

(2011) 05 GAU CK 0062

In the Gauhati High Court

Case No : Misc. Civil Case No's. 1029 and 1654 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Williamson Tea (Assam) Ltd.

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Income Tax Act, 1961 — Section 260A
Limitation Act, 1963 — Section 5

Citation : (2012) 346 ITR 428

Hon'ble Judges : K. Meruno, J; Amitava Roy, J

Bench : Division Bench

Advocate : U. Bhuyan with B. Chakraborty, for the Appellant; A.K. Saraf with Miss N. Hawelia, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The miscellaneous cases have been registered on applications filed under s. 5 of the Limitation Act, 1963 (for short hereafter referred to as "the Limitation Act") seeking condonation of delay of 290/287 days in filing the accompanying appeals. These applications, at the first instance, were rejected by the order dt. 28th Oct., 2009, of another Division Bench of this Court sustaining the objection raised on behalf of the opposite party that the prayer for condonation of delay under s. 5 of the Act, 1963, in filing the aforementioned appeals under s. 260A of the IT Act, 1961 (for short also referred to as "the Act") was untenable in law, there being no provision therefore. Placing reliance on the decision of the Hon'ble apex Court, rendered in Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, , the applications were rejected considering the then state of s. 260A of the Act. The Revenue took the matter to the Hon'ble apex Court and, by its order dt. 24th Jan., 2011, passed in Petition(s) for Special Leave to Appeal (Civil) No. 2611 of 2011, the order impugned was interfered with in face of an amendment, vide Finance Act No. 14 of 2010 in s. 260A of the Act. Thereby, this issue has been remitted to this Court for a fresh disposal on the merits on a scrutiny of the cause offered by the

applicants for condonation of delay.

2. We have heard Mr. U. Bhuyan, senior advocate assisted by Mr. B Chakraborty, advocate for the applicant and Dr. A.K. Saraf, senior advocate assisted by Ms. N. Hawelia, advocate, for the opposite party.

3. The factual background in both the miscellaneous cases is identical and the grounds enumerated seeking condonation of delay, are also same. The pleaded stand of the party logically is also common in both the miscellaneous cases. It would thus suffice to record the versions of the parties as available in the pleadings of Misc. Civil No. 1029 of 2009.

4. According to the applicant, the certified/authenticated copies of the orders dt. 31st Aug., 2007, passed by the Tribunal, Guwahati Bench, Guwahati, rendered in ITA No. 44/Gau/2004 and ITA. No. 51/Gau/2004 for the asst. yr. 2000-01 (in Misc. Civil No. 1029) and in ITA No. 7/Gau/2001 and CO No. 7 of 2006 for the asst. yr. 1996-97 (in Misc. Civil No. 1654 of 2009) were received by the office of the CIT, Guwahati-II on 20th Sept., 2007, and 24th Sept., 2007, respectively. On receipt thereof, a tentative view was taken to file an appeal against the same. The AO was directed to forward all relevant documents with his comments through the office of the Addl. CIT, Range-3, Guwahati, which was received by him (AO) on 9th Oct., 2007. It was averred that the AO, meanwhile, got seriously preoccupied in the work for "completing 99 time barring assessments arising out of search and seizure cases by 31st Dec., 2007". As the exercise was voluminous and complex in nature, there was a considerable delay in processing the same, the situation being compounded by acute shortage of staff in the office of the AO. As the situation was beyond his control, the AO, eventually, despatched the relevant documents for filing the appeals as contemplated to the office of the CIT, Guwahati-II (for short referred to as "the applicant"), which was received by him on 11th Jan., 2008. The applicant has stated that immediately, thereafter, his office wrote to the standing counsel of the Department on the same date seeking his opinion regarding the advisability of filing an appeal under s. 260A of the Act. The advice was sought in this regard vis-?-vis five years of the Tribunal order relating to the assessment years, i.e., 1996-97, 1997-98, 1998-99, 2000-01 and 2002-03. According to the applicant-Revenue, the learned standing counsel, though submitted his opinion (on) 16th Jan., 2008, it was qua the asst. yr. 2002-03 only. This when detected, the office of the applicant reverted to the standing counsel on 22nd Jan., 2008, seeking his opinion for the other assessment years and the latter by his letter dt. 25th Jan., 2008, communicated that his earlier opinion be taken to be also for the other assessment years. On receipt of this letter on 29th Jan., 2008, the approval of the Chief CIT, Guwahati, was sought for and the same having been received on 30th Jan., 2008, all relevant papers and documents were forwarded to the learned standing counsel on 30th Jan., 2008, and the same were received by the latter on 1st Feb., 2008. The applicant has asserted on solemn affirmation that subsequent thereto, details of the authorized officers were furnished to the

learned standing counsel on 6th Feb., 2008, where after, additional instructions were provided to him on 26th Feb., 2008, and 24th March, 2008. Meanwhile, admittedly, the period of limitation for filing the related appeal had expired on 22nd Jan., 2008.

5. The application discloses that thereafter, the learned standing counsel due to a series of personal difficulties, as detailed therein, could not attend to his professional engagements regularly. His mother suffered a stroke resulting in her hospitalization and that thereafter the long vacation of this Court intervened. According to the applicant, the mother-in-law of the learned standing counsel met with an accident on 22nd Oct., 2008, requiring her hospitalization and surgery. The applications were, eventually, filed on 3rd Nov., 2008. In the meantime, a delay of 290/287 days had occurred. Contending that, in the facts and circumstances of the case, it had not been guilty of wilful laches or intentional lapses in approaching this Court with the appeals, condonation of the aforementioned delay has been prayed for indicating as well that as substantial revenue is involved, rejection of the appeal without adjudicating the same on the merits would result in serious prejudice and loss to the Revenue.

6. In its affidavit-in-opposition, the opposite party (filed before the initial disposal of the miscellaneous cases on 29th Oct., 2010), apart from contending against the maintainability of the application, has insistently asserted that the reasons cited do not disclose any sufficient cause for condoning the delay that had occurred. It has been strenuously averred that the applicant from the very beginning had adopted a cavalier attitude as would be evident from greater importance ascribed to the assessment proceedings than to the appeals proposed to be filed. While, generally denying the correctness of all the averments bearing on the explanation for the delay, the opposite party has maintained that the applicant being demonstratively guilty of wilful laches and inaction, the Revenue is not entitled to the equitable relief as prayed for.

7. Mr. Bhuyan has argued that in the face of the progression of events, as narrated in the application, the applicant can by no means be charged of being deliberately indifferent, negligent or callous and; thus, instrumental for the delay and that as the grounds offered constitute sufficient cause in law; it is a fit case in which the same (delay) ought to be condoned. Underlining the indispensability of official formalities and bureaucratic compulsions as unavoidable impediments in furthering such process at the required levels, the learned standing counsel, the Revenue contended that a liberal approach ought to be adopted by the Courts, lest meritorious matters as these be summarily jettisoned at the threshold to the prejudice of greater public interest. In support of his submission, Mr. Bhuyan has placed reliance on the decision in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and in State of Haryana Vs. Chandra Mani and others, .

8. As against this, Dr. Saraf assiduously urged that as would be apparent from the disclosures made in the application, the applicant had been consistently

incautious in the matter of filing the appeals, presented belatedly. The fact that the AO did not forward the necessary documents for preferring the appeals for long three months being purportedly engaged in other official works unassailably testify to this effect, he urged. The learned senior counsel contended that the ground of providing a series of instructions is not only vague but also is unconvincing. Though Dr. Saraf, in his usual fairness did not dispute the correctness of the facts bearing on the personal difficulties of the learned counsel for the Revenue, he emphasised on want of bona fide of the Revenue and its deliberate negligence disentitling it to the grant of such discretionary relief. Dr. Saraf to reinforce his arguments placed reliance on the decision of the apex Court in *Balwant Singh (Dead) Vs. Jagdish Singh and Others*, and of this Court in *State of Manipur Vs. All Manipur Regular Post Vacancies Substitute Teachers' Association and Others*, and in *Indian Oil Corporation Ltd. and Others Vs. Subrata Borah Chowlek*, .

9. We have extended our thoughtful consideration to the rival projections. Before advertng to the facts, it would be appropriate to recapitulate the law as adumbrated by the judicial pronouncements cited at the Bar.

10. In *Collector, Land Acquisition vs. Mst. Katiji (supra)*, the apex Court enunciated that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to subserve the ends of justice that being the life-purpose for the existence of the institution of Courts. Their Lordships observed that such a liberal approach is justified, amongst others, on the consideration that refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was propounded that 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 done because of a non-deliberate delay. Their Lordships underlined that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of mala fide and that a litigant does not stand to benefit by resorting to delay but to the contrary runs a serious risk. It was held in particular in the context of delay vis-?-vis the State that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve and, thus, certain amount of latitude is not impermissible. Noting that the State represents the collective cause of the community, their Lordships observed that if the appeals brought by the State are lost for such default, which is generally in view of its officers/agencies as well as the encumbered process of pushing the files from table to table, no person is individually affected but public interest is a casualty.

11. The above view was reiterated In *State of Haryana vs. Chandra Mani (supra)*, to propound that the expression "sufficient cause" should, therefore, be

considered with pragmatism in justice-oriented approach rather than to warrant explanation for every day's delay. Their Lordships ruled that the factors which are peculiar to and characteristic of the functioning of the Governmental institutions would require adoption of pragmatic approach and that the Courts should decide the matters on the merits unless the case is hopelessly bereft thereof.

12. In *Balwant Singh (Dead) vs. Jagdish Singh (supra)*, the apex Court was in seisin of a prayer for condonation of delay of 778 days in bringing the legal heirs of the appellant on record in the appeal before it. The facts thereof disclosed that the application therefor was of one page wherein, the applicants contended that they were not aware of the pendency of the appeal earlier and that they had come to know of it only in the month of March, 2010, whereafter, the application was filed on 15th April, 2010. Their Lordships noticed contradictions in the stand taken to explain the delay and concluded that the applicants had acted irresponsibly and with negligence and, thus, there was an *ex facie* lack of bona fide. It was held that the conduct of the legal representatives of the sole deceased evinced that they had acted with callousness and that they had not even stated true facts, which made the exercise of discretionary power in their favour difficult. It was In that factual context, that the apex Court on an exhaustive survey of its earlier decisions on the issue declined to condone the delay. While emphasizing that the expression "sufficient cause", implies the presence of legal and adequate reasons to advance substantial justice, which presupposes no negligence or inaction on the part of the applicant, it was enunciated that the word "sufficient" signified adequacy to answer the purpose intended. Their Lordships were of the view that the sufficient cause should be such as it would persuade the Court, in the exercise of its judicial discretion, to treat the delay as an excusable one. In conclusion, while culling out the quintessential of the law applicable, their Lordships reiterated that the word "sufficient cause" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts, circumstances and the type of the case. That these words ought to receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fide, deliberate inaction or negligence on the part of the applicant, was reemphasized. That the decisive factor in condonation of delay is not its length but the sufficiency of a satisfactory explanation was indicated in clear terms. It was held that the extent and degree of leniency to be shown by a Court would depend on the nature of the application and facts and circumstances of the case.

13. In *State of Manipur vs. All Manipur Regular Post Vacancies Substitute Teachers Association (supra)*, the delay involved was about 1 year 11 months and the explanation centered around developments suggesting lack of co-ordination and consistence in views at different institutional levels ensuing in the late filing of the appeal. A Division Bench of this Court on a survey of the authorities laid before it, including the decision in *Collector, Land Acquisition*

(supra), affirmed that in assessing sufficient cause, factors which are peculiar to and characteristic of the functioning of the Government ought not to be excluded from consideration. It was observed that Government decisions are proverbially slow, encumbered as they are by a considerable degree of procedural red-tape in the process of their making and thus a certain amount of leeway is permissible. The necessity, however, of proving a sufficient cause was underlined adding that a liberal approach is essential to advance substantial justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to the party seeking the relief. It was noticed in the contextual facts that the applicant had not made any attempt to disclose why during the period prescribed, the appeal could not be preferred. The applications for condonation of delay were, thus, rejected in the above factual premise.

14. In *Indian Oil Corporation Ltd. vs. Subrata Borah Chowlek* (supra), the delay involved was of 59 days and the explanations furnished revealed, amongst others, that not only the applicant whiled away time at various intervening stages even after the expiry of the period of limitation, they waited for the summer vacation of the Hon'ble Supreme Court of India and the Delhi High Court to be over to have the matter attended to by their learned counsel from whom a second opinion was solicited. The following observations were made in the above factual background to reject the prayer for condonation of delay:

13. Condonation of delay, it is no longer *res integra*, is not a matter of right, the essential pre-condonation whereof is a sufficient cause satisfactorily explaining the same. There is no strait jacket formula to adjudge a sufficient cause, an appraisal whereof has to be logically individualistic contingent on the attendant facts and circumstances. By no means, if sufficient cause is wanting, delay can be condoned merely on equitable or sympathetic considerations. Though a liberal approach in analysing the cause is generally adopted, it cannot displace the imperative essentiality of a convincing and rational explanation to avail of the discretionary relief.

15. The primary legal precepts invocable for assessing an explanation to be sufficient or not vis-à-vis a prayer for condonation of delay are thus no longer *res integra*. The cause offered has to be essentially analysed in the facts of each case and cannot be cast in a rigid mould incapable of any transience. An explanation is a must, though, in scrutinizing the same a liberal approach has been consistently permitted so as to ensure that an otherwise genuine cause of justice is not defeated by adherence to technical precedence. Condonation of delay, though an equitable relief, however, cannot be accorded merely on sympathy or compassion and the grounds offered have to be evaluated to test whether the party in default had been guilty of conscious and deliberate inaction, culpable negligence and inexcusable indifference to the period of limitation mandatorily prescribed by law.

16. Reverting to the facts except for the time consumed by the assessing authority in completing the assessment in 99 cases, which was in the process of

getting time-barred on 31st Dec., 2007, the Revenue, having regard to the steps taken from time to time cannot be criticized of being either sluggish, indifferent or causal in its approach to the requirement of filing the accompanying appeals. The last date thereof being 22nd Jan., 2008, the AO might have diverted his attention to the assessment cases, which were to get time-barred prior thereto, i.e., 31st Dec., 2007. There is no overwhelming material on record to negate the correctness or authenticity of this averment as well as of the acute shortage of the staff in his office adding to the delay in processing the exercise undertaken. The response of the AO in forwarding the relevant papers and documents noticeably had been on 11th Jan., 2008, i.e., before the expiry of the period of limitation. The clarification sought for from the learned standing counsel as to his opinion rendered with regard to the asst. yr. 2002-03 also cannot be repudiated as unwarranted. Merely because instructions were provided to the learned standing counsel by the Revenue on more than one occasion, the same is not demonstrative of unnecessary wastage of time by it. More so, there is nothing to the contrary to even infer the same. The personal problems plaguing the learned standing counsel, as referred to hereinabove, have not been controverted by the opposite party so as to discard the same as untrue. The preparation of the appeals, all these notwithstanding and the filing thereof within a reasonable time of the subsidence of the learned standing counsel unforeseen tribulations persuades us to conclude that the causes enumerated to explain the delay ought to be construed as sufficient. To reiterate, the Revenue in the facts and circumstances of the case, cannot be held guilty of any deliberate inaction, negligence, indifference or a detached attitude vis-?-vis the appeals, so as to penalize it with rejection of its prayer for condonation of delay. On a totality of the considerations hereinabove, we are, thus, of the unhesitant opinion that the applications have considerable merit and ought to succeed. Ordered accordingly. The delay of 290/287 days in preferring the accompanying appeals is hereby condoned. The miscellaneous cases are allowed.