

(2009) 08 MP CK 0072
In the Madhya Pradesh High Court

Assistant Commissioner of Income Tax	APPELLANT
Vs	
Shubhash Traders, Tesla Transformers (P) Ltd. and Veena Industries	RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 35B
Constitution of India, 1950 — Article 141
Income Tax Act, 1961 — Section 249, 253, 260A
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Representation of the People Act, 1951 — Section 35EE, 35G, 35H, 86, 97

Citation : (2009) 226 CTR 372 : (2009) ILR (MP) 2395

Hon'ble Judges : R.K. Gupta, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.—These three appeals preferred u/s 260A of the IT Act, 1961 (for brevity "the Act") were listed for default for not filing the application for condonation of delay supported with affidavit. At that juncture, a query was made from Mr. Sanjay Lal whether the High. Court can condone the delay when an appeal is preferred beyond the time prescribed u/s 260A of the Act in view of the decision rendered by the apex Court in Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, . Mr. Alok Aradhe, learned senior counsel and Mr. Sumit Nema, learned Counsel were appointed as amicus curiae.

2. Be it noted, there is no dispute over the fact that the appeals have been preferred beyond the period of limitation.

3. The centripodal question that emerges for consideration is whether the High Court can condone the delay and if the delay is not condonable, there is no justification for granting time to file an application for condonation of delay supported with affidavit. Hence, we proceed to deal with the controversy. In this context, it is apposite to scan the anatomy of certain provisions of the Act which relate to preferring of appeals before various forums. Chapter XX deals with

appeals and revision. Section 249 prescribes for an appeal under the Act to be preferred within 30 days before the CIT(A). Sub-section (3) provides for the CIT(A) to admit the appeal after expiration of the said period if he is satisfied that the appellant has sufficient cause for not preferring the appeal within the stipulated time. Section 253 of the Act provides for an appeal to the Income Tax Appellate Tribunal (in short "the Tribunal"). Sub-section (3) of Section 253 provides that an appeal under Sub-section (1) of (2) of Section 253 shall be filed within 60 days from the date from which the order is communicated. Sub-section (5) of the said section provides that the Tribunal may admit an appeal or permit filing of the memorandum of cross-examination (sic-objections) after expiry of the relevant period referred to in Sub-section (3) or (4) after it is satisfied that there is sufficient cause for not presenting the same within the stipulated time.

4. Section 260A of the Act provides that an appeal shall lie to the High Court from every order passed by the Tribunal. As the main thrust is on the said provision, it is condign to reproduce the same:

260A. Appeal to High Court:(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Chief CIT or the CIT or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be:

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Chief CIT or CIT;

(b)...

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in" any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which:

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in Sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the CPC, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as, may be, apply in the case of appeals under this section.

5. On a scrutiny of the aforesaid provision, it is clear as noon day that no provision for condonation of delay is prescribed in Section 260A which stands in contradistinction to Sections 249 and 253.

6. The submission of Mr. Sanjay Lal, learned Counsel appearing for the Revenue, is that there is no prohibition u/s 260A of the Act which denudes the High Court from exercising the power to condone the delay and further in the absence of any express exclusion of provisions of the Limitation Act, the provision contained in Section 29(2) of the Limitation Act is attracted. It is urged by him that such an exclusion is not to be readily or lightly inferred. It is canvassed by Mr. Lal that when there is no clear indication of exclusion of applicability of Sections 4 - 24 of the Limitation Act, the power of the High Court which is plenary in nature should not be curbed or curtailed by inference. The learned Counsel has commended us to a Full Bench decision of the Bombay High Court rendered in *The Commissioner of Income Tax Vs. Velingkar Brothers*, .

7. Mr. Alok Aradhe, teamed senior counsel submitted that the language employed u/s 260A of the Act does not exclude the applicability of Sections 4 - 24 of the Limitation Act and hence, this Court should construe that it has the jurisdiction to condone the delay as a, 29(2) gets attracted. The learned senior counsel submitted that as a proposition of law, by implication, there can be exclusion of Sections 4 - 24 of the Limitation Act but for the said purpose, the principle of strict interpretation has to be applied regard being had to the jurisdiction of the superior Court. He has commended us to certain decisions which we shall advert to at the relevant time.

8. Mr. Nema submitted that since the CPC is attracted u/s 260A of the Act, delay in filing the appeal can be condoned if a case is made out on the foundation of existence of sufficient cause.

9. Before we advert to the other decisions, it is imperative to understand the ratio laid down in the three-Judge Bench decision in *Hongo India (P) Ltd.* (supra). In the said case, the question arose whether the High Court has power to condone the delay in presentation of reference application u/s 35H(1) of the unamended Central Excise Act, 1944 beyond the prescribed period by application of Section 5 of the Limitation Act. Be it noted, the matter was referred to a Larger Bench as a two-Judge Bench had expressed its doubt with regard to the decision in *CCE v. Punjab Fibres Ltd.* (2003) 3 SCC 73 . Their Lordships referred

to the provisions u/s 35 of the Central Excise Act, 1944 and dealt with the contention whether in the absence of specific prohibition in the said enactment for condoning delay, the High Court has power u/s 5 of the Limitation Act, 1963 to condone the delay beyond the period prescribed under the main statute. The apex Court took note of the fact that in the case of appeal to the High Court u/s 35G and reference to the High Court u/s 35H of the 1944 Act, 180 days have been provided for preferring the appeal and revision (reference), and beyond that, there is no further clause empowering the High Court to condone the delay. Their Lordships referred to Sections 5 and 29(2) of the Limitation Act and took note of the, decisions rendered in *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd.*, *Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa*, , *M.M. Thomas v. State of Kerala* (2008) 1 SCC 666 , *Sharda Devi Vs. State of Bihar*, and *Union of India Vs. M/s Popular Construction Co.*, and eventually held as under:

30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commr., it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court u/s 35G and reference application to the High Court u/s 35H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

31. In this regard, it is useful to refer to a recent decision of this Court in *Punjab Fibres Ltd.* (supra). The CCE, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference u/s 35H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others*, concluded that.

8. ...the High Court was justified in holding that there was no power for condonation of delay in filing reference application.

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used In other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only upto 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to

condone the delay after expiry of the prescribed period of 180 days.

33. Even otherwise, for filing an appeal to the CIT, and to the Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the CIT and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 - 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed u/s 35H(1) to make a reference to the High Court is absolute and unextendable by a Court u/s 5 of the Limitation Act. It is well settled law that it is the duty of the Court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act.

(Emphasis, italicized in print, supplied)

10. In this context, we may note another decision of the apex Court rendered in Chaudharana Steels (P) Ltd. Vs. The Commissioner of Central Excise, Allahabad, wherein a two-Judge Bench has held as under:

In this appeal the only question that arises for consideration is whether there is

power for condonation of delay in filing an appeal u/s 35G of the Central Excise Act, 1944 (in short the "Act"). By judgment delivered in Commnr. of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida, it was held that the High Court has no power to condone delay in seeking reference u/s 35H of the Act. Doubting correctness of the view reference was made to Larger Bench. By judgment dt. 27th March, 2009 a three-Judge Bench in Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, concurred with the view taken by the two-Judge Bench in Punjab Fibres case (supra). The decision has full application to the present case also.

11. Be it noted, in this case their Lordships were dealing with the appeal u/s 35G of the Central Excise Act, 1944.

12. It is submitted by Mr. Aradhe that the decision rendered in Hongo India (P) Ltd. (supra) is distinguishable as that was dealing with a reference and further under a different statute and, therefore, the said principle would not be applicable to the IT Act and further, in the absence of any direct proscription, the applicability of Sections 4 - 24 of the Limitation Act should not readily be excluded from the sphere of the 1961 Act. In this regard, he has commended us to the decision rendered in Vidyacharan Shukla Vs. Khubchand Baghel and Others, . The learned senior counsel has specifically drawn our attention to para 26 of the decision wherein the Constitution Bench has held as under:

The contention is that Sub-section (3) of Section 116A of the Act not only provides a period of limitation for such an appeal but also the circumstances under which the delay can be excused, indicating thereby that the general provisions of the Limitation Act are excluded. There are two answers to this argument. Firstly, Section 29(2)(a) of the Limitation Act speaks of express exclusion but there is no express exclusion In Sub-section (3) of Section 116A of the Act; secondly, the proviso from which an implied exclusion is sought to be drawn does not lead to any such necessary implication. The proviso has become necessary because, if the proviso was not enacted, Section 29(2)(b) of the Limitation Act would have excluded the operation of Section 5 of the Limitation Act with the result that even if a sufficient cause for the delay existed, the High Court would have been helpless to excuse the delay. I therefore, hold the proviso to Sub-section (3) of Section 116A of the Act only restores the power denied to the Court u/s 29(2)(b) of the Limitation Act.

(Underlining, italicized in print is ours)

13. In K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, , it has been held as follows:

The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless the application thereof has been excluded by any enactment; the extent of such application is

governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition in as much as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.

(Emphasis, italicized in print, supplied)

14. In *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, the controversy that arose was whether Section 5 of the Limitation Act was applicable to the election petition under the provisions of the Representation of People Act. Their Lordships, while dealing with the said issue, expressed the view as under ;

...It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is, in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 - 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law excluded their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81, 82 or 117. It will be seen that Section 81 is not the only section mentioned in Section 86 and if the Limitation Act were to apply to an election petition u/s 81 it should equally apply to Sections 82 and 117 because u/s 86 the High Court cannot say that by an application of Section 5 of the Limitation Act. Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 - 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial.

18. It was sought to be contended that only those provisions of the Limitation

Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But this is not what Section 29(2) of the Limitation Act says, because it provides that Sections 4 - 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. If none of them are excluded, all of them would become applicable. Whether those sections are applicable is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. A person who is a minor or is insane or is an idiot cannot file an election petition to challenge an election, nor is there any provision in the Act for legal representation of an election petitioner or respondent in that petition who dies, in order to make Section 16 of the Limitation Act applicable. The applicability of these provisions has, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act.

15. In AIR 1994 512 (SC) , it has been held as follows:

There is no provision in the Representation of the People Act, 1951 making all or any of the provisions of the Limitation Act applicable to the proceedings under that Act. Even by virtue of Section 29(2) of the Limitation Act the provisions thereof would not become applicable to the recrimination notice u/s 97. The Representation of the People Act is a self-contained code. The proviso to Section 97(1) requiring a commencement of the trial (which in view of the Explanation to Section 86(4) means within 14 days of the date fixed for the respondents to appear before the High Court to answer the claim or claims) has also a particular meaning and object behind it. The idea is that the recrimination notice, if any, should be filed at the earliest possible time so that both the election petition and the recrimination notice are tried at the same time. The recrimination notice is thus comparable to an election petition. When the Supreme Court in H.N. Yadav's case has already held that Section 5 of the Limitation Act does not apply to the filing of an election petition, it does not equally apply to the filing of the recrimination notice.

(quoted from the placitum)

16. In Popular Construction Co. (supra) their Lordships placing reliance on the decision rendered in Hukumdev Naraian Yadav (supra) expressed the view as under:

13. Apart from the language, express exclusion" may follow from the scheme and object of the special or local law. "Even in a case where the special law does not exclude the provisions of Sections 4 - 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter

and scheme of the special law exclude their operation. (SCC p. 146, para 17)

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed u/s 34 to challenge an award is absolute and unextendable by Court u/s 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need to "minimise the supervisory role of Courts in the arbitral process". [4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996]. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

5. Extent of judicial intervention notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this part.

15. The "part" referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

17. In *Gopal Sardar Vs. Karuna Sardar*, , the apex Court was dealing with the provisions of the West Bengal Land Reforms Act, 1955 and specifically with Section 8 which provides for filing of an application within a period of four months from the date of such transfer. The question that arose was whether the provisions of the Limitation Act would apply. There was no provision for condonation of delay in the 1955 Act and other provisions of the Act expressly or impliedly provides for the period of limitation. In that context, it has been held as follows:

8. There is yet another good reason for insisting that right of preemption must be exercised within the period specified u/s 8 of the Act so that the rights of purchasers of a land cannot be eclipsed for a long time. Right of preemption was sought to be exercised after six years and four years from the dates of transfer respectively as against the period of four months prescribed u/s 8 of the Act without any scope for extension of that period. Sub-section (3) was added to Section 8 of the Act by the West Bengal Land Reforms (Amendment) Act, 1972 w.e.f. 15th Feb., 1971. Prior to 15th Feb., 1971, an application u/s 8 was required to be made to the "Revenue Officer specifically empowered by the State Government in this behalf." This phrase was substituted by the phrase "Munsif having territorial jurisdiction" by the aforementioned amendment. Even after this amendment when an application is required to be made before the Munsif Court, no amendment was made to Section 8 of the Act either to apply Section 5 of the Limitation Act or its principles so as to enable a party to make an application after the expiry of the period of limitation prescribed on showing sufficient cause for not making an application within time. The Act is of 1955 and for all these years, no provision is made u/s 8 of the Act providing for condonation of delay. Thus, when Section 5 of the Limitation Act is not made applicable to the proceedings u/s 8 of the Act unlike to the other proceedings under the Act, as

already stated above, it is appropriate to construe that the period of limitation prescribed u/s 8 of the Act specifically and expressly governs an application to be made under the said section and not the period prescribed under Article 137 of the Limitation Act.

18. In *Fairgrowth Investments Ltd. Vs. The Custodian*, their Lordships were dealing with the provision u/s 4(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. The said provision provides for filing of objection within thirty days. The question that emerged for consideration before their Lordships pertained to the applicability of the Limitation Act. In that context their Lordships held as:

17. This brings us to the question whether the power to condone the delay in filing a petition u/s 4(2) exists in the Special Court. We have held that the statute itself does not provide for it. A possible source of the power could be Section 5, of the Limitation Act, 1963, provided it applies to the Act. Section 29(2) of the Limitation Act, 1963 provides for the application of the provisions of Section 4 to Section 24 of the 1963 Act including Section 5, to any special or local law which prescribes a period of limitation in respect of any suit, appeal or application different from the period prescribed under the Limitation Act. In other words, the general rule as far as special and local Acts are concerned is that the specified provisions including Section 5 of the Limitation Act will apply provided the special or local Act provides a period of limitation different from that prescribed under the Limitation Act. There is an additional requirement viz. that the special / local Act does not expressly exclude the application of the Limitation Act. It has been held in *Union of India v. Popular Construction Co.* that the word "exclusion" also includes "exclusion by necessary implication". This proposition of law is not in dispute. The only question is does the Act expressly or necessarily exclude the provisions of the Limitation Act ? We think it does. The fact that it has provided for a power to condone delay u/s 10(3) of the Act, shows that Parliament had consciously excluded the power of the Court in relation to Section 4(2). This view also finds support in the decision of this Court in *Gopal Sardar v. Karuna Sardar* (supra). The statutory provision under consideration in that case was Section 8 of the West Bengal Land Reforms Act. When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made u/s 8 of the Act, it obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act.

(Emphasis, italicized in print, supplied)

19. At this juncture, we may note with profit the decision rendered in *Ravula Subba Rao and Another Vs. The Commissioner of Income Tax, Madras*, wherein their Lordships have held as follows:

To sum up, the Indian IT Act is a self-contained code exhaustive of the matters

dealt with therein and its provisions show an intention to depart from the common rule, *qui facit per alium facit per se*. Its intention again is that a firm should be given benefit of Section 23(5)(a), only if it is registered u/s 26A in accordance with the conditions laid down in that section and the rules framed thereunder. And as those rules require the application to be signed by the partner in person, the signature by an agent on his behalf is invalid."

(Underlining, italicized in print, is ours)

20. We have referred to the said decision that even after coming into force of the 1961 Act, it has to be construed as a self-contained code and hence, paras 33 and 35 of the Hongo India (P) Ltd. (supra) would get attracted. We may hasten to clarify that there need not be mandatory exclusion to the applicability of the provisions of the Limitation Act by special law and there can be necessary exclusion by the language in which the provision is couched and regard being had to the intendment of the legislature. On a scanning of the anatomy of the provisions of the IT Act relating to condonation of delay, we have no doubt that Section 260A does not allow the High Court to condone the delay regard being had to the scheme of the Act and the period which has been stipulated in the said provision. We are disposed to think so because Section 260A permits the assessee or the Revenue to prefer an appeal within 120 days from the date on which the order appealed against is received by the assessee. The receipt of the order passed by the assessee has its own signification. By no stretch of imagination, its significance can be marginalised. Two aspects, namely, the period and the date from which it is computed, have to be given their due weightage and on conferral of such weightage, the only conclusion which can be arrived at in the backdrop of Hongo India (P) Ltd. (supra) is that this Court has no power to condone the delay.

21. We would be failing in our duty if we do not refer to the citation brought to our notice by Mr. Nema rendered by the Bombay High Court, in CIT v. Grasim Industries Ltd. IT Appeal (L) No. 3592 of 2008. [reported at (2009) 225 CTR (Bom) 127: Ed.] The learned Counsel has commended us to para 6 of the said judgment. It reads as follows:

6. We have carefully considered the rival submissions. It is not in dispute that Section 35G of the Excise Act is part materia with Section 260A of the IT Act. Section 260A(7) of the IT Act as well as Section 35G(9) of the Excise Act provide that the provisions of the CPC, 1908 relating to appeals to the High Court as far as may be, apply to the appeals filed under the respective provisions. No such provision is to be found in Section 35H of the Excise Act. Therefore, the argument advanced by the counsel for the Revenue that Section 35G and Section 35H of the Excise Act are materially different cannot be said to be wholly without substance. However once the apex Court has held that the High Court has no power to condone delay in filing appeal u/s 35G of the Excise Act, we have no option but to hold that this Court has no power to condone delay u/s 260A of the IT Act because Section 260A of the IT Act is part materia with Section 35G of the

Excise Act.

22. In our considered opinion, the applicability of the CPC to appeals to the High Court u/s 35G of Excise Act and Section 260A(7) of the IT Act is really of no assistance in as much as that only postulates that the provisions of the CPC relating to appeals to the High Court shall apply to appeals under the provisions of Section 260A of the IT Act to the High Court. The said provision cannot be construed to confer power on the High Court to condone delay. That apart, as has been noticed earlier, the apex Court in Chaudharana Steels (P) Ltd. (supra), while dealing with the appeal u/s 35G of the Central Excise Act, 1944, held that the decision rendered in Hongo India (P) Ltd. (supra) shall have full application to an appeal u/s 35G. The decision is binding on the High Court under Article 141 of the Constitution of India and hence, we conclude and hold that the principle shall apply on all fours to an appeal preferred u/s 260A of the Act.

23. In the result, we are of the considered opinion that this Court has no power to condone the delay in filing the appeal u/s 260A of the IT Act, 1961 beyond the prescribed period and, therefore, the appeals inevitably have to pave the path of dismissal and we so direct.