IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.161 of 2023

M/s.Rarefield Engineers Private Limited
No.104, East Madha Church Road,
Royapuram, Chennai – 600 013.
PAN: AABCR7832D .. Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle – V (3),
Income Tax Department Chennai,
Aayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 19.10.2022 passed in ITA No.911/CHNY/2018 (Assessment Year 2010-2011) on the file of the Income Tax Appellate Tribunal, "B" Bench, Chennai and to quash the same.

For Appellant : Mr.A.S.Sriraman
for Mr.S.Sridhar

For Respondent : Mrs.V.Pushpa
Senior Standing Counsel
for Ms.Anu Ganesan
Junior Standing Counsel

JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN, J.]

Challenging the order dated 19.10.2022 passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai, in ITA No.911/CHNY/2018 for the Assessment Year 2010-2011, the appellant / assessee has filed the present appeal.

2.According to the appellant, for the assessment year 2010-11, the assessment was completed under section 143(3) of the Income Tax Act, 1961 (in short, "the Act") on 26.03.2013 in determining the taxable total income at Rs.1,23,24,320/- as against the reported income mentioned in the return of income filed on 11.01.2011 at Rs.99,84,330/-. In para 3 of the assessment order, the respondent made an addition of Rs.23,40,000/-

representing fresh unsecured loans in terms of section 68 of the Act on the ground of unsatisfactory explanation offered by the appellant. Challenging the said assessment order, the appellant preferred an appeal, which was dismissed by the appellate authority by order dated 30.12.2016. Aggrieved by the same, the appellant went on further appeal before the Income Tax Appellate Tribunal, but belatedly by 380 days. The Tribunal without considering the explanation offered by the appellant for condoning the delay in filing the appellant, rejected the petition seeking condonation of delay and dismissed the appeal, by order dated 19.10.2022, which is impugned in this tax case appeal.

3.The learned counsel for the appellant submitted that the issue involved is relating to the assessment of unsecured loans due to non-furnishing of confirmation letters by the appellant at the relevant point of time. According to the learned counsel, since the appellant was unable to provide the confirmation letters, they were advised not to file further appeal and therefore, they did not file appeal before the Tribunal within the limitation period. While so, penal action was initiated under section

271(1)(c) of the Act and a penalty order dated 21.03.2018 came to be passed by the assessing officer. Hence, the appellant preferred the further appeal before the Tribunal belatedly i.e., on 15.03.2018, to challenge the assessment of unsecured loans. The learned counsel further submitted that in fact, in the penalty proceedings, the appellant produced necessary evidence to support and prove the claim of unsecured loans obtained as reflected in the remand report dated 12/30.09.2019; and based on the remand report, the penalty imposed under section 271(1)(c) of the Act, was deleted in the appellate order dated 16.10.2019 in ITA.No.3/CIT(A)-3/ 2018-19 which fortified the stand of the appellant. Pointing out all these reasons, the appellant sought to condone the delay in filing the appeal and decide the case on merits. However, the Tribunal erred in rejecting the plea of the appellant, on the premise that the reasons given by the assessee were not *bona fide* and accordingly, dismissed the condonation of delay petition and the appeal as time barred, by the order impugned in this appeal. It is submitted by the learned counsel that the appellant has now in possession of the necessary materials to prove their claim and has fair chance of success in the appeal and hence, an opportunity may be provided to them to contest the case on merits. Stating so, the learned counsel prayed for allowing this appeal by setting aside the order passed by the Tribunal.

4.On the other hand, the learned senior standing counsel appearing for the respondent submitted that the appellant has not furnished the necessary documents in support of their claim before the authority concerned and hence, the assessing officer has correctly assessed the income and passed the assessment order, which was also confirmed by the appellate authority. The learned counsel further submitted that the appellant approached the Tribunal with a delay of 380 days, which is beyond the period of limitation and hence, the Tribunal rightly rejected the condonation of delay petition and the further appeal filed by the appellant, by the order impugned herein.

5.Heard the learned counsel appearing for both sides and perused the materials placed before this court.

6.The dispute raised by the appellant is with respect to addition of Rs.23,40,000/- towards unsecured loans in terms of section 68 of the Act. It is an admitted fact that the appellant has not furnished the required documentary evidence to substantiate their claim before the assessing authority as well as the appellate authority. The appellant preferred the further appeal before the Tribunal, with a delay of 380 days i.e., beyond the period of limitation. By the order dated 19.10.2022, the Tribunal rejected the condonation of delay petition as the reasons offered by the appellant were not *bona fide* and consequently, dismissed the appeal as not maintainable.

7.At this juncture, 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.

8.Therefore, considering the facts and circumstances of the case and taking note of the submissions made by the learned counsel on either side, the order dated 19.10.2022 passed by the Income Tax Appellate Tribunal, Chennai, is set aside and the delay in filing the appeal is condoned. Consequently, the matter is remanded to the Tribunal, which shall entertain the appeal and decide the same, on merits and in accordance with law. The appellant shall place all the materials for consideration before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, failing which, the Tribunal shall decide the matter on the basis of available materials, without granting further adjournments.

9.This tax case appeal stands disposed of in the above terms. No costs.

[R.M.D., J.] [M.S.Q., J.]
27.03.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd

To
1.The Assistant Commissioner of Income Tax,
Company Circle – V (3), Income Tax Department Chennai,
Aayakar Bhavan, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Commissioner of Income Tax (Appeals)-3,
Chennai.

3.The Judicial Member,
The Income Tax Appellate Tribunal,
"B" Bench, Chennai.

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