IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL APPLICATION NO. 1544 of 2021

In R/TAX APPEAL NO. 657 of 2022

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THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), AHMEDABAD

Versus

LAVJIBHAI SWARUPCHAND MEHTA

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Appearance:
MR. VARUN K. PATEL, ADVOCATE for the Applicant(s) No. 1
MR B S SOPARKAR(6851) for the Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR**
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 12/10/2022

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

1. This is an application filed by the Revenue seeking condonation of delay of 474 days in preferring the Appeal under section 260A of the Income Tax Act, 1961 in Tax Appeal (F) No. 17463 of 2021 (Tax Appeal No. 657 of 2022).

2. The applicant has contended that order of the Income Tax Appellate Tribunal (for short 'ITAT') was received on 30.07.2018 and a rectification application came to be filed

on 14.02.2019 which was dismissed by ITAT as time barred by order dated 28.08.2019. Being aggrieved by the same, Revenue had filed Special Civil Application No. 13024 of 2020 against the order dated 28.08.2019 passed by ITAT and said Special Civil Application also came to be dismissed on 22.10.2020 and as such Tax Appeal No. 657 of 2022 was filed on 17.07.2021 against the order of the ITAT dated 08.06.2018. Hence, appellant is seeking for condonation of delay.

3. For reasons best known, additional affidavit has been filed by Mr. Sandeep Jain, Principal Commissioner of Income Tax (Central) Ahmedabad narrating the sequential events and also contending that Department was pursuing the matter and as it was under bona fide reason, Appeal was not filed on time and seeks for condonation of delay.

4. Respondent on being notified, has filed a reply affidavit opposing the delay being condoned and denying each and every averments made in the application as well as

in the additional affidavit. It has been contended that there is delay of more than 900 days in filing the Tax Appeal and to overcome the judgment of this Court, present Appeal has been filed with inordinate delay. It is further contended that in respect of Mr. Mehul Lavji Mehta, who is son of assessee, there was an order passed by the Tribunal under similar circumstances on 22.09.2017, against which the Revenue had filed an appeal under Section 260A in Tax Appeal No. 208 of 2018 on 20.02.2018 and this Court vide order dated 18.06.2018 passed in Tax Appeal No. 208 of 2018 having observed and directed the Revenue to file application for rectification without bar of limitation, Revenue had filed an application before the Tribunal on 16.07.2018 which has been dismissed vide order dated 24.08.2022 and Revenue being conscious and well aware of the fact that against the order of the Tribunal, an Appeal had to be filed under section 260A, it could not have filed an application for rectification before the ITAT in the present case and pursue its grievance after having failed in its attempts therein, the Revenue cannot be allowed to file Appeal belatedly, inasmuch as the Revenue

was aware and conscious of the order of the Tribunal not only passed in the present case but also in respect of the son of the present assessee which had resulted in dismissal on 22.09.2017, against which an Appeal had been filed in Tax Appeal No. 208 of 2018 and as such Revenue cannot feign ignorance. By relying upon the judgment of High Court of Bombay in the case of ***Commissioner of Income-Tax-4 versus Harinagar Sugar Mills Ltd. reported in (2015) 276 CTR 473 Bombay***, respondent has prayed for the application for condonation of delay being dismissed and consequently, Appeal being dismissed.

5. We have heard the arguments of Mr. Varun K. Patel, learned counsel appearing for Revenue and Mr. Bandish Soparkar, learned counsel appearing for respondent. They have reiterated the contentions raised in their respective pleadings and have sought for grant of the prayers sought for therein.

6. Having heard the learned advocates appearing for

the respective parties, we are of the considered view that following point would arise for our consideration :

> *"Whether the delay of 474 days in filing the Appeal deserves to be condoned or rejected ?"*

7. While considering an application for condonation of delay, it is not the length of delay but cause for delay which would be of paramount consideration. If the cause shown is just and sufficient which is falling within four corners of "sufficient cause" as indicated in Section 5 of the Limitation Act, 1963, such delay deserves to be condoned irrespective of length of delay. However, if the cause shown is not within the proximity of truth or contrary to facts or there has been deliberate suppression of material facts, irrespective of length of delay, such cause cannot be accepted or delay cannot be condoned. It all depends upon facts and circumstances of each case. There cannot be any straitjacket formula prescribed for considering the cause for delay.

8. It also requires to be noticed that no litigant would stand to benefit in approaching the Court belatedly.

However, if the cause shown in the application or the affidavits supporting the application is reasonable cause, which a person of ordinary prudence would plead and accepted such cause deserves to be accepted. When justice is at stake, a technical or a pedantic approach would not be adopted by the Court and in order to complete justice between the parties and to avoid miscarriage of justice, the delay, if any, when explained with sufficient cause, deserves to be condoned. The Hon'ble Apex Court in the case of ***Collector Land Acquisition, Anantnag & Anr. Versus Mst. Katiji and others,*** reported in ***AIR 1987 SC 1353***, has held that the Courts should adopt liberal approach and reiterated the reasons for adopting such approach. It has been held :

> *"3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *6. It must be grasped that judiciary is respected*

not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

9. In the case of ***State of Nagaland versus Lipok AO & Others*** reported in ***(2005) 3 SCC 752,*** the Hon'ble Apex Court has held that peculiar characteristic of functioning of a Governmental functionaries requires adoption of pragmatic approach and certain amount of latitude is not impermissible. It has been further held :

*"**10.** In Concord of India Insurance Co. Ltd. v. Nirmala Devi, (1979 (4) SCC 365) which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Matu Din v. A. Narayanan, (1969 (2) SCC 770), this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.*

***11.** In State of Kerala v. E.K. Kuriyipe, (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath, (1982 (3) SCC 366), it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.*

> ***15.*** *It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice- oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.*

10. The Hon’ble Apex Court in the case of ***Sesh Nath Singh and Another versus Baidyabati Sheoraphuli Co-operative Bank Limited and Another reported in (2021)***

7 SCC 313, has held that period of pursuing the remedy in a wrong forum is not essential for claiming exclusion of time under section 14 of the Limitation Act, and such exclusion can be claimed even while the proceedings in the wrong Forum is pending. It has been further held :

> *"**60.** It is true that a valuable right may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hyper technical view of the matter, causing thereby irreparable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.*
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> ***61.*** *Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.*
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> ***65.*** *As observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible.*

> ***68.*** *Section 14 (2) of the Limitation Act provides that in computing the period of limitation for any application, the time during which the petitioner had been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance, or of appeal or revision, against the same party, for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it. The conditions for exclusion are that the earlier proceedings should have been for the same relief, the proceedings should have been prosecuted diligently and in good faith and the proceedings should have been prosecuted in a forum which, from defect of jurisdiction or other cause of a like nature, was unable to entertain it."*

11. We are also conscious of the fact that concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. However, to apply this principle, the Court will have to arrive at a conclusion that there is no justification given for the cause for delay. The expression or word "sufficient cause" occurring in section 5 of the Limitation Act, 1963, cannot be construed in a static form, it requires to be examined on the basis of the facts pleaded and it has to be read in the background of the terrain it travels. When technicalities are pitted against substantial justice, naturally such technicalities will have to yield or kneel before the substantial justice, or in other words,

technicalities will have to make way for substantial justice. On the ground of delay, the larger relief to which the litigant may be entitled to, cannot be deprived of on such technicalities. However, at the same-time, this Court also cannot loose sight of the fact that delay disentitles such relief to a litigant who is indolent, negligent or careless, since delay defeats equity. The contours of sufficient cause requires to be considered as explained by the Hon'ble Apex Court in the case of ***Collector Land Acquisition, Anantnag & Anr. Versus Mst. Katiji and others (supra),*** which are illustrative and keeping in mind the observations made therein, facts on hand is being examined.

12. The order of the ITAT - Tribunal came to be passed on 08.06.2018. The application for rectification was filed before the Tribunal by the Revenue on 14.02.2019. During this interregnum period, steps taken by the Revenue will also have to be noticed, namely in the case of Mehul Lavji Mehta, the son of the assessee herein who was also visited with an order of Tribunal on 22.09.2017 resulted in Revenue filing an

Appeal in Tax Appeal No. 208 of 2018 on 20.02.2018. On 18.06.2018, this Court in Tax Appeal No. 208 of 2018 directed the Revenue to file an rectification application before ITAT without bar of limitation and as such an application for rectification was filed in the case of Mehul Lavji Mehta (son of assessee herein) on 16.07.2018 by the Revenue. In view of this development which had taken place, obviously wisdom prevailed upon the Department to file an rectification application before the Tribunal in respect of this assessee namely the respondent in Tax Appeal No. 657 of 2022 on 14.02.2019 and on its dismissal on 28.08.2019 which was confirmed in Special Civil Application No. 13024 of 2020 on 22.10.2020, the present Appeal was filed belatedly. The delay that has occasioned has to be necessarily accepted as a sufficient cause for the reasons more than one; firstly – the Revenue was prosecuting its cause before the Tribunal by filing rectification application and as such it would be justified in requesting this Court to exclude the time consumed in prosecuting aforesaid proceedings as it was prosecuting right cause before different Forum; secondly – in

the light of the development that had taken place during interregnum period i.e. after the order of Tribunal passed on 08.06.2018 and before filing of the Application for rectification before ITAT on 14.02.2019, in the connected matter i.e. in the Appeal of Mr. Mehul Lavji Mehta (son of present assessee), an observation has been made by this Court to file such application which had perforced the Revenue to file the rectification application in the instant case also was the reason for such delay. However, the rectification application which was filed in the instant case was dismissed on 28.08.2019 by the Tribunal which was carried before this Court by the Revenue in Special Civil Application No. 13024 of 2020 and this Court by order dated 20.10.2020 dismissed the Special Civil Application filed by Revenue and confirmed the order dated 28.08.2019 passed by ITAT. It is this order which gave cause of action or triggered the Revenue to resort to filing an appeal under section 260A of the Act namely the Tax Appeal No. 657 of 2022, which was belated. According to the Registry, the number of days delay calculated it is 474 days. However,Mr.

Bandish Soparkar, learned Advocate would contend that there is 900 days delay in filing the Appeal. Registry has rightly taken note of the fact that from the date of receipt of the order of the Tribunal by the Revenue being 30.07.2018 and Appeal having been filed on 17.07.2021, delay would be 1083 days delay and excluding the limitation prescribed namely 120 days delay, it would be 963. Delay which had occasioned due to lock-down namely 489 days, the benefit has also been extended to the Revenue and as such the Registry has arrived at a conclusion that there is delay of 474 days (963 – 489 days). In that view of the matter, contention of Mr. Bandish Soparkar that there is delay of more than 900 days, cannot be accepted and it stands rejected.

13. The cause for delay of 474 in filing the Appeal having been explained by the Revenue not only in affidavit but also in the additional affidavit (referred to herein supra) by giving sufficient cause, we are of the considered view that delay deserves to be condoned and accordingly it stands condoned.

14. Civil Application No. 1544 of 2021 is hereby **ALLOWED**.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

AMAR SINGH