IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Friday, the Eighth day of April Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE R.MAHADEVAN

AND

THE HON`BLE MR JUSTICE J.SATHYA NARAYANA PRASAD

CMP.No.16186 of 2021

in TCA.SR.No.51482 of 2013

K.T.KUNJUMON [PETITIONER]
S/O.SHRI K.THOMAS,
BUDDHA ST, ASHOK AVENUE,
KODAMBAKKAM, CHENNAI 600024
PAN ACZPK1724A.

Vs

THE ASSISTANT COMMISSIONER [RESPONDENT]
OF INCOME TAX, CORPORATE CIRCLE 1(5)
CHENNAI 600034.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 2423 days in representing the above tax case appeal [IN CMP.No.16186 of 2021 in TCA.SR.No.51482 of 2013]

Order : This Miscellaneous petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.R.SIVARAMAN, Advocate for the petitioner and of MR.J.NARAYAN SWAMY, SENIOR STANDING COUNSEL for M/S.K.G.USHA RANI, STANDING COUNSEL on behalf of the Respondent, the court made the following order:-

(Order of the court was made by R.MAHADEVAN, J.)

This petition is filed by the petitioner / appellant / assessee seeking to condone the delay of 2423 days in representing the above Tax Case Appeal, which was filed against the order dated 31.01.2013 passed by the Income Tax Appellate Tribunal, Chennai 'B' Bench in IT(SS)A.No.21/Mds/2012 relating to the block assessment period from 01.04.1986 to 31.03.1996 and from 01.04.1996 to 20.01.1997.

2.The learned counsel appearing for the petitioner reiterating the averments made in the affidavit filed in support of this petition, submitted that the petitioner has age related health issues, including cardio, diabetes, gastro and urology problems and has been undergoing continuous treatment till date, due to which, he could not run his business successfully and in order to stabilize the same, he borrowed loans, but was unable to repay the same. As a result, all his immovable properties were attached by the department. The learned counsel further submitted that the petitioner after coming to know about the Vivad Se Vishwas Scheme, 2020, intended to avail the benefit of the same, but he was unable to mobilise funds to settle the dues. It is also submitted that in the mean while, the appeal in TCA No.664 of 2019 filed by the department was dismissed in favour of the petitioner and thereafter, he took steps to represent the appeal papers with a delay of 2423 days. Therefore, according to the learned counsel, the delay occasioned is neither wilful, nor wanton, but only due to the reasons stated hereinabove and the same may be condoned and an opportunity be provided to the petitioner to contest his case on merits, as he has fair chance of success in this appeal.

3.On the other hand, the learned senior standing counsel appearing for the respondent filed a counter affidavit and submitted that the Hon'ble Supreme Court has held that Section 5 of the Limitation Act is hard task Master and therefore, a litigant who is not vigilant, must explain each day delay. Whereas, in this case, the petitioner has not shown sufficient or reasonable cause and date wise particulars with regard to the exorbitant delay of 2423 days in representing the appeal papers. Hence, the learned counsel prayed to reject the plea of the petitioner / appellant and dismiss this miscellaneous petition. The learned counsel further submitted that the petitioner / appellant failed to discharge the burden cast upon him, by producing satisfactory materials as regards the borrowal of Rs.60 lakhs from M/s.G.V.Films, either before the assessing officer or before the CIT(A) or even before the Tribunal and hence, there is no infirmity in the order passed by the Tribunal, which is impugned in the tax case appeal.

4.Heard both sides and perused the materials placed before this court.

5.Admittedly, the petitioner preferred the tax case appeal vide SR.No.51482 of 2013 as against the order of the Income Tax Appellate Tribunal on 19.06.2013. However, the said appeal papers were returned by the Registry for want of certain compliance. After rectifying the defects, the petitioner represented the same on 17.09.2021 and in this process, there was a delay of 2423 days occasioned. He sought to condone the same citing his health issues, whereas the department raised serious objection for condoning such a huge and inordinate delay occasioned on the part of the petitioner.

6.Before appreciating the submissions made on either side, it is pertinent to refer to the following decisions, in regard to the condonation of delay:

(i)***N. Balakrishnan v. M. Krishnamurthy, [1998(7) SCC 123]***, wherein, it was observed by the Hon'ble Supreme Court as follows:

"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not meant to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. Condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other case, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words 'sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

(ii)In ***Esha Bhattacharjee v. Raghunathpur Nafar Academy [2013 (12) SCC 649]***, the Hon'ble Supreme Court has culled out the principles applicable to an application for condonation of delay and the same are profitably reproduced hereunder:

"i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

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 calls 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.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

(iii)It is also useful to extract paragraph Nos.14 and 17 of the judgment of this court in ***Tamilnadu Mercantile Bank Ltd., Vs. Appellate Authority***, [**(1990) 1 LLN 457]**, which read as under:

"14.We are unable to agree with the reasoning of the learned Judge that no litigant ordinarily stands to benefit by instituting a proceeding beyond time. It is common knowledge that by delaying a matter, evidence relating to the matter in dispute may disappear and very often the party concerned may think that preserving the relevant records would be unnecessary in view of the fact that there was no further proceeding. If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter. Hence to view a matter of condonation of delay with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious. In our view, each case has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed period of limitation."

"17.... Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. It is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent."

Thus, the legal position discernible from the aforesaid decisions is that the question of limitation is not based on technical consideration, but is on the principles of public policy and equity; and the substantial justice is paramount consideration and pivotal.

7.That apart, a Co-ordinate Bench of this court, in similar circumstances, in CMP.No.12925 of 2021 in CMA.SR.No.61827 of 2021, by order dated 09.09.2021, after taking note of the reasons adduced by the petitioner, which found to be sufficient cause, has condoned the delay of 3426 days in filing the civil miscellaneous appeal, however, subject to payment of costs of Rs.10,000/- by the petitioner / appellant.

8.Thus, this court, considering the reasons adduced in the affidavit filed by the petitioner and also following the aforesaid legal proposition coupled with the earlier order of this court, is inclined to condone the delay in representing the appeal, subject to payment of Rs.10,000/- towards costs to the Tamil Nadu Mediation and Conciliation Centre, High Court, Chennai, within a period of three weeks from the date of receipt of a copy of this order. Upon complying with the aforesaid direction, this petition stands ordered. Thereafter, on production of the receipt for payment of costs, the Registry shall take further course of action.

-sd/-
08/04/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, CHENNAI

2 THE ASSISTANT COMMISSIONER OF INCOME TAX,
CORPORATE CIRCLE 1(5), CHENNAI 600 034

COPY TO

THE TAMIL NADU MEDIATION
AND CONCILIATION CENTRE,
HIGH COURT, MADRAS 104.

Order
in
CMP.No.16186 of 2021
in TCA.SR.No.51482 of 2013

Date :08/04/2022

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