

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL (IT) NO.1269 OF 2017

Perfect Circle India Ltd.
(Now known as Anand I-Power Ltd.) ... Appellant

V/s.
Assistant Commissioner
of Income Tax Range 5 ... Respondent

Mr.Sanjiv M. Shah, Advocate for the Appellant.
Mr.Nirmal Chandra Mohanty, Advocate for the
Respondent.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : JANUARY 28, 2020**

P.C.:-

1. Heard Mr.S.M.Shah, learned counsel for the appellant; and Mr.N.C.Mohanty, learned standing counsel, revenue for the respondent.

2. This appeal under Section 260A of the Income Tax Act, 1961 (briefly “the Act” hereinafter) has been preferred by the assessee against the order dated 28th February, 2017 passed by the Income Tax Appellate

Tribunal, Mumbai Bench “C”, Mumbai (briefly “the Tribunal” hereinafter) in Income Tax Appeal No.3403/Mum/2014 for the assessment year 2001-02.

3. From the materials on record it is seen that the related Income Tax Appeal No.3403/Mum/ 2014 was filed by the appellant against order of the Commissioner of Income Tax (Appeals) dated 1st November, 2004. However, there was delay of 3389 days in filing the appeal for which appellant submitted application for condonation of delay. In support of the application for condonation of delay, appellant also filed an affidavit dated 31st October, 2015 and a further affidavit on 8th November, 2016. However, by the order dated 28th February, 2017 Tribunal declined to condone the delay.

4. Hence, the appeal.

5. Learned counsel for the appellant submits that it was wrong on the part of the Tribunal to say that second affidavit was an afterthought. Infact, the second affidavit

explained the first affidavit. That apart, appellant has got a good case on merit. Without examining the merit of appellant's appeal, the same ought not to have been dismissed as being time-barred. In this connection learned counsel for the appellant has placed before us a compilation of various judgments, out of which he places reliance on **Collector, Land Acquisition Vs. Mst. Katiji, 167 ITR 471** . He therefore submits that the Tribunal ought to have taken into consideration the merit of the appeal and ought to have adopted a liberal approach in considering question of delay.

6. Mr.Mohanty, learned standing counsel, revenue on the other hand supports the order of the Tribunal and has placed reliance on a decision of this court in the case of **Cenzer Industries Ltd., Mumbai Vs. Income Tax Officer dated 15th January, 2016 passed in Notice of Motion Nos.492 of 2015 and 493 of 2015 in Income Tax Appeal (L) Nos.2079 and 2077 of 2014**, wherein this court declined to condone delay of 865 days.

7. Submissions made by learned counsel for the parties have been considered.

8. At the outset, we may advert to the impugned order passed by the Tribunal, relevant portion of which is extracted hereunder:-

“11. Thus examining the present case on the touchstone of above, we find that in this case there has been inordinate delay of about 10 years in filing the appeal. Firstly, the assessee had submitted that it was an inadvertent error. In another affidavit assessee had tried to submit that appeal papers were prepared but were not filed without any reason by the Chartered Accountant. The submission is not supported for its veracity or reasoning. Furthermore, there is no rationale in allowing a person to file an appeal after ten years simply because ten years ago also he had thought of filing the appeal. There can be many reasons why a person having thought of filing an appeal may decide not to pursue the matter. Hence, the contents of the second submission cannot be treated but as an afterthought.”

9. We do not find any error or infirmity in the view taken by the Tribunal.

10. In so far the decision in **Mst. Katiji (supra)** is concerned, we find that it was a matter arising out of land acquisition and in the appeal filed by the State of Jammu and Kashmir, there was delay of 4 days. It is in such circumstances that the Supreme Court expressed the view that each days delay is not required to be explained and a pragmatic approach is required to be taken.

11. In the decision of this court in the case of **Cenzer Industries Ltd. (supra)** reference was made to the above decision of the Supreme court and it was held as under :-

5. It is a settled position that an application for condonation of delay has to be liberally construed, as held by the Apex Court in various cases (see Collector, Land Acquisition v/s. Mst. Katiji, (1987) 167 ITR 471(SC)). However, this liberal construction of the sufficient cause while condoning delay has to be counter balanced by ensuring that the law of limitation which provides for definite consequence on the rights of the parties does not become ineffective. The rule of limitation is provided for general welfare of the society so as to put a period beyond which a party cannot agitate an issue in litigation. The rationale for the same is that

once a litigation is decided, the dispute must repose. This is particularly so, if the party aggrieved by the order does not agitate the issue before the appellate forum within the time provided. The opposite party can then proceed on the basis that the dispute is settled and arrange its affairs on that basis. Thus, if the aggrieved party has not moved the appellate forum within the prescribed time, resulting in other securing an accrued rights, then the party moving an application for condonation of delay, must endeavor to explain the delay and show his bonafide in not having moved within the time prescribed (i.e. not being diligent). The law assist the vigilant and not the indolent as stated in the Latin Maxim "Vigilantibus et non dormientibus jura subveniunt." The reasons for explaining the delay has to be plausible and reasonable so that the Court can exercise its discretion. Moreover, although a party is not be required to explain the reasons for not filing an appeal within the prescribed time, the party must explain the delay post period of limitation i.e. from the expiry of the period of limitation."

12. As is evident, there was delay of 3389 days in filing the related appeal before the Tribunal by the appellant, Tribunal has returned a clear finding that no sufficient cause was shown by the appellant to explain the huge delay. Period of delay is a factor to be considered while considering a delay condonation application; but more

importantly it is the explanation for the delay which is relevant.

13. In such circumstances, we are not inclined to interfere with the impugned order passed by the Tribunal. Appeal is devoid of merit and is accordingly dismissed. However, there shall be no order as to cost.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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