2023:DHC:8246-DB

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

% ***Decision delivered on: 07.11.2023***

\+ **ITA 425/2023 & CM APPL. 45878/2023**

RESORTS CONSORTIUM INDIA LIMITED ..... Appellant
Through: Ms Rachna Agrawal, Advocate.

versus

INCOME TAX APPEALLATE TRIBUNAL SMC-1, DELHI BENCH & ORS. ..... Respondents
Through: Mr Aseem Chawla, Sr. Standing Counsel with Ms Pratishtha Chaudhary, Advocate.

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

GIRISH KATHPALIA, J. (ORAL):

CM APPL. 45878/2023 ***[Application for condonation of delay in filing the appeal]***

1. By way of this application brought under Sections 5 and 12 of the Limitation Act read with Section 151 CPC, the appellant has sought condonation of delay of 79 days in filing the appeal (ITA 425/2023) under Section 260A of the Income Tax Act. The respondents/revenue filed reply, opposing the application, which followed a rejoinder from the applicant/assessee. We heard learned counsel for both sides.

2. The appeal under Section 260A of the Income Tax Act assails order

dated 20.06.2016/21.06.2016 passed by the Income Tax Appellate Tribunal in ITA 1725/del/2012. The appeal having been filed beyond time prescribed by law, present application has been filed seeking condonation of delay.

2.1 In order to explain the delay in filing the appeal, it is submitted on behalf of the applicant/assessee that on 20.06.2016, arguments in ITA No. 1725/del/2012 and ITA No. 5068/del/2013 were heard by the Tribunal but no further date was fixed; that on 26.05.2019 on inquiry from Registry of the Tribunal qua status of the case, the applicant was informed on 19.06.2019 over telephone from Registry that ITA No. 5068/del/2013 was decided in favour of the applicant but ITA No. 1725/del/2012 was decided against the applicant vide order dated 21.06.2016; that promptly on 20.06.2019, the applicant applied for certified copy of the order dated 21.06.2016 and received the same on 02.07.2019; that on 09.10.2019, the appellant filed before the Tribunal an application seeking review of order dated 21.06.2016, specifically pleading that the applicant had no notice or information about the outcome of the said appeal and also explaining the events mentioned hereinbefore; that accepting the said explanation, the Tribunal admitted the review application to be heard on merits; that on 10.10.2022, the review application was disposed of by the Tribunal but knowledge of that order was acquired by the appellant only on 02.05.2023, so immediately on 04.05.2023 the appellant applied for certified copy of the order dated 10.10.2022; and that on 21.07.2023, the appellant filed the appeal though certified copy of order of dismissal of the review application was received by the applicant subsequently on 28.07.2023.

2.2 Thence, after deducting the time spent in obtaining certified copies of the order impugned in the present appeal as well as the order passed in the review application, the present appeal got delayed by 79 days, for which the applicant has sought delay condonation, mainly on the grounds that the Director of the applicant who had argued the matter before the Tribunal resigned and got settled abroad while other Directors of the applicant are senior citizens and not much conversant with the process; that the portal of the Tribunal was not functioning effectively during the relevant period; and that it is only in May 2019 that during a meeting with the auditors, the issue of appeal filed before the Tribunal came to the knowledge of the Directors of the applicant, so a letter was sent seeking update and status of the appeal. It is further explained on behalf of the applicant that on the basis of telephonic information from the Tribunal, it promptly applied for certified copy of the impugned order, after perusal whereof it was revealed that the arguments and judicial precedents cited on behalf of the appellant had not been dealt with in the impugned order, so under a bonafide belief qua a mistake apparent on the face of record, the appellant preferred a review application and even the Tribunal without any objection from the present respondents/revenue not just admitted the review application but also heard arguments on various dates before dismissing the review application vide order dated 10.10.2022, which date also was not informed to the applicant.

2.3 Hence, the present application for condonation of delay in filing the appeal.

3. In reply to the application under consideration, the respondents/

revenue pleaded that lack of diligence on the part of the appellant in this case would disentitle the applicant any discretionary relief. The respondents/revenue pleaded that the actual delay in filing the appeal is of 1471 days and not 79 days, for which the appellant has failed to set up a sufficient cause. It was further pleaded on behalf of respondents/revenue that it is difficult to believe that to check the status of the case, the appellant would have kept sitting silent for 1070 days after conclusion of the final arguments before the Tribunal and even after obtaining the certified copy of the impugned order, the applicant opted to seek review of the impugned order instead of promptly filing the appeal. The applicant/assessee being guilty of utmost laxity does not deserve condonation of delay in filing the appeal, as per respondents/revenue.

4. The applicant/assessee filed rejoinder to reaffirm its pleadings of the application.

5. During arguments on the application, learned counsel for both sides reiterated the relevant circumstances as extracted above.

6. In nutshell, the delay in filing the appeal is sought to be explained by the appellant taking resort to Sections 5 and 12 of the Limitation Act. The legal position pertaining to these provisions is well settled across plethora of judicial pronouncements. It is trite that admission of any appeal beyond the prescribed period is not a matter of right of the appellant but a matter of discretion of the court, which discretion like any other has to be exercised judiciously by examining as to whether the court stands satisfied that the

appellant had sufficient cause for not preferring the appeal within prescribed period. In this examination, the question as to what is sufficient cause is a question of fact depending upon specific circumstances of the main proceedings and the parties. With the underlying principle of preference to bring permanent quietus to the disputes, the law evolved over a period of time is that the expression "sufficient cause" must be construed liberally in favour of the applicant. One of the distinctive features of a "sufficient cause" is that it should be a cause beyond control of the applicant concerned. In a case reflecting no gross negligence or deliberate inaction or lack of bona fides attributable to the applicant, the discretion contemplated under Section 5 Limitation Act should be exercised in favour of the applicant. It also has come over a period of time as a settled proposition of law that it is not the number of days of delay but the reason of delay, which must be scrutinized by the court in the sense that if the applicant has successfully setup a sufficient cause, delay of even years can be condoned, otherwise condonation of delay of even a day can be declined. The provision under Section 12 Limitation Act stipulates that in computing the period of limitation for filing an appeal, *inter alia*, the time requisite for obtaining a copy of the order appealed from shall be excluded.

6.1 In the case of ***State of Nagaland vs Lipok AO,*** (2005) 3 SCC 752, the Supreme Court recapitulated the legal position through various judicial precedents and reiterated that the proof of sufficient cause is a condition precedent for exercise of discretion vested in court, in the sense that what counts is not the length of the delay but the sufficiency of the cause; that Section 5 Limitation Act has to be construed liberally so as to do substantial

justice to the parties; that an application under Section 5 Limitation Act should not be thrown out unless there is lack of bona fides or negligence on the part of the applicant.

6.2 In the case of ***Bhivchandra Shankar More vs Balu Gangaram More***, (2019) 6 SCC 387, the Supreme Court dealt with an undisputed factual situation that partition suit of some of the respondents filed in the year 2007 was decreed ex parte on 04.07.2008; that the remaining respondents filed an application under Order IX Rule 13 CPC on 05.10.2008, which application was dismissed on 06.08.2010; that the appellant and the applicants preferred appeal on 03.09.2010 to challenge the order dismissing the application under Order IX Rule 13 CPC but withdrew the said appeal on 11.06.2013; and that thereafter they filed an appeal on 12.06.2013 challenging the ex parte partition decree along with an application seeking condonation of delay of 04 years 10 months and 08 days. After traversing through the legal position pertaining to Section 5 Limitation Act, the Supreme Court held that the time spent in pursuing the application under Order IX Rule 13 CPC is to be taken as sufficient cause for condoning delay in filing the appeal.

6.3 Most recently in the case of ***Sheo Raj Singh (deceased) through LRs vs Union of India***, 2023 SCC OnLine SC 1278 [Civil Appeal No.5867 of 2015 decided on 09.10.2023], the Supreme Court again traversed through a plethora of judicial pronouncements and held thus:

> *"29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that*

condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. ***Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'.*** *Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true.* ***Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts.***"

(emphasis is ours)

7. It is in the backdrop of above legal matrix that this court has to examine the sufficiency or otherwise of the cause of delay in filing the appeal in this case without getting influenced by the enormity of period of delay.

8. Broadly speaking, the applicant/assessee has explained that the delay in filing the appeal occurred because firstly, the applicant was never informed about the fate of its appeal before the Tribunal after conclusion of final arguments, till the appellant sent a written communication and secondly, the applicant/assessee under good faith initiated and continued to

prosecute the review remedy but met failure in view of the judgement of the Supreme Court in the case of *Reliance Telecom*. On the other hand, the respondents/revenue largely contended that the delay in filing the appeal was on account of extreme laxity on the part of the applicant/assessee.

9. Significantly, the respondents/revenue did not make even a whisper in their reply or even arguments that copies of the impugned order and order of dismissal of the review application or even intimation of those dismissals were ever conveyed by their officials on their own to the applicant/assessee. Since after conclusion of final arguments (*advanced on behalf of the applicant/assessee by one if its Directors in person*) no date for pronouncement of order was fixed, it was the bounden duty of the Tribunal to serve or at least dispatch a copy of the impugned order as well as order of dismissal of review application to the applicant/assessee. There is also no serious challenge to the contention of the applicant/assessee that its Director who had been addressing arguments in person had resigned and got settled abroad while the remaining Directors were not conversant about the proceedings before the Tribunal till their auditors pointed out.

10. There is nothing on record to even feebly suggest any lack of good faith on the part of the Directors of the applicant/assessee in their having filed review application before the Tribunal. A litigant cannot be expected to be conversant with the complex technicalities of law pertaining to the exercise of review and appeal, in which many a time even the experienced lawyers fall in error. We cannot ignore the admitted situation that immediately upon coming to know about dismissal of appeal by the

Tribunal, the applicant applied for certified copies of the impugned order and promptly filed review application. Similarly, on coming to know about dismissal of the review application also the applicant promptly applied for certified copies and soon thereafter filed the present appeal. These circumstances clearly show that there were no lack of bona fides on the part of the applicant. Besides, the applicant had nothing to gain by not challenging the impugned order. As held in the case of ***Bhivchandra Shankar More*** (supra), the applicant in such circumstances cannot be denied the benefit of time spent by it in pursuing the review application as it was a sufficient cause which sought to explain the delay.

11. Besides, the time spent by the applicant while pursuing the review proceedings deserves to be excluded even under principles analogous to Section 14 of the Limitation Act because the applicant in good faith was prosecuting the challenge to the impugned order before the Tribunal with due diligence but the Tribunal was unable to entertain the review on account of defect of jurisdiction.

12. In view of the aforesaid, quoting the expression of the Hon'ble Supreme Court in the case of ***Sheo Raj Singh*** (supra), we find the case set up by the applicant to be an "explanation" and not an "excuse". Most importantly, we would prefer in the facts and circumstances of this case to be guided by cardinal principle of justice that disputes should be decided on merits and not defaults, so the applicant having brought before us a cause with sufficient explanation concerning the delay, cannot be shown door.

13. The application under consideration is allowed and accordingly the delay in filing the appeal is condoned.

ITA 425/2023

14. List the appeal for arguments on 24.04.2024.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

NOVEMBER 7, 2023
as

Click here to check corrigendum, if any