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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3792 OF 2025
IN
INCOME TAX APPEAL(L) NO.20117 OF 2024

Principal Commissioner of Income Tax 5 Mumbai ...Applicant
Versus
BKC Abode Pvt. Ltd. AY 2018-19 ...Respondent

Mr Vikas T Khanchandani, for Applicant.

Mr Rahul Gaikwad, with Prerna Shah, i/b Gravitas Legal, for Respondent.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 09th OCTOBER 2026

P.C.

1. By this Interim Application, the applicant/appellant has prayed for condonation of delay of 76 days in filing the aforesaid Appeal under Section 260A of the Income-tax Act, 1961.

2. The case of the Applicant is that the certified copy of the Impugned Order was received on 14th December 2023 and the Appeal was filed on 27th June 2024. The delay is attributed to unavoidable official formalities. The Scrutiny Report was prepared on 2nd April 2024, approval of the competent authority was obtained on 7th May 2024, the documents were forwarded to the advocate on 9th May 2024 and the draft was received on 31st May 2024. The Assessing Officer, who assumed charge on 5th February 2024, was occupied with time-barring matters in February

and March 2024, due to which the report of the predecessor could be revised only in April 2024. It is contended that the delay was bona fide and not deliberate, and that sufficient cause is made out.

3. Mr Rahul Gaikwad, learnd counsel for the Respondent has filed an Affidavit-in-Reply on behalf of Mr Ratan Lal Jain, director of the Respondent-Company, opposing the present Interim Application seeking condonation of delay of 76 days in filing the Appeal. The Respondent denies the contents of the Application and submits that the Impugned Order was passed on 8th September 2023, having been reserved on 5th September 2023 and pronounced in open Court, and that the Appellant therefore had knowledge of it since that date. It is contended that the Appellant has produced no proof, such as its application for the certified copy or a postal receipt, to show that the certified copy was received on 14th December 2023, and that the delay is therefore more than 76 days. It is further submitted, without prejudice, that limitation expired on 5th January 2024, and the Respondent prays that the Application be dismissed with costs.

4. Having considered the rival contentions and the pleadings on record, it is well settled that in matters of condonation of delay, a justice-oriented and liberal approach is ordinarily adopted, particularly where the delay is not of such magnitude as to indicate deliberate or mala fide conduct, and where refusal to condone the delay would result in a meritorious cause being shut out without adjudication on merits a consequence ordinarily graver than any prejudice that may be occasioned to the opposite side, which can, in most cases, be compensated in costs. While the Respondent has disputed the correctness and sufficiency of the

explanation offered, it is not shown that any irreversible or irreparable prejudice which would be caused to the Respondent if the delay is condoned.

5. In **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**[1], the learned Judges opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus:-

> "18. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

6. The Hon'ble Supreme Court in **Shivamma (Dead) By LRs v. Karnataka Housing Board & Ors.**[2] has held that:

> "115. However, as is manifest from the entire discussion above, for the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the delay has to be explained by establishing the existence of "sufficient cause" for the entirety of the period from when the limitation began till the actual date of filing. In other words, if the period of limitation is 90-days, and the appeal is filed belatedly on the 100th day, then explanation has to be given for the entire 100-days."

7. Applying the above principle to the present case, we find that the Applicant has furnished a stage-wise explanation, which covers the entire period of delay and not

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1 Civil Appeal No. 2970-2971/2012 dated 9th April 2012

2 2025 INSC 1104

merely a part of it. Limitation, reckoned from receipt of the certified copy on 14th December 2023, expired on 12th April 2024, and the Appeal was filed on 27th June 2024, resulting in a delay of 76 days.

8. We have perused the averments made in the application. Considering the period of delay and the settled principles of law governing applications for condonation of delay, in our opinion, it is appropriate that the delay is condoned.

9. The Application is accordingly allowed in terms of prayer clause (a).

10. Office objections, if any, be removed within a period of eight weeks from today.

11. List the Appeal for admission after the removal of office objections.

12. Interim Application stands disposed of in the aforesaid terms. No costs.

(DR. NEELA GOKHALE, J) **(G. S. KULKARNI, J.)**