barred.

(AJAY KUMAR MITTAL)
JUDGE

March 25, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes