2023:DHC:6017-DB

$~

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

% *Judgment reserved on: 26.07.2023*
Judgment pronounced on :23.08.2023

\+ **ITA 401/2023 & CM No. 37496/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX 4 ..... Appellant
Through: Mr Shailendera Singh, Sr Standing Counsel with Ms Dacchita Shahi and Mr Viplav Acharya, Jr Standing Counsels along with Mr Akash Saxena, Adv.

versus

M/s NATIONAL FERTILIZERS LTD ..... Respondent
Through: Mr Ved Jain, Mr Nischay Kantoor and Ms Soniya Dodeja Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

GIRISH KATHPALIA, J:

1.

> "*2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statues prescribed.*
> .....
> .....
> *8. Looking to the period of delay and the casual manner in which the application has been worded, we consider 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."*

Our anguish while examining this matter can be aptly expressed by borrowing the above quoted portion from the judgment in the case of ***The State of Madhya Pradesh & Ors vs Bherulal,*** (2020) 10 SCC 654 decided almost three years ago by the Hon'ble Supreme Court.

2. By way of this application (CM No. 37496/2023) brought under Section 151 of the Civil Procedure Code, the appellant/revenue has sought condonation of delay of 498 days in filing the appeal under Section 260A of the Income Tax Act. Irrespective of the provision quoted in its title, the application is treated as application under Section 260A(2A) of the Income Tax Act. The application being completely bereft of even circumstances, what to say of sufficient cause explaining the delay, the respondent/assessee opted not to file a formal reply but strongly opposed the application. We heard both sides.

3. For convenience and better analysis, the relevant paragraphs of this delay condonation application are quoted below:

> *"2. That an Appeal challenging the impugned order passed by Hon'ble the ITAT has to be presented within 120 days of pronouncement of the impugned order and the time required for obtaining the certified copy of the order is to be excluded. It is however, respectfully submitted that in the present case there has been a delay of 498 as on 31.05.2023, in filing the accompanying Appeal.*
>
> *3. That the Applicant/ Appellant respectfully submits that there has been delay due to sufficient cause inspite of due procedure followed by the Applicant/ Appellant in filing the said Appeal. The said delay in*

filing the appeal has arisen in bona-fide circumstances and for no fault or omission or negligence on the part of the Applicant/ Appellant herein and earnest efforts had been made by the Applicant/ Appellant to expedite the process at various stages of finalising the accompanying Appeal, within the earliest possible time.

4. That the Appeal has been filed on the basis of records maintained in the office of concerned Assessing officer, The Appeal has to be processed through official channel/hierarchy and the Appeal has been filed by the Appellant as he is authorized to file Appeal under the Income Tax Act, 1961.

5. That several orders including the Assessment order, CIT (Appeals) order and orders of the ITAT have been filed along with the Appeal.

6. That as per the requirements of the High Court Rules and orders, the typed copies of all the orders are required to be filed along with the Appeal. Beside this, several other compliances have to be fulfilled by the Assessing Officer, which has caused an inadvertent delay".

4. In support of this application, learned counsel for the applicant/ revenue argued that the power to condone delay must be exercised liberally in favour of the applicant, especially where the applicant is a government body and the exchequer is involved. On the other hand, learned counsel for respondent/assessee strongly argued that no circumstances have been set up in this application to explain such inordinate delay in filing the appeal, therefore, it is not a case that warrants liberality in condoning the delay; that the delay simpliciter worked to the detriment of the respondent/assessee and failure on the part of the appellant/revenue has resulted in a substantive right accruing in favour of the respondent/assessee.

5. Before proceeding further, it would be apposite to briefly traverse through the relevant legal position.

5.1 The provision under Section 260A(1) of the Income Tax Act lays down that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. Sub-section (2) of Section 260A mandates that the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner (*collectively referred to herein as "the revenue"*) or an assessee aggrieved by the any order passed by the Tribunal may file an appeal to the High Court and such appeal shall be filed within 120 days from the date on which the order appealed against is received by the assessee or the revenue. By way of the Finance Act 2010, brought into effect from 01.10.1998, sub-section (2A) was inserted in Section 260A of the Act and the same laid down that the High Court may admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within that period.

5.2 While construing the expression "sufficient cause" in the context of Section 5 Limitation Act, a plethora of judicial pronouncements held that the said expression must be construed liberally in favour of the applicant keeping in mind the cardinal principle of justice that disputes should be decided on merits and not on defaults; and that in the cases involving governmental bodies, the court must keep in mind that owing to the impersonal State machinery, delays and defaults have to be accepted with latitude to a certain extent.

5.3 At the same time, law related to interpretation of the expression "sufficient cause" while dealing with the issue of limitation developed also to the extent that the concepts of liberal interpretation and substantial justice cannot be overstretched to render the law of limitation otiose, especially where the court finds absolutely no justification for the delay in question. While looking for "sufficient cause" as an explanation of delay, the court must bear in mind that expiration of limitation period for filing an appeal gives rise to a substantive right in favour of the decree holder to treat the decree as final and binding between the parties.

5.4 In the case of ***Finolux Auto Pvt. Ltd. vs Finolex Cables Ltd.,*** 136(2007) DLT 585(DB), a Division Bench of this court held thus :

> *"6. In this regard, we may refer to a decision of the Supreme Court in **P.K. Ramachandran vs State of Kerala,** IV(1997) CLT 95 (SC). In the said decision, the Supreme Court has held that **unless and until a reasonable or satisfactory explanation is given, the inordinate delay should not be condoned**. In para 6 of the judgment, the Supreme Court has laid down in the following manner :*
>
> > *"Law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and **the Courts have no power to extend the period of limitation on equitable grounds**. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."*
>
> *(emphasis is ours)*

5.5 In the case of ***Pundlik Jalam Patil (dead) by LRs vs Executive Engineer Jalgaon Medium Project,*** (2008) 17 SCC 448, the Hon'ble

Supreme Court held that basically the laws of limitation are founded on public policy and the courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, and (iii) that persons with good causes of action should pursue them with reasonable diligence. While dealing with the issue of condonation of delays on the part of the governmental bodies in filing the appeals, the Apex Court held thus:

> *"31. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such.* ***It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis.*** *We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings".*
>
> *(emphasis is ours)*

5.6 The concepts of "liberal approach" and "reasonableness" in the exercise of discretion by the courts in condoning delay were again considered by the Hon'ble Supreme Court in the case of ***Balwant Singh(dead) vs Jagdish Singh & Others,*** (2010) 8 SCC 685, holding thus :

> *"25. We may state that* ***even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned.*** *The purpose of introducing liberal construction is normally to introduce*

the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the rights and obligations of party to arise. These principles should be adhered to and applied appropriately depending upon the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. ***Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.***

27. ....

....

35. The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. .....

*36. ....****The party shows that besides acting bonafide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it would have been avoided by the party by the exercise of due care and attention****."*

(emphasis is ours)

5.7 In the case of ***Union of India vs C.L. Jain Woolen Mills Pvt. Ltd.***, 131 (2006) DLT 360, one of the arguments of the applicant Union of India seeking condonation of delay in filing the appeal was that the power to condone delay has been conferred to do substantial justice and the court should adopt a liberal approach and the delay resulting from official

procedures should normally be condoned. This court rejected the argument, placing reliance on the judgment in the case of ***P.K. Ramachandran*** (supra) and observed that although the provisions under Section 5 Limitation Act have to receive liberal construction, but the court cannot ignore the fact that where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner without disclosure of good and a sufficient cause for condonation of delay.

5.8 As regards the delays in appeals filed by the government departments on account of impersonal official machinery, this court dealt with the issue in the case of ***Union of India vs Wishwa Mittar Bajaj & Sons***, 141 (2007) DLT 179 and held thus:

> *"41. It is well settled that* ***administrative delays which are urged by the respondents have to be properly and adequately explained. Negligence or indifference on the part of the authority or its officers in pursuing a matter cannot be condoned simply because the applicant is a State or government undertaking. The law of limitation remains the same and certainly there cannot be two laws, one governing the State and the other governing individuals.*** *Cryptic and routine explanations for condonation of delay cannot be accepted as adequate explanation or sufficient cause for condonation of delay. (Re:* ***DDA vs Ramesh Kumar****) This Court in several judgments has noted the manner in which matters are proceeded with utmost casualness on the part of the State and its officials. In this behalf, in a decision rendered on 2nd December, 1988 reported as* ***UOI vs Mangat****, noticing the judgments of the Apex Court where delay was condoned observed thus:*
>
> > *"4. ...The Supreme Court was thus concerned with isolated cases of said aberrations.* ***What we are facing in this Court is a spate of delayed appeals without any proper and convincing explanation or even an attempt in doing so. It is a common experience of Benches of this Court that the condonation applications are in a cyclostyled form and only the dates and***

days are filled in hand. *The stay applications are also mechanically drafted and are in one standard cyclostyled form. Usually, the appeals are filed with defects. After the Registry points out the defects, the defects are not removed for months together. We do not think that the Supreme Court judgments can be usefully availed of by the Union of India in the colossal situation of negligence and delays as we find in this Court.* ***In fact, it appears that the liberal approach of the higher courts and the understanding of the difficulties of the Government departments shown by the courts have not been appreciated in its proper perspective by the Government departments. Nobody in the Government Department feels any responsibility or takes any responsibility for the delay caused in the movement of files. There is no conscious and systematic efforts to keep the deadline of limitation in view and to speed up the disposal at various stages.*** *If a serious effort is made in the Government Departments to fix the responsibility on the persons causing delay the present sorry state of affairs can be rectified substantially within short time. Occasionally, important questions of law or principles of compensation or heavy financial stakes are involved in land acquisition matters. The agencies of the Government involved in the acquisition, unfortunately, seems to be completely oblivious of these considerations. In some cases there is great urgency of acquisition of land for urgent developmental projects. They are likely to be frustrated by the habitual negligence of Government departments.*

5. The practical problem in the day to day cases is how to reconcile the two principles laid down by the Supreme Court, namely - (i) the doctrine of equality before law demands that all litigants including the State as litigant should be accorded the same treatment and the law is administered in an even-handed manner, and (ii) it would perhaps be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. The Supreme Court in the judgments referred to above had observed that the State should not be given step-motherly treatment. If all the petitions of condonation of delay filed in the large number of cases are to be accepted, as requested by the Government Advocate, a citizen would naturally complain that the State is being given a 'son-in-law' treatment. In ***State of M.P. & Ors vs Vishnu Prasad Sharma & Ors****. AIR 1996 SC 1593 at page 1598 the three Judges Bench of the Supreme Court observed: "In interpreting these provisions the court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of*

> *the person who is being deprived of his land without his consent." The Supreme Court further held: "the provisions of the statute must be strictly construed as it deprives a person of his land without his consent." A golden rule for reconciliation of these conflicting considerations would be to use the discretion with common sense. Extreme positions of either not condoning the delay howsoever negligible it may be or to condone the delay howsoever large and unjustifiable it may be should be avoided. The discretion has to be exercised on the basis of the facts of each case with common sense and public interest in view."*
>
> *(emphasis is ours)*

5.9 Recently, in the case of ***Bherulal*** (supra), the Hon'ble Supreme Court observed 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*** *(Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in* ***Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.*** *(2012) 3 SCC 563 where the Court observed as under:*
>
> > *"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 bonafide, 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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few".* *(emphasis is ours)*

6. Falling back to the present case, as mentioned above, the delay in question even according to the appellant/revenue is of inordinate period of 498 days. What is more intriguing is that the application under consideration appears to be a cyclostyled proforma in which the number of days of delay has been subsequently filled, which amply reflects the total lack of seriousness with which the issue of limitation has been taken up by the appellant/revenue.

7. To add to this, as mentioned above, there is not even a whiff of any circumstance which could be analysed by this court in order to arrive at a conclusion that it was beyond control of the revenue and thereby a sufficient cause which led to delay in filing of this appeal. The averments in the application under consideration that there has been delay due to sufficient cause; that the delay has arisen in bonafide circumstances with no fault on the part of the appellant; that earnest efforts were made to expedite the process at various stages of finalizing the appeal; that the appeal has to be processed through official channel/hierarchy are completely nebulous and

cannot be scrutinized to understand if the delay of 498 days in filing the appeal was on account of sufficient cause.

8. The appellant/revenue, to expect the least, ought to have explained explicitly the circumstances that led to delay, in the sense that there ought to have been in the very least a broad disclosure of movement of the file to explain such enormous delay of 498 days. But, what to say of that, even the time, if any, spent by the appellant/revenue in obtaining copies of the relevant orders has not been disclosed. Rather, as mentioned above, it appears that the concerned department of appellant/revenue has stocked a cyclostyled proforma of delay condonation applications, which are filed after simply inserting the number of days of delay. Can such laxity on the part of one of the litigants be ignored so as to snatch away from the other party a right which accrued to it on account of non-filing of appeal in time? The answer, according to us, has to be in negative.

9. We are unable to fathom why the State despite having at its disposal an enormous paraphernalia is unable to act with due expedition. In such cases, plea of the State that it could not obtain copies or even certified copies in time sounds pathetically absurd and hence is unacceptable.

10. In application under consideration, it also stated that if the delay is not condoned, an irreparable injury would be caused to the appellant/revenue appellant and that if the delay is condoned, no prejudice would be caused to the respondent assessee. The argument is fallacious insofar as it ignores the fundamental principle that if the appeal is not filed in time prescribed by

law, a substantial right accrues in favour of the person in whose favour the impugned order was passed. So far as the argument of the so called injury that would be caused to the appellant/revenue, suffice it to record that it cannot be accepted as a ground to discard law of limitation. Also, in the case of ***Bherulal*** (supra), the apex court found the proposition preposterous that if there is some merit in the case, the period of delay is to be given a go-by. As observed by the apex court in the case of ***Bherulal*** (supra), the irony is that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine and it is time when the concerned officer responsible for such laxity bears the consequences.

11. There is another aspect, which is quite vital. The legislature under Section 260A of the Act has already granted a comparatively much longer period of 120 days to the revenue to file appeals. That in itself should call for a rather stricter scrutiny of the matrix set up by the revenue to explain delays in filing its appeals. But in the present case, as mentioned above, appellant/revenue opted not even to set up a specific factual matrix, apparently under overconfidence that the applicant being a government body and the issue being qua exchequer, the delay in filing the appeal would surely be condoned.

12. Despite anguish expressed by courts at all levels through various judicial pronouncements, no change in work attitude of officials of some of the government departments has taken place. Largely, behind such delays on the part of government agencies in initiating appropriate legal

proceedings lies extreme laxity, negligence and dereliction of duties on the part of government officials. Even in this hi-tech "click of mouse" age some of the government officials are yet to come out of their love for "snail pace" style of working. Worst is when such delays are aimed at simply completing formalities so that the government appeals get dismissed on the grounds of limitation, to the designed benefit of the other party. Whatever be the reason, it is either the loss to the exchequer or abrogation of the valuable rights of the assessee litigating against the State. Such negligent or deliberate dormancy on the part of government officials cannot be countenanced. It is high time such government officials are taken to task and penalized to recompense the exchequer, though such exercise can be undertaken in some other appropriate *lis*. Time has come to take drastic measures qua lethargy caused litigation delays, lest the chaos in judicial functioning percolated further. Time has come when due diligence has to replace negligence which pervades some of the government agencies as in the present case, so that justice does not hang at the altar of dereliction, default, negligence and indifference.

13. Before parting, we feel inclined to record an expectation that all the learned counsel who represent the revenue in this court would sensitize their officers regarding the view taken by the apex court on such issues in the case of ***Bherulal*** (supra).

14. We are unable to find any cause, what to say of sufficient cause, explaining delay of 498 days in filing this appeal. Accordingly, the delay condonation application is dismissed.

15. Consequently, the appeal also stands dismissed as time barred.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

AUGUST 23, 2023/as