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

INTERIM APPLICATION NO. 5989 OF 2026
IN
INCOME TAX APPEAL(L) NO.31862 OF 2025

Shanno Mohammed Yusuf Warsi ...Applicant
Versus
Income Tax Officer 25(1) (3) Mumbai and Anr. ...Respondents

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Ms Priyanka Jain, with Avanish Patil, S. Shanmugam, i/b Vaish Associates Advocates, for Applicant.

Mr Ravi Rattesar, with Mahima Nallasevi, for Respondents.

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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 385 days in filing the aforesaid Appeal under Section 260A of the Income-tax Act, 1961 ("the Act").

2. The case of the Applicant is that the order dated 26th February 2024 passed by the Income Tax Appellate Tribunal, Mumbai Bench ("ITAT") in I.T.A. No.1306/Mum/2023 for Assessment Year 2013-14 ("the Impugned Order") was received on 16th May 2024, and that the period of 120 days prescribed under Section 260A(2)(a) of the Act for filing the Appeal expired on 13th September 2024. The Applicant filed a Miscellaneous Application under Section 254(2) of

the Act on 22nd August 2024, seeking rectification of the Impugned Order on the ground that the ITAT had omitted to consider a decision of a Co-ordinate Bench relied upon at the hearing. That Miscellaneous Application, being M.A. No.207/Mum/2024, was dismissed by order dated 3rd June 2025, which was received by the Applicant on 7th October 2025. The Appeal was filed on 3rd October 2025 based on the web copy of that order uploaded on the portal. It is contended that, if limitation is reckoned from the receipt of the Impugned Order, the delay is 385 days; that the delay occurred in the bona fide pursuit of the remedy under Section 254(2) of the Act, in the belief that no appeal would be required if the Miscellaneous Application were allowed; that it was neither deliberate nor negligent; and that sufficient cause is made out under Section 260A(2A) of the Act. Reliance is placed on the order dated 6th January 2026 of this Court in **Ilaben K. Ghadia v. DCIT, Central Circle 1(1)**[1]. In the alternative, it is submitted that the Miscellaneous Application was filed 98 days after receipt of the Impugned Order, leaving a balance of 22 days of the prescribed period, and that after giving credit for those 22 days the delay would be 99 days.

3. Mr Ravi Rattesar, orally opposes the application and no written opposition is being filed to this application by him.

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

1 I.T.A.(L) No.1644 of 2025 order dated 6th January 2026

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. It is not shown that any irreversible or irreparable prejudice would be caused to the Respondents if the delay is condoned.

5. In **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**,[2] the Supreme Court 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 Supreme Court in **Shivamma (Dead) By LRs v. Karnataka Housing Board & Ors.**[3] has held that:

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

3 2025 INSC 1104

> "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 attributed the delay to the time spent in pursuing the Miscellaneous Application under Section 254(2) of the Act. Limitation, reckoned from receipt of the Impugned Order on 16th May 2024, expired on 13th September 2024, and the Appeal was filed on 3rd October 2025, resulting in a delay of 385 days.

8. We have perused the averments made in the application. Considering the period of delay, the explanation offered by the Applicant 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.)**