

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 17.07.2020****Judgment delivered on 22.07.2020****Tax Case No.16 of 2020***(Arising out of order dated 05.11.2019 passed in MA No.41/RPR/2019
by the Income Tax Appellate Tribunal, Raipur Bench, Raipur)*

South Eastern Coalfields Ltd., Seepat Road, Bilaspur, Chhattisgarh

---- Appellant**Versus**Pr. Commissioner of Income Tax, Aaykar Bhawan, Vyapar Vihar,
Bilaspur, Chhattisgarh**---- Respondent**

For Appellant	: Shri S. Rajeswara Rao, Advocate.
For Respondent	: Smt. Naushina Afrin Ali Advocate on behalf of Shri Amit Chaudhari, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Judgment****P. R. Ramachandra Menon, Chief Justice**

1. This appeal has been filed along with an IA for condonation of delay, however pointing out that, the limitation for filing the appeal virtually had ended only on 30.03.2020 and that it was only because of 'COVID-19 pandemic', that the appeal could not be filed on time. But the fact remains that, the Apex Court, as per order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 has held that the period of limitation will not be applicable during the period of 'lock-down' and hence, non-filing of the appeal during the period of lock-down cannot invite any adverse consequence with reference to the

law relating to limitation. This aspect has been rightly noted by the Registry and no delay has been noted. As such, the IA does not require consideration and stands closed, as the appeal is noted as filed 'within time'.

2. This appeal is at the instance of the Assessee, under Section 260A of the Income Tax Act, 1961, challenging the order dated 05.11.2019 passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur in MA No.41/RPR/2019 (filed by the Assessee for restoration of the appeal with a petition to condone delay of '1924' days). The MA for restoration was dismissed holding that the delay has not been explained, nor has the chronology of events pertaining to such inordinate delay has been given by way of any affidavit.
3. The case put up by the Appellant/Assessee is that, the Assessee is a Public Sector Undertaking and a subsidiary of the Coal India Limited, which is engaged in the development of mines, mining activities and trading of coal. The return for the assessment year 2007-08 was filed on 31.10.2007, which came to be revised and enhanced as per the revised return filed later. The Assessing Authority proceeded with further steps and the assessment was completed under Section 143(3) of the Income Tax Act, 1961, making various additions and effecting disallowances under some heads, as borne by Annexure A/2 Assessment Order. Being aggrieved of the assessment, the Assessee preferred an appeal before the Commissioner of Income Tax, Bilaspur, vide Annexure A/3, which came to be partly allowed as per Annexure A/4. Met with the situation, the Assessee preferred Annexure A/5 appeal before the Income Tax Appellate Tribunal, to

the extent the Assessee was aggrieved. A similar appeal was filed from the part of the Revenue as well, insofar as the issue was decided against them.

4. When the matters were considered by the Tribunal, it was found that the appeals were filed without obtaining the approval of the High Power Committee in terms of the verdict passed by the Apex Court in **Oil and Natural Gas Commission and Another v. Collector of Central Excise** reported in **(1992) 104 CTR Reports 31**. Accordingly, both the appeals were dismissed as not maintainable as per Annexure A/6 order dated **03.06.2010**; however, leaving it open to the parties to file applications for revival of the appeals after obtaining clearance.

5. It is pointed out that the Apex Court had subsequently made it clear in **Electronics Corporation of India Limited v. Union of India and Others** reported in **(2011) 238 CTR Reports 353** that the provisions relating to COD approval had outlived their utility. In the said circumstance, the Revenue had filed an MA to get their appeal restored. After hearing both the sides, the Revenue's appeal was restored as per Annexure A/7 order dated 21.10.2011, though such restoration was opposed from the part of the Assessee. No further steps were pursued from the part of the Assessee with regard to their appeal for several years and it was only in September 2019, that the Assessee chose to file MA as borne by Annexure A/8 to restore their appeal dismissed on 03.06.2010, with a petition to condone the delay of 1924 days. The reason stated for the inordinate delay was that, because of the transfer/retirement of the

concerned officers-in-charge and the change in income tax consultant, it could not be filed on time. This was considered and held as not a satisfactory explanation to condone the inordinate delay; more so, in the absence of any affidavit and it was accordingly, that the said MA was dismissed as per Annexure A/1 order dated 05.11.2019, correctness of which is put to challenge.

6. Shri S. Rajeswara Rao, the learned counsel for the Appellant/Assessee was required to demonstrate the “substantial question of law” involved, so as to entertain the appeal preferred before this Court, particularly, since the order under challenge (Annexure A/1) has been passed on a factual aspect as to the inordinate delay in filing the MA and not on merits. According to the learned counsel, the Tribunal was not justified in dismissing the appeal merely based on the verdict of the Apex Court in **ONGC** (supra) and that in view of subsequent ruling of the Apex Court in **Electronics Corporation of India Limited** (supra), the appeal had to be restored.
7. Smt. Naushina Afrin Ali, the learned standing counsel representing the Respondent-Revenue submits that there is absolutely no merit or bonafides in the appeal preferred by the Assessee. The dismissal of the appeals filed by the Assessee and the Revenue as per Annexure A/6 order passed on 03.06.2010 was based on the law that prevailed as on that date. However, in view of subsequent ruling rendered by the Apex Court and by virtue of the liberty granted by the Tribunal itself while dismissing the appeals as per Annexure A/6 order dated 03.06.2010, to file MA on getting COD clearance; the Revenue filed

an MA for restoration of the appeal, which was allowed after hearing both the sides vide Annexure A/7 dated 21.10.2011. Instead of taking any similar step by the Assessee to get their appeal restored, they were sleeping over the issue for near 7-8 years and it was thereafter, that the MA was filed in September 2019 with a petition to condone the inordinate delay of 1924 days; that too, without offering any satisfactory explanation. In the said circumstance, dismissal of the said MA as per Annexure A/1 order, holding that the delay was not condonable, is purely a question of fact and it does not involve any substantial question of law.

8. There is no dispute with regard to the sequence of events. As mentioned already, the challenge before this Court is not against the original order passed on 03.06.2010, vide Annexure A/6, dismissing the appeal preferred by the Assessee, but against the order dated 05.11.2019 (Annexure A/1) dismissing the MA for restoration- because of the refusal to condone the inordinate delay of 1924 days. Does it involve any substantial question of law, is the point to be considered in this appeal.
9. The primary point to be noted is that the verdict passed by the Apex Court in **Electronics Corporation of India Limited** (supra) was very much known to the Appellant/Assessee. There is also no dispute that, as per Annexure A/6 order, at the time of dismissing the appeal for want of COD approval, the Tribunal had reserved the right of the parties to file MA for restoration of the appeal on getting COD clearance.

10. In view of the ruling rendered by the Apex Court in **Electronics Corporation of India Limited** (supra), it was quite open for the Appellant/Assessee as well, to file MA for restoration then and there, which was never done. At the same time, the Revenue who was prudent enough in pursuing their rights had filed MA for restoration of their appeal, which came to be allowed as per Annexure A/7 order dated 21.10.2011.

11. There is no case for the Appellant/Assessee that the Annexure A/7 order was passed by the Tribunal (allowing the MA preferred by the Revenue and restoring their appeal) without notice to the Appellant/Assessee. On going through Annexure A/7 order dated 21.10.2011, it is seen that the Appellant/Assessee was very much represented through their counsel, but the stand of the Appellant/Assessee was something else, who virtually opposed the relief sought for by the Revenue in the MA, contending that the Apex Court decision in **Electronics Corporation of India Limited** (supra) was not applicable to the case. This is discernible from paragraph-2 of Annexure A/7 order, which is reproduced below for easy reference:

“2. On the other hand, the Ld. Counsel for the assessee Ms. Sushamu Basu and Mr. Subhasis De read out the relevant portions from page 3 of the Supreme Court and mentioned that the assessee's case falls under exceptions and therefore, the said apex court decision in the case of ECIL (supra) is not applicable to the facts of the case. Accordingly, she

argued with the prayer that the appeal of the revenue should be dismissed.”

The Tribunal held in paragraph-3 that the learned counsel for the Assessee failed to demonstrate that their case was falling under exceptions to avoid retrospective operation of the judgments mentioned therein and it was accordingly, that the MA filed by the Revenue was allowed as per the said order.

12. This clearly shows the course and conduct pursued by the Assessee. In spite of having sufficient knowledge about the Apex Court's judgment, they had contended before the Tribunal that the said decision was not applicable. At least, on allowing the MA filed by the Revenue as per Annexure A/7 order dated 21.10.2011, the Appellant/Assessee could have filed a similar MA to get their appeal as well to be restored, which course was not pursued by them. It was after waiting for nearly 7-8 years, that they had some second thought and have come up on some revelation, that similar MA could be filed with a petition to condone the inordinate delay of '1924 days' as discernible from Annexure A/1. It is in the said circumstance that, the merit of the so-called explanation to condone the delay was considered, leading to an adverse finding.
13. It will be worthwhile to examine the reasons stated for the inordinate delay as given in paragraphs-5 and 6 of the MA, which are reproduced below:

“5. That the applicant could not file said Miscellaneous Application due to bona fide reasons of transfer/retirement of

concerned officers-in-charge and change in its Tax Consultants resulting in loss of track of proceedings as there were more than 50 appeals pending before this Hon'ble Tribunal.

6. That the mistake is traced now while reconciling pendency of appeals and present application is filed immediately after detecting the bona fide lapse.”

14. The acceptability of the said 'reason' was considered by the Tribunal in Annexure A/1 order dated 05.11.2019. The finding and reasoning are discernible from paragraphs-6 and 7, which are reproduced below:

“6. We have head the rival submissions and perused the material on record. It is an undisputed fact the Assessee is praying for recalling of the Tribunal's order dated 03.06.2010 for which the Miscellaneous Application has been filed by the Assessee on 09.09.2019 which is delayed by 1924 days. The fact is there is an inordinate delay in filing the present Miscellaneous Application. We find that apart from making a general statmetn that on account of bona fide reasons of transfer/retirement, no affidavit has been filed by the Assessee explaining the reasons for delay. We find that Hon'ble Apex Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur, Nafar Academy & Others, 2013 (5) CTC 547 has laid down the principles involved and the approach needed while considering the application

of delay, the relevant portion is as under:

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

.....

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 alls 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.”

7. In the present case, we find that the inordinate delay in filing the Miscellaneous Application has not been explained nor has explained the chronology of events pertaining to such inordinate delay by way of affidavit. In view of the aforesaid facts and after relying on the aforesaid decision of Hon'ble Apex Court, we are of the view that the inordinate delay cannot be condoned. We dismiss the Miscellaneous Application of the assessee.”

15. Ongoing through the order passed by the Tribunal, we are quite convinced, that absolutely no tenable reason or explanation has been offered by the Appellant/Assessee for condoning the inordinate delay of '1924 days'; much less any satisfactory explanation. The finding was rendered by the Tribunal that the inordinate delay cannot be condoned, led to dismissal of the MA for restoration of the appeal. It is quite relevant to note that the merit of the case was not considered by the Tribunal, as the MA for restoration of the appeal came to be dismissed for want of any satisfactory explanation of delay. The finding rendered by the Tribunal is well supported by the reasons; which is more evident from the course and conduct pursued by the Assessee by approbating and reprobating simultaneously; initially by contending before the Tribunal (when MA preferred by the Revenue was allowed years ago in 2011) that the Apex Court ruling in **Electronics Corporation of India Limited** (supra) was not applicable to their case and now seeking to place reliance on the same.

16. In the above facts and circumstances, we hold that Annexure A/1 order dated 05.11.2019 passed by the Tribunal is well within the four-walls of the law. The appeal preferred by the Appellant/Assessee does not contain any 'question of law'; much less any 'Substantial Question of Law' so as to call for interference under Section 260A of the Income Tax Act, 1961. Appeal fails. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu