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M.P.Nos.1 and 1 of 2012

AND

T.C.A.SR.Nos.32642 and 32644 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2023

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THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

AND

THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

M.P.Nos.1 and 1 of 2012

AND

T.C.A.SR.Nos.32642 and 32644 of 2012

M/s.Royal Stitches P Ltd.
Sai Business Point
II Floor, 17, Mount Road
Saidapet, Chennai 600 015
PAN : AAACR1709A

.. Petitioner / appellant
in both cases

Vs.

The Deputy Commissioner of Income Tax
Company Circle IV(5)
Chennai

.. Respondent / Respondent
in both cases

Miscellaneous Petitions filed under Section 5 of the Limitation Act to condone the delay of 1072 days in filing the above Tax Case Appeals.

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, challenging the common order dated 28.11.2008 passed by the



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Income Tax Appellate Tribunal, 'D' Bench, Chennai, in I.T.A.Nos.774 & 775/MDS/2002, in respect of the assessment years 1994-95 & 1995-96, respectively.

For Petitioner : Mr.Sairam
in both cases for Mr.S.Sridhar

For Respondent : Mrs.V.Pushpa
in both cases Senior Standing Counsel

COMMON ORDER

[Order of the court was delivered by R.MAHADEVAN, J.]

Heard both sides and perused the materials available on record.

2. These miscellaneous petitions have been filed by the petitioner / appellant / assessee to condone the delay of 1072 days in filing the appeals against the common order dated 28.11.2008 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, in I.T.A.Nos.774 & 775/MDS/2002, for the assessment years 1994-95 & 1995-96, respectively.



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3. It is averred in the affidavits filed in support of these petitions that pursuing alternate remedy under the Act, would constitute reasonable cause for considering the plea for condonation of delay in filing the appeals. It is further stated by the petitioner / assessee that consequent to the change of counsel on record, the distinction between the remedy of waiver of interest available under the Act and the right of appeal to challenge the very levy of such interest, was brought to the notice of the petitioner, while the mistake in the order of the Income Tax Appellate Tribunal dated 28.11.2008 was pointed out to them. Thereafter, the appeals were preferred along with condonation of delay petitions. Thus, the delay of 1072 days in filing the appeals is neither wilful nor wanton, but only due to the reasons stated above and hence, the same may be condoned.

4. Opposing the relief sought herein, the respondent / Revenue filed a detailed counter affidavit, *inter alia* stating that the petitioner has not averred any good and valid reason for condoning such huge delay of 1072 days and hence, the delay petitions are liable to be dismissed. It is further



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stated that the petitioner has allowed the case to be pending since 2012 (i.e.) for nearly 11 years without taking any effective steps for having the appeal numbered, and thus, they have not shown any interest in pursuing the appeals. It is also submitted that the issue under consideration relating to the assessment years 1993-94, 1994-95, 1995-96 and 1996-97, was already dealt with by this court in WP.Nos.2104 to 2107 of 2007 on 19.05.2009 and in WA.Nos.1441 to 1443 of 2009 on 01.12.2010; and having not succeeded, they filed appeals under section 260A on 30.03.2012 against the ITAT order dated 28.11.2008 with a delay of 1072 days, but allowed the same to be kept pending without numbering for nearly 11 years. Referring to the decision of the Supreme Court in *Majji Sannemma v. Reddy Sridevi [2021 SCC Online SC 1260]*, it is stated that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. Thus, the respondent sought to dismiss these petitions seeking condonation of delay in filing the appeals.



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5. We are not convinced with the reasons adduced in the affidavits filed in support of these petitions for condoning the inordinate delay of 1072 days. It is trite law that where a case has been presented in the Court beyond limitation, the petitioner 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 this connection, reference may be made to the following decisions of the Hon'ble Supreme Court:

(a) Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81:

"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



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ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336], *Mata Din v. A. Narayanan* [(1969) 2 SCC 770], *Parimal v. Veena* [(2011) 3 SCC 545] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157].)"

(b) Ajay Dabre Vs Pyare Ram 2023 SCC Online SC 92:

"13. This Court in the case of Basawaraj v. Special Land Acquisition Officer while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"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."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

Thus, it is crystal clear from the above legal proposition that the discretion to condone the delay has to be exercised judiciously based on facts and



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circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party. In the present case, the petitioner/appellant has not given 'sufficient cause' for condoning the huge delay of 1072 days in filing the appeals.

6. It is also to be pointed out that the appeals were filed along with condone delay petitions in the year 2012 itself. By order dated 14.09.2012, notice was ordered to the respondent in the condone delay petitions. Subsequently, on two occasions, in March, 2015, the matter stood adjourned for filing counter by the respondent. Thereafter, nothing moved and the appellant has not taken any step to follow up the same, till June 2023. Now, they suddenly woke up from slumber like Rip Wan Winkle and prayed to condone the delay in filing the appeals. Such callous and lackadaisical attitude on the part of the appellant, cannot be countenanced by this court. The Supreme Court in *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project [(2008) 17 SCC 448]*, observed that the courts help those,



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who are vigilant and “do not slumber over their rights”. Therefore, we are not inclined to condone the delay of 1072 days in filing the appeals.

7. Thus, for the reasons stated above, these miscellaneous petitions fail and are accordingly, dismissed. Consequently, the tax case appeals are rejected at the SR stage itself. No costs.

[R.M.D., J.] [M.S.Q., J.]
21.09.2023

Internet : Yes
Neutral Citation: Yes / No
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To

1.The Income Tax Appellate Tribunal, D Bench,
Chennai.

2.The Deputy Commissioner of Income Tax
Company Circle IV(5)
Chennai



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VERDICTUM.IN



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