C.M.P.Nos.9365, 9343 & 9772 of 2021 in
T.C.A.SR.Nos.84356, 84352 & 84362 of 2013

T.S. SIVAGNANAM, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

These petitions have been filed by the petitioners to condone the delay of more then 2000 days in representing the appeals.

2.When the matter came up earlier, we expressed that the reasons are insufficient and we found that sufficient cause has not been shown for condonation of delay in re-presenting the papers.

3.This Court can take judicial notice of the fact that, several appeals filed by the Revenue are presented to the Registry with certified copy of the order of the Tribunal along with Memorandum of Grounds of Appeal, without the Typed Set of Papers and other relevant documents, for the appeal to be taken up for numbering. This Court has always been liberal, either it be the Revenue or the assessee, while considering the applications for condonation of delay in representation. On several occasions, the learned Standing Counsel themselves have filed affidavits praying for condonation of delay and in all such cases, though the delay may be exorbitant or may be lacking in sufficient cause, the Court has exercised discretion and condoned the delay. In cases filed by the assessees, considering the type of assessee and the cause shown, the Court has exercised discretion and condoned the delay, and in certain cases, imposed reasonable cost as a condition to be complied with for condonation of delay. The prayer for condonation of delay in representing the papers is between the appellant and the Court and the Court may not be required to hear the other side, while exercising discretion in condoning the delay in representation.

4.As mentioned earlier, the affidavit filed by the petitioner before us, in support of the condone delay petitions were bereft of particulars and when we expressed our opinion, the learned counsel for the assessee requested time to file a better affidavit. Accordingly, one of the Directors of the assessee has filed a better affidavit, stating that the appeals were filed before this Court within 120 days from the date of communication of the order by the Registry of the Appellate Tribunal and they were filed on 23.09.2013 with a delay ranging from 4 to 16 days and the delay was not deliberate, but owing to the circumstances beyond the control of the appellant. It is submitted that, due to the sudden absence of the Accountant, who was coordinating with the office of the counsel who initially filed the appeals on behalf of the appellant/assessee, there was a small delay in filing the appeals. Further, the assessee submitted that, if the delay is not condoned, the assessee will miss the opportunity to settle the proceedings under the Vivas Se Vishwas Scheme, 2020 ("VSV Scheme" for brevity) by way of filing Form-4 in response to Form-3 issued by the Income Tax Department, dated 15.04.2021.

5.The learned Standing Counsel appearing for the respondent/Revenue, on the earlier occasion, sought time to file counter affidavit, which has been filed and placed before us today. The counter affidavit largely proceeds on the basis as to how the petitioner/assessee is not entitled to the benefit of VSV Scheme. So far as the delay is concerned, it is submitted by the respondent that the mistake committed by the erstwhile counsel in not representing the papers after complying with the defects pointed out by the Registry, is not a reason to be accepted for condonation of delay. Further, it is submitted that the assessee had obtained Form-3 by misrepresentation of facts by stating that a valid appeal was pending as on 31.01.2020, which is a pre-requisite for availing the benefit of VSV Scheme and on the date of application, no appeal was pending before the Court. In this regard, the Revenue placed reliance on Circular No.21 of 2020, dated 04.12.2020, issued by the CBDT, which is a FAQ and in particular, the Answer to Question No.59. Further, the Revenue would also contend that, on facts, the Revenue has got a good case on merits and several decisions which are stated to support their case have been been referred to in Para Nos.9 to 11 of the counter affidavit.

6.Before we consider as to whether the Revenue was justified in cancelling the Form-3 issued to the assessee vide order dated 17.09.2021, we need to first consider as to whether the assessee has made out a case for condonation of delay. As pointed out earlier, in substantial number of cases, either filed by the Revenue or by the assessee, the Court has exercised discretion and condoned the delay. Even though the affidavits are not sworn to by the concerned officer, the Court has exercised discretion and adopted a liberal approach in favour of the Revenue, bearing in mind that the jurisdiction of this Court under Section 260A of the Income Tax Act, 1961, ("the Act" for brevity) is to decide the substantial questions of law and therefore, this Court always holds that, on technicalities, the Court should not shun away from taking a decision on the substantial questions of law, which if done, would result in serious miscarriage of justice.

7.Admittedly, the appeals were filed in the Registry of this Court on 23.09.2013, along with certified copy of the order passed by the Tribunal, which is impugned in these appeals. Thereafter, the papers were returned to the erstwhile counsel for the appellant/assessee and were re-presented on 19.03.2014. The present counsel had filed his vakalat on 11.06.2021, after obtaining No-Objection from the erstwhile counsel. Thereafter, the matter has been pursued and the present counsel has taken steps to file an affidavit in support of the petitions to condone the delay in representation. We find from the case papers that the appeals were presented and the Batta which was required to be paid for service of notice on the respondent has been remitted by the appellant along with the appeals on 23.09.2013. Subsequently, the appeals were represented on 23.12.2016, after complying with the defects pointed out by the Registry. From the available papers, it is not clear as to on what date, the papers were returned to the counsel, after which, it was represented on 23.12.2016.

8.Thus, considering the aforesaid dates and events, we are of the view that the date of filing of the appeals by the assessee has to be reckoned as 23.09.2013 for all purposes. This is so, because if we exercise discretion and condone the delay in representation, then the delay in filing is ranging only between 4 to 16 days, which has been calculated as per the period of limitation prescribed under the Act, reckoning the date of filing of appeal as 23.09.2013. Therefore, it goes without saying that the appeals were filed before the Registry on 23.09.2013.

9.As far as the delay in representation is concerned, the Revenue may be right in stating that the assessee cannot escape by blaming the erstwhile counsel. In many of the cases, we have noticed that, on account of change of jurisdiction, there is change of Standing Counsel for the Department and there would be delay in handing over the papers to the concerned Standing Counsel and these are all cumulative reasons, which will lead to delay in filing the appeal or representing the appeal or getting the appeal numbered or making submissions in the appeal which have been numbered. Thus, bearing in mind that we are required to decide the substantial questions of law in appeals filed under Section 260A of the Act, we exercise discretion and condone the delay in re-presenting the appeals. These Civil Miscellaneous Petitions are allowed.

(T.S.S., J.) **(S.S.K., J.)**
23.09.2021

Note :
Registry is directed to number the petitions to condone the delay in filing the appeals, forthwith.

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