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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 445/2022**

PR. COMMISSIONER OF INCOME TAX-1 Appellant

Through: **Mr. Sanjay Kumar & Ms.
Easha, Advs.**

versus

CASIO INDIA COMPANY PVT. LTD. Respondent

Through: **Mr. Nageswar Rao & Mr.
Parth, Advs.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

15.05.2024

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CM APPL. 47820/2022 (condonation of delay of 460 days)

1. This application seeks condonation of delay caused in the preferment of the instant appeal and which is directed against the order of the Income Tax Appellate Tribunal [“ITAT”] dated 22 April 2019.

2. We note that undisputedly the instant appeal came to be filed only after we had passed a detailed order on 21 July 2022 in connected ITA 211/2022. As would be apparent from a reading of the aforesaid order, although the appellant had chosen to institute appeals for subsequent Assessment Years [“AY”], no appeal for AY 2010-11 had been preferred. It was only when the aforesaid fact came to light during the course of consideration of ITA 211/2022 that the instant appeal came to be preferred.

3. As we go through the explanation which have been proffered, it



is apparent and evident that the appellant/ applicant has been wholly negligent in pursuing its right of challenge.

4. We note that the Supreme Court has explained the principles which must govern condonation of delay in **State of Madhya Pradesh and Ors. vs. Bherulal** [(2020) 10 SCC 654] and held :-

“3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [*LAO v. Katiji* [*LAO v. Katiji*, (1987) 2 SCC 107]]. This position is more than elucidated by the judgment of this Court in *Postmaster General v. Living Media (India) Ltd.* [*Postmaster General v. Living Media (India) Ltd.*, (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] wherein the Court observed as under : (*Postmaster General case* [*Postmaster General v. Living Media (India) Ltd.*, (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] , SCC pp. 573-74, paras 27-30)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to



accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In para 4, a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the



Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider it appropriate to impose costs on the petitioner State of Rs 25,000 (Rupees twenty-five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.”

5. The aforesaid position in law was reiterated in **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private Limited** [(2021) 6 SCC 460] where the following pertinent observations were rendered:-

“58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in *Basawaraj v. LAO* [*Basawaraj v. LAO*, (2013) 14 SCC 81], has held : (SCC pp. 85-88, paras 9-15)

“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 & Building Corpn. v. Bhutnath Banerjee* [*Manindra Land & Building Corpn. v. Bhutnath Banerjee*, AIR 1964 SC 1336] , *Mata Din v. A. Narayanan* [*Mata Din v. A. Narayanan*, (1969) 2 SCC 770] , *Parimal v. Veena* [*Parimal v. Veena*, (2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [*Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24] .)

10. In *Arjun Singh v. Mohindra Kumar* [*Arjun Singh v. Mohindra Kumar*, AIR 1964 SC 993] this Court explained the difference between a “good cause” and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”.

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only [Ed. : The matter between two asterisks has been emphasised in original.] *so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned* [Ed. : The matter between two asterisks has been emphasised in original.] , whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [*Madanlal v. Shyamlal*, (2002) 1 SCC 535] and *Ram Nath Sao v. Gobardhan Sao* [*Ram Nath Sao v. Gobardhan Sao*, (2002) 3 SCC 195] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. ‘A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.’ The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive



factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, Para 605 p. 266:

‘605. *Policy of the Limitation Acts.*—The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.’

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat & Kotecha Property v. SBI Staff Assn.* [*Popat & Kotecha Property v. SBI Staff Assn.*, (2005) 7 SCC 510], *Rajender Singh v. Santa Singh* [*Rajender Singh v. Santa Singh*, (1973) 2 SCC 705] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [*Pundlik Jalam Patil v. Jalgaon Medium Project*, (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

14. In *P. Ramachandra Rao v. State of Karnataka* [*P. Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578 : 2002 SCC (Cri) 830] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [*Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225 : 1992 SCC (Cri) 93] .

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.”

(emphasis supplied)

59. Likewise, merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in *Postmaster General v. Living Media (India) Ltd.* [*Postmaster General v. Living Media (India) Ltd.*, (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] [*“Postmaster General”*], as follows : (SCC pp. 573-74, paras 27-29)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they



perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

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61. In a recent judgment, namely, State of M.P. v. Chaitram Maywade [State of M.P. v. Chaitram Maywade, (2020) 10 SCC 667 : (2021) 1 SCC (Civ) 111 : (2021) 1 SCC (Cri) 120 : (2021) 1 SCC (L&S) 87] , this Court referred to Postmaster General [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] , and held as follows : (SCC pp. 668-69, paras 1-5)

“1. The State of Madhya Pradesh continues to do the same thing again and again and the conduct seems to be incorrigible. The special leave petition has been filed after a delay of 588 days. We had an occasion to deal with such inordinately delayed filing of the appeal by the State of Madhya Pradesh in State of M.P. v. Bherulal [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (L&S) 84] in terms of our order dated 15-10-2020.

2. We have penned down a detailed order in that case and we see no purpose in repeating the same reasoning again except to record what are stated to be the facts on which the delay is sought to be condoned. On 5-1-2019, it is stated that the Government Advocate was approached in respect of the judgment delivered on 13-11-2018 [Chaitram Maywade v. State of M.P., 2018 SCC OnLine MP 1632] and the Law Department permitted filing of the SLP against the impugned order on 26-5-2020. Thus, the Law Department took almost about 17 months' time to decide whether the SLP had to be filed or not. What greater certificate of incompetence would there be for the Legal Department!

3. We consider it appropriate to direct the Chief Secretary of the State of Madhya Pradesh to look into the aspect of revamping the Legal Department as it appears that the Department is unable to file appeals within any reasonable period of time much less within limitation. These kinds of excuses, as already recorded in the aforesaid order, are no more admissible in view of the judgment in Postmaster General v. Living Media (India) Ltd. [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649]

4. We have also expressed our concern that these kinds of the



cases are only “certificate cases” to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue. The object is to save the skin of officers who may be in default. We have also recorded the irony of the situation where no action is taken against the officers who sit on these files and do nothing.

5. Looking to the period of delay and the casual manner in which the application has been worded, the wastage of judicial time involved, we impose costs on the petitioner State of Rs 35,000 to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited within four weeks. The amount be recovered from the officer(s) responsible for the delay in filing and sitting on the files and certificate of recovery of the said amount be also filed in this Court within the said period of time. We have put to Deputy Advocate General to caution that for any successive matters of this kind the costs will keep on going up.”

62. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in *Ramlal v. Rewa Coalfields Ltd.* [*Ramlal v. Rewa Coalfields Ltd.*, (1962) 2 SCR 762 : AIR 1962 SC 361] as follows : (SCR p. 771 : AIR p. 365, para 12)

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in



our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14.”

6. We consequently find no justification to condone the delay which stands caused. The application shall consequently stand dismissed. We, however, observe that this order shall be without prejudice to the right of the appellant to address submissions questioning the legality of views expressed by the ITAT in the other appeals which are pending and in which the decision of this AY was followed.

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7. In view of the order passed on CM No. 47820/2022, the appeal shall stand consigned to the record.

YASHWANT VARMA, J.

PURUSHAINdra KUMAR KAURAV, J.

MAY 15, 2024/kk