IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM

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

C.M.P. No.8063 of 2023
and
T.C.A. SR.No.44531 of 2023

Shri M.Srinivasulu,
New No.15, Old No.7,
1st Floor Lime Kline Street,
Aminijikarai, Chennai 600 029.
AIQPM7204C ... Petitioner / Appellant

-vs-

The Assistant Commissioner of Income Tax,
Non Corporate Circle 10(1),
Chennai 600 034. ... Respondent / Respondent

Prayer in C.M.P.No.8063 of 2023 : Civil Miscellaneous Petition is filed under Section 260A(2A) of the Income Tax Act, praying to condone the delay of 5318 days in filing the tax case appeal in T.C.SR.No.44531 of 2023.

Prayer in T.C.A.SR.No.44531 of 2023: Tax Case Appeal is filed under Section 260A of the Income Tax Act, 1961 against the order of the Income

Tax Appellate Tribunal, 'B' Bench, Chennai passed in I.T.(SS).A.No.168/Mds/06 dated 09.05.2008 for the block assessment period 01.04.1996 to 31.03.2002 and 01.04.2002 to 18.02.2003.

For Petitioner : Mr.T.Pramodkumar Chopda, Senior Advocate for M/s P.Aruna Chopda

For Respondent : Mr.Karthik Ranganathan, Standing Counsel (Income Tax)

ORDER

(Order of the Court was made by MOHAMMED SHAFFIQ,J.)

The Civil Miscellaneous Petition has been filed to condone the delay of 5318 days in filing the Tax Case Appeal in T.C.(A) SR.No.44531 of 2023 against the order passed by the Income Tax Appellate Tribunal in I.T.(SS).A.No.168/Mds/06 dated 09.05.2008 confirming the order of the CIT(A), Chennai sustaining the addition of Rs.50 Lakhs as undisclosed income of the petitioner.

2. A perusal of the affidavit filed in support of the petition to condone the delay would reveal that the petitioner has primarily attempted to

demonstrate lack of jurisdiction with regard to addition of Rs.50 Lakhs as undisclosed income. We do not propose to get into the merits of the matter, but we intend to confine ourselves to see if there is "sufficient cause" for the delay of 5318 days in filing this Tax Case Appeal.

3. We shall now proceed to examine the averments made in the affidavit filed in support of the petition to condone the delay. The petitioner is engaged in the business of selling products under the brand name of Manick Chand Gutka / Pan Masala. The petitioner was a consignment agent for his principal Dhariwal Industries Ltd., Pune. He received goods on consignment basis and effected sales and remitted the sale proceeds with the principal. On 17.02.2003, the petitioner after collecting the sale proceeds from retailers in the regular course, was on the way to Hyderabad to deposit a sum of Rs.50 lakhs in his bank account viz., M/s.A.P.Mahesh Urban Co-operative Bank Limited, Hyderabad for business transaction. While the petitioner was about to board the bus, the police authorities intercepted him and found him carrying a sum of Rs.50 lakhs. The explanation offered by him that the said sum represented sale proceeds and was meant to be

deposited, was not accepted by the police authorities. The petitioner was arrested and the cash in his custody was seized and an F.I.R. came to be registered. The police authorities informed the seizure to the Income Tax Authorities.

4. Though there are other facts which have been narrated in the affidavit filed in support of the petition to condone the delay, we are not referring to the same inasmuch as the same were made in support of the petitioner's contention on merits, which we do not propose to examine. We intend to confine only to the averments relating to seizure and requisition by the department inasmuch as the petitioner had placed emphasis on the above fact as leading them to file a review petition against the order of the Tribunal dated 09.05.2008. The petitioner filed a Crl.M.P.No.1160 of 2003 in respect of seized cash of Rs.50 lakhs for return of the same. The department had issued warrant for requisition of assets under Section 132 A of the Act and filed a petition in Crl.M.P.No.1205 of 2003. A common order dated 02.08.2004 was passed dismissing the petitioner's petition for release and return of the seized cash while allowing the department's petition under

Section 132 A(1)(c) of the Act and ordered delivery of the cash to the Income Tax Department. The said order was confirmed by this Court vide order dated 22.11.2004 in Crl.R.C.No.1495 of 2004. It is further stated that on receipt of the impugned order dated 09.05.2008, the petitioner filed a review petition before the Tribunal on the premise that it was only receiving refund for excess collection of tax, while giving effect to the appeal order against the assessment order, it was found that the sum of Rs.50 lakhs was not refunded. Secondly, a memo dated 12.07.2010 was filed by the Revenue before the Magistrate stating that it does not require the requisitioned asset. It was thus submitted that the requisition under Section 132A of the Income Tax Act, 1961 dated 16.04.2003 was pending and not completed which would have a material bearing and may well alter the very decision of the order passed by the Tribunal dated 09.05.2008 and thus sought for a review by the Tribunal of its order dated 09.05.2008. The Tribunal dismissed the review petition vide order dated 04.11.2010 in M.P.No.174/Mds/2008 in I.T.(SS) A.No.168/Mds/06.

4.1. Thereafter, a rectification petition in M.P.No.273/Mds/2011 in I.T.(SS) A.No.168/Mds/06 under Section 254 of the Act was filed before the Tribunal which also came to be dismissed vide order dated 27.09.2013.

4.2. In the meanwhile, the petitioner had filed an appeal / rectification petition against the order of the Appellate Authority before the Commissioner (Appeals) and the same came to be dismissed vide order dated 19.12.2017 in ITA No.219/CIT(A)-12/2013-14 wherein it was found that the original order was passed on 19.05.2006 for Block assessment periods from 01.04.1996 to 31.03.2002 and from 01.02.2002 to 18.02.2003 and the appeal filed against the said order, was also disposed of by the Tribunal, vide order dated 09.05.2008 and thus, there was no room for rectifying the order of the CIT(A), in the absence of any direction by the Tribunal. Aggrieved by the same, the petitioner once again filed an appeal before the Tribunal. The Tribunal dismissed the said appeal, vide order dated 21.12.2022.

5. It is against the above factual background that the petitioner was advised to challenge the impugned order dated 09.05.2008. Accordingly, the

petitioner challenged the same, by way of Tax Case Appeal, with a delay of 5318 days.

6. The learned counsel for the petitioner submitted that the present tax case appeal has been filed challenging the order dated 09.05.2008 in IT(SS).A.No.168/Mds/2006 *inter alia* on various grounds including that the Block assessment order was a nullity and the order of the Revenue to the extent relating to addition of alleged undisclosed income of Rs.50 Lakhs is beyond jurisdiction.

7. To the contrary, counter has been filed by the learned counsel for the Respondent wherein it has been stated that the entire attempt made by the petitioner is an after thought and the reason set out in the affidavit filed in support of the petition to condone the delay does not reveal any cause for the delay muchless "sufficient cause", instead the affidavit reflects gross laxity, casual approach and lack of *bona fide* on the part of the petitioner as evident from the fact that the same order has been attempted to be challenged before various forums on multiple occasions.

8. Heard both sides. Perused the material on record.

9. We find that there is merit in the submission of the learned counsel for the Respondent. The impugned order dated 09.05.2008 was challenged by the petitioner by way of review and rectification petition before the Tribunal and the same were disposed of as early as on 04.11.2010 and 27.09.2013. No attempt was made thereafter to file the Tax Case Appeal, instead the petitioner has chosen to file a rectification petition before the First Appellate Authority and on its rejection, once again filed an appeal before the Tribunal. The complacency in the approach of the petitioner does not inspire confidence, but reflects apathy and lack of *bona fide*. Thus, we do not find any convincing reason set out in the affidavit filed in support of the condone delay petition.

10. It is trite law that where a case has been presented in the court beyond limitation, it is for the applicant to explain that there was "sufficient cause" for the delay. It had been consistently held that "sufficient cause" would mean that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part, but must have acted diligently and

not remained inactive. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

(a) Basawaraj v. Land Acquisition Officer [(2013) 14 SCC 81]:

*"**9.** Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] , Mata Din v. A. Narayanan [(1969) 2 SCC 770], Parimal v. Veena [(2011) 3 SCC 545] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157])."*

(b) Ajay Dabre v. Pyare Ram [2023 SCC Online SC 92]:

*"**13.** This Court in the case of Basawaraj v. Special Land Acquisition Officer while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:*

> *"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."*
>
> ***14.*** *Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."*

10.1. It is clear that the discretion to condone the delay ought to be exercised judiciously based on facts and circumstances of each case. If it is found that the party has been negligent, not vigilant and lacking *bona fide,* the Court would not come to rescue of such litigants. We had already found that the conduct of the petitioner lacks *bona fide* and the reasons adduced do not satisfy the test laid down for constituting "sufficient cause". The reasons set out in the affidavit filed in support of the petition to condone the delay of 5318 days i.e., nearly 14 years are unconvincing and do not furnish any cause much less "sufficient cause" for condoning the delay in filing the appeal, instead reveal a callous attitude and a casual approach in availing the right of appeal.

11. The Hon'ble Supreme Court in the case of ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project*** reported in ***[(2008) 17 SCC 448]***, has categorically observed that the Courts help those, who are vigilant and “do not slumber over their rights”. Therefore, we are not inclined to condone the inordinate delay of 5318 days in filing the appeal.

12. Accordingly, the Civil Miscellaneous Petition filed to condone the delay stands dismissed. Consequently, the Tax Case Appeal stands rejected at SR stage itself. No costs.

[R.M.D., J.]   [M.S.Q., J.]
21.12.2023

Index: Yes/No
Speaking order/ Non speaking order

Neutral Citation: Yes/No
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R.MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

shk

To

1.The Income Tax Appellate Tribunal,
'B' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-1
Chennai.

3.The Assistant Commissioner of Income Tax,
Central Circle IV(3)
Nungambakkam High Road
Chennai 600 034.

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