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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.46 OF 2022
IN
STAMP NUMBER MAIN NO.1438 OF 2020-FILING.

THE INCOME TAX DEPT. BY DY.
COMMISSIONER OF INCOME TAX
PANAJI ... APPLICANT
VS
GREGORY LEWIS ... RESPONDENT

Ms Amira Razaq, Advocate for the Applicant.
Mr. Ajit Kantak, Advocate for the Respondent.

CORAM:-SHREERAM V. SHIRSAT, J.

RESERVED ON:-22nd September 2025

PRONOUNCED ON:- 17th OCTOBER 2025

ORDER

1. Heard learned counsel for the respective parties.

2. The Applicant has filed the present application for condonation of delay in filing appeal which is challenging the impugned order dated 29.04.2019 passed by the learned Chief Judicial Magistrate acquitting the Respondent/Accused of the charges levied against him under Sections 276(C)(1) and 277 of the Income Tax Act, 1961 in Criminal Case No.142/OA/ ITD/2010/A.

3. It is submitted by the Ld. Counsel for the Applicant that the impugned judgment and order was passed on 29.04.2019 and an application for certified copy of the order was made on 21.05.2019. It is further submitted by Ld. Counsel for the Applicant that the Special Public Prosecutor for the Income Tax Department submitted copies to the Department on 13.08.2020. The Ld. Counsel for the Applicant further submits that the implementation of faceless assessment and consequent diversion of several posts occurred vide order dated 13.08.2020 , which caused the sudden changes in existing jurisdictions of the Chief Commissioner of Income Tax, Panaji and the Principal Commissioner of Income Tax, Panaji and therefore, the clarification from the CBDT was awaited for ascertaining the jurisdiction of the office for filing an appeal. It is also submitted by the Ld. Counsel for the Applicant that due to nationwide lockdown on account of the Covid-19 pandemic and Covid-19 guidelines issued by the Central Ministry applicable to all offices of the Income Tax Department, Panaji, the office of the Principal Commissioner of Income Tax, Panaji, was working on roster system, which allowed 50% of the actual strength of officials to attend office, thereby causing delay in the works of the office. It is submitted by the Ld. Counsel for the Applicant that it was directed to file an appeal in the above matter by the Office of the Principal Commissioner of Income Tax, Panaji, vide communication dated 09.09.2020. It is further submitted that the letter directing the Deputy Commissioner of Income Tax, Panaji, was forwarded on 09.09.2020, as per the notification under Section 120 of the Act from the office of the Joint Commissioner of Income Tax, Range -1 Panaji and was forwarded to the office of the applicant on 11.09.2020. It is further submitted that the said records which were received from the Public Prosecutor were forwarded to the learned Standing Counsel for the Department to prepare the draft of the Special Leave to appeal to be filed before this Court and the draft of the appeal was submitted to the Department for approval on the 15.09.2020 by the Standing

Counsel and the same was perused and approved by the Principal Commissioner on 16.09.2020 and immediately thereafter the present appeal is filed in the Registry of this Court on 17.09.2020.

4. The Ld. Counsel appearing for the Respondent has filed the reply and has vehemently objected to the application for condonation of delay and has argued that there is an inordinate delay of 447 days for which there is no plausible explanation offered in the application for condonation of delay. It is submitted that the reasons stated by the Applicant in the application, wherein the Standing Counsel provided an opinion on 13.08.2020 and contended that he was under a bona fide belief that the opinion had been submitted and there is no explanation as to how or when he became aware that the opinion had not been submitted, nor is there any clarification as to the time frame within which the opinion was eventually submitted thereafter. It is also submitted that during COVID-19, nothing whatsoever has been done to show how the functioning of the Office had been affected. It is also argued that nothing has been stated in the application about the movement of file. It is also submitted by the Ld. Counsel for the Respondent that Respondent has already suffered from the Court proceedings for a period of 9 years and ordeal from the Income Tax Department in respect to the Income Tax Return filed in the year 1998 i.e. 26 years back and therefore has prayed that the application for condonation of delay be rejected at the threshold.

5. The Applicant has filed rejoinder and has submitted that the Department ought not to be penalised for the delay by its Counsel and submitted that delay be condoned.

6. The Applicant has relied upon the following judgments:

i. *The Income Tax Department, Rep. by its Asst. Commissioner of Income Tax, Panaji Vs Dattaraj Vassudeva Salgaonkar, Criminal Misc. Appl. No. 253 of 2019 in STM No.1342 of 2019 order dated 12.3.2024.*

ii. *The Income Tax Department, Rep. By Its Asst. Commissioner of Income Tax, Panaji Vs Dattaraj*

Vassudev Salgaonkar in Criminal Misc. Application No. 253 of 2019 in STM No.1342 of 2019 order dated 16.11.2021.

iii. The Income Tax Department, Rep. by its Asst. Commissioner of Income Tax, Panaji Vs Dattaraj Vassudev Salgaonkar in Criminal Misc. Application No. 253 of 2019 in STM No.1342 of 2019 order dated 12.8.2024.

7. The learned Counsel for the Respondent relied in the case of *State of Madhya Pradesh and others Vs Bherulal* reported in *(2020) 10 SCC 654.*

8. It will not be necessary to deal with the orders passed in *the Income Tax Department, Rep. by its Asst. Commissioner of Income Tax, Panaji Vs Dattaraj Vassudeva Salgaonkar, Criminal Misc. Appl. No. 253 of 2019 in STM No.1342 of 2019 order dated 12.3.2024 and the order passed in The Income Tax Department, Rep. By Its Asst. Commissioner of Income Tax, Panaji Vs Dattaraj Vassudev Salgaonkar in Criminal Misc. Application No.*

253 of 2019 in STM No.1342 of 2019 order dated 16.11.2021 which have been relied upon by the Applicant as the issue therein was about maintainability of the application seeking condonation of delay on the ground that there is no power to condone the delay. Since this objection is not raised in the present application and the same having been decided by the Division Bench of this Court, no further discussion is required.

9. As far as the order passed in *The Income Tax Department, Rep. by its Asst. Commissioner of Income Tax, Panaji Vs Dattaraj Vassudev Salgaonkar in Criminal Misc. Application No. 253 of 2019 in STM No.1342 of 2019 order dated 12.8.2024.* is concerned, on which the reliance is placed by the Ld. Counsel for the Applicant, it will be pertinent to refer to observations made in paragraph 19 which reads thus:-

> ***"19.*** *In the case of* ***Collector (LA) v. Katiji, (1987) 2 SCC 107****, the Apex Court observed that:*
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> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on *technical grounds but because it is capable of removing injustice and is expected to do so.""*

10. This Court has further observed in the said judgement that the Court must adopt a pragmatic approach specifically when the case is of unwarranted acquittal which could result in failure of justice and also consider the concept of sufficient cause liberally.

11. The Respondent, on the other hand has relied upon the case of the *State of Madhya Pradesh Vs Bherulal,* reported in (2020)10 Supreme Court Cases 654 and has referred to paragraphs nos. 3, 6 and 7 wherein it has been held thus:-

"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!

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."*

12. Based on the above observations, it is emphatically submitted that the present application be dismissed.

13. Heard.

14. From the above submissions it will have to be seen whether the Applicant has made out sufficient grounds for condoning the delay or reasons specified are not sufficient which would constitute a sufficient cause for condoning the delay of 447 days in filing the appeal.

15. Although the judgment relied upon by the Respondent is more apt to the facts of the present case since the application is by the Government Department, however, it will have to be seen whether "sufficient cause" has been set out.

16. The impugned judgment came to be passed on 29.4.2019. The application states that the legal opinion of the Standing Counsel Satish L. Karale was received by the office on 13.8.2020, and he has explained the reasons for the delay in submitting the opinion by stating at paragraph 5 of the application which reads thus:-"

... I humbly submit that I was under the bonafide belief, that I had already submitted the same to the Department, since I had diligently applied for the certified copy of the judgement on 21.05.2019 and the same was delivered to me on 11.06.2019. I had strongly contested the above matter and I had no intention to deceive or to put the Department in jeopardy neither I had anything to gain by doing so. 1 sincerely apologize for the mistake committed by me".

17. Further in the application it is also stated that due to change in jurisdictions of the Chief Commissioner of Income Tax, Panaji and the Principal Commissioner of Income Tax, Panaji there was no proper clarification for ascertaining the jurisdiction of the office for filing appeal and further due to Covid-19 pandemic and the guidelines issued by the Central Ministry, the strength of officials was reduced by 50% which has caused delay in the regular working of the office. It is also submitted that after a letter dated 9.9.2020 was received by the office of the applicant, immediate steps were taken to file the appeal, and on 17.9.2020, the appeal came to be filed.

18. In my opinion, considering the reasons set out in the application, that there was a bonafide mistake on the part of the Special Public Prosecutor, no proper clarification for ascertaining the jurisdiction of the office for filing appeal and that it was during covid period that the strength of the officials was not optimum, the delay can be condoned. Further after the communication was received on 9.9.2020 by the office of the Applicant, immediate steps were taken to file the appeal, and on 17.9.2020, the appeal came to be filed. The application for condonation of delay, no doubt should have been more specific and should have explained the delay in detail, though not each day's delay, however by not condoning the delay and by refusing the opportunity on merits, it can result in a meritorious matter being thrown out at the very threshold and thereby the cause of justice will be defeated. The Appeal will be decided on its merits after hearing the parties.

19. In my view, therefore in the interest of justice, the application is allowed. The delay is condoned. Registry to register the Appeal.

20. Application stands disposed of.

SHREERAM V. SHIRSAT, J.