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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

VATAP-371-2019 (O&M)
Date of Decision: 10.04.2024

M/s Bhagwan Dass Contractor
Vs. . . . Appellant

The State of Haryana and another
. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Goyal, Advocate
for the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. This is an appeal preferred by the assessee assailing the order passed by the Haryana Tax Tribunal dated 08.08.2019 whereby the appeal was rejected, finding the explanation for long and inordinate delay of 1229 days in filing the appeal as unsatisfactory.
2. Learned counsel submits that an application under Section 5 of Limitation Act was filed by the appellant wherein it was stated that the appellant's last counsel had advised to the assessee that no appeal should be filed at this stage because the case has been remanded back by the Revisional Authority to the Assessing Authority, and keeping in view the advice given by the lawyer, the assessee did not file the appeal. He was under an impression that the appeal could be filed only after the matter was finalized by the Assessing Authority.

3. It is submitted that the lawyer was a tax expert and given his advice and as such, the appeal was not filed. It is further stated that the Assessing Authority decided the issue of levying of interest on 12.01.2018 and the same was delivered to the counsel for the assessee on 16.02.2018. However, soon thereafter, the lawyer suffered seizure disorder and was hospitalized. After he was discharged, he could not resume his normal work and suffered memory loss, and did not apprise the assessee of the passing of the order by the Assessing Authority. It was only when the demand notice was served on the assessee on 14.09.2018, he approached his lawyer and ultimately looked at the old record on 01.04.2019 and thereafter, the assessee contacted another advocate at Chandigarh who advised him to file an appeal along with the application for condonation of delay.
4. We have carefully considered the submissions.
5. Learned counsel, in support of his contentions, has invited our attention to the judgments passed by the Supreme Court in the cases of *N. Balakrishnan vs. M. Krishnamurty*, (1998) 7 SCC 123 and *Rafiq and another vs. Munshilal and another*, (1981) 2 SCC 788; judgment of Kerala High Court in the case of *Rajesh Chandran vs. M.R. Gopalkrishnan Nair and others*, OP(C) No.281 of 2022; and judgment of Madhya Pradesh High Court in the case of *Mahaveer Prasad Jain vs. Commissioner of Income Tax*, (1988) 172 ITR 331.
6. In the case of *N. Balakrishnan* (supra), the Apex Court was considering a case where the appellant had engaged an advocate who did not inform about the application having been dismissed in default, and when the summons for execution were received, the concerned

appellant had approached the counsel, but the counsel misled him and did not take up any proceedings, and he later on left the appellant and joined in some other firm. Considering the said aspects and also that the appellant therein had taken up the proceedings against the lawyer and had received a sum of Rs.50,000/- from the Consumers Forum on account of the default of the lawyer in performing his services, the Court proceeded to condone the delay of 883 days, and observed as under:

“9. It is axiomatic that 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 want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. 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.

12. 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. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749].

13. It must be remembered that 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. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

7. In the case of *Rafiq and another* (supra), the appellant's counsel had not appeared in the Court and ex-parte order of dismissal was passed, and therefore the appeal was allowed and case was restored, and costs was to be recovered from the lawyer who had absented himself.
8. In the case of *Mahaver Prasad Jain* (supra) coming up before Madhya Pradesh High Court, the restoration application was allowed as the counsel failed to appear and also did not inform the concerned litigant.
9. In the case of *Rajesh Chandran* (supra), the Kerala High Court restored the claim petition and condoned the delay in relation to the case relating to claim under Motor Vehicles Act in MACT case.
10. In the present case, however, we find that the appellant had engaged his counsel and it is not a case where the counsel did not inform him

about the decision. Of course, it is stated that he had advised the appellant not to file an appeal and to await the decision in the remand. But it is for the concerned appellant to have taken a decision. Once he accepts the advice of his counsel and thereby accepts the verdict of the authority, and chooses not to file an appeal with regard to the issues which have been finally decided relating to the tax imposition of Rs.6,32,091/- with included refund of Rs.2,41,371/-, and was waiting only with regard to the issue relating to remand on interest part, it cannot be said that the appellant was not having knowledge of his rights.

11. In our opinion, a lawyer's advice as accepted by a litigant, has to be treated as a decision taken by the litigant himself, and once he has taken a decision not to proceed further to a higher court, it has to be presumed that he has accepted the verdict, and subsequently he cannot turn around and state giving reasons of wrongful advice given by the lawyer.

12. Such excuses would not be treated as reasonable grounds for condonation of delay, and therefore, we are in agreement with the order passed by the Haryana Tax Tribunal dated 08.08.2019, and find that the judgments which have been cited at bar, have no *iota* of similarity with the facts of the present case.

13. Question regarding condonation of delay has to be examined on the facts of each case, and each case is different on facts. Although the Court would always attempt to decide the case on merits, but huge delay would have to be examined considering all the aspects. The assessee is found to have not even deposited the amount as decided by

the authority since 2015, and thus it cannot be said that *bona fides* are in his favour.

- 14. In view of above, appeal stands *dismissed*.
- 15. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

April 10, 2024
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |