
(2008) 08 BOM CK 0182

In the Bombay High Court

Case No : Notice of Motion No's. 2281 of 2008 and Others

Ornate Traders (P.) Ltd.

APPELLANT

Vs

Income Tax Officer Ward 3(2)(3)

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Income Tax Act, 1961 — Section 260A, 260A(27)(a)
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5

Citation : (2008) 219 CTR 256 : (2008) 173 TAXMAN 192

Hon'ble Judges : Swatanter Kumar, C.J;A.P. Deshpande, J

Bench : Division Bench

Advocate : J.D. Mistry and Raj Darak, for the Appellant; Vimal Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—By this order, we propose to dispose of 44 Notice of Motions, all filed in the income tax Appeals preferred against the orders of the income tax Appellate Tribunal. Notice of Motion No. 2281 of 2008 in income tax Appeal (Lodging) No. 1814 of 2008 has been filed by the Assessee while remaining 43 Notice of Motions have been filed by the Commissioner(s) of income tax. The prayer for condonation of delay in filing the appeals vary from 18 days to 1474 days. Normally, we would have proceeded to deal with each application separately but the grounds for condonation of delay noted by Commissioner(s) of income tax are more or less common and, in fact, in most of the cases identical, hence we propose to discuss some of them in detail. Notices of Motion Nos. 2330 of 2008, 1898 of 2008, 2335 of 2008 and 2059 of 2008 have been filed by the Commissioner(s) of income tax while Notice of Motion No. 2281 of 2008 has been filed by the assessee. There is no dispute to the proposition of law before us that the provisions of section 5 of the Limitation Act are applicable to the appeals filed u/s 260A of the income tax Act. Once the

provisions of section 5 of the Limitation Act are applicable, the entire controversy would revolve on the showing or not of sufficient cause while praying for condonation of delay. In other words, where there is sufficient cause shown and the application for condonation of delay has been moved bona fide, the court would normally condone the delay but where the delay has not been explained at all and, in fact, there is unexplained and inordinate delay coupled with negligence or sheer carelessness, the discretion of the court in such cases would normally tilt against the applicant. It really would not make much difference whether the applicant before the Court is a Government Department or is a private individual. Of course, as per the settled principles, the courts are inclined to show greater indulgence to the departments of the Government because of inter and intra departmental steps to be taken before initiation of a legal proceedings by the department, but this indulgence has its own limitations and cannot be extended without any reasonable cause and that too beyond the permissible time. The period of limitation has to be construed somewhat strictly and advantages that accrue to non-applicant would normally not be taken away in a routine manner or for no plausible cause or reason.

2. As we have noticed that in the above notices of motion filed on behalf of the Commissioner(s) of income tax, the delay in filing the appeal varies from 18 days (Notice of Motion No. 2330 of 2008) to 1474 days (Notice of Motion No. 2093 of 2008). While in the case of the assessee in Notice of Motion No. 2281 of 2008, there is delay of 198 days in filing the appeal.

3. Firstly we will proceed to discuss the cause shown in the affidavits in support of Notices of Motion filed by the Commissioner(s) of income tax. In the affidavits filed in support of the Notice of Motion No. 2330 of 2008, it is averred that the order of the Tribunal was passed on 9-1-2008. The last date of filing the appeal was 29-5-2008 but the same was filed on 16-6-2008. In para 4 of the said affidavit, a synopsis of the details of different actions taken by the department have been given. The Chief Commissioner had granted approval for filing of the appeal u/s 260A, in the High Court, on 14-5-2008. Thereafter draft appeal was prepared and ultimately, the appeal was filed in the court on 16-6-2008. Similarly, in all other cases, except Notice of Motion No. 2335 of 2008, similar grounds have been taken praying for condonation of delay. According to the applicants, the time was taken on the table of one officer or the other in drafting appeals, approval of the Chief Commissioner and in some cases, the files were not attended/dealt with for a considerable time. An additional ground taken in that Notice of Motion was non-availability of the court fee stamps for some duration. It will be useful at this stage itself to reproduce the relevant paragraphs of the affidavits in which the delay has occurred right from 190 days to above 1000 days.

Particulars

Notice of Motion No. 1898/2008 in ITXA (L) No. 1107/2008

(190 days delay)

Notice of Motion No. 2335/2008 In No. 1940/2008

(448 days delay)

Notice of Motion No. 2059/2008 in ITXA (L) No. 533/2008 ITXA(L)

(1223 days delay)

Date of the impugned order

16-5-2007

14-11-2006

Wrongly mentioned as 20-10-2004 in the affidavit-in-support. 20-5-2004-correct date

Impugned order received by the Office of CIT

7-6-2007

6-12-2006

23-6-2004

AO's comments/scrutiny report submitted

13-8-2007

-

20-9-2004

AO's report forwarded to CIT

13-9-2007

-

21-9-2004

Scrutiny report put up for consideration of CIT

1-10-2007

-

-

CIT/DIT put up file before CCIT/DGIT for approval for filing appeal u/s 260A of I.T. Act.

1-10-2007

-

-

CCIT's/DGIT's approval and authorisation

3-10-2007

-

20-10-2004

File sent for drafting to Panel Counsel/Law Ministry.

5-10-2007

4-4-2007

27-10-2004

Draft appeal received from the Panel Counsel/Law Ministry

31-12-2007

27-2-2008

30-11-2004

Court fee stamps made available on

-

17-4-2008

Appeal filed in High Court

11-4-2008

26-6-2008

25-2-2008

Reasons for delay

Appellant's office was following the matter for filing of appeal on due date. However, due to reasons beyond control of the appellant's office, which includes administrative difficulties.

Appellant's office was following the matter for filing of appeal on due date. However, due to reasons beyond control of the appellant's office, which includes administrative difficulties.

Appellant's office was following the matter for filing of appeal on due date. However, due to reasons beyond control of the appellant's office. Shortage of stamp papers in office.

4. From the above averments, it is clear that the reasons for condonation of delay are more or less similar. However, the period of delay varies considerably.

It was expected of the applicants, Commissioner(s) of income tax to explain properly and with better particulars where delay is more than 200 days. This we are not treating as a cut off mark or magic figure but on reasonable application of administrative principles and applying the commonly accepted norms of office functioning. Heavy burden lies upon the applicant to show special circumstances constituting a sufficient cause within the meaning of section 5 of the Limitation Act for condonation of delay of more than 200 days at least, if not each day's delay. In most of these applications, the delay shown up to 200 days has been adequately explained and is in consonance with normal office working where some time is taken in processing office files in the hierarchy of the Government departments, but where the delay is more than even 400 days, hardly any explanation much less reasons showing sufficient cause have been stated in the affidavits in support of the applications. These applications are practically the carbon copies of each other. In most of them, the blanks were left which have been filled in subsequently. Particularly, so in Notice of Motion No. 2335 of 2008, as is evident from the above narrated facts, it is nowhere explained as to what steps were taken in the file for any purpose whatsoever from 4-4-2007 to 27-2-2008. All that is averred is that the file was sent to the Ministry of Law for drafting memorandum of appeal. The file was even sent almost four months after the order of the Tribunal dated 14-11-2006 was received by the department on 6-12-2006. Again there is no explanation as to what steps were taken or for that matter even how the file moved from 6-12-2007 to 4-4-2007 except that the Assessing Officer processed the matter. After 27-2-2008, it is averred as under :--

I say that since the Court Fee Stamps were not readily available the above Appeal could not be filed in time. Court Fee Stamps were made available on 17-4-2008. The appeal was filed on 26-6-2008.

5. Firstly, these averments are entirely vague, indefinite and render no explanation. What is meant by "readily available" cannot be equated to that court fee stamps were "not available". What steps were taken to obtain the court fee stamps is nowhere stated. Furthermore, even when the court fee stamp was made available on 17-4-2008, still the appeal was filed on 26-6-2008. This only reflects a casual and negligent attitude. It is expected that the Government Departments should function in a properly mechanized manner and not to act so casually that because of its inaction or misdeeds, the public exchequer is made to suffer.

6. In Notice of Motion No. 2330 of 2008, there is delay of 18 days only and in paragraph 4 of the Motion, the delay has been explained. Primarily it had occurred when the brief was sent to the Panel Counsel for preparation of draft of Appeal which took considerable time right from 21-5-2008 to 5-6-2008 which resulted in delay of 18 days.

7. In Notice of Motion No. 2059 of 2008, there is a delay of 1223 days i.e., nearly more than three years in filing the Appeal. As already noticed, in paragraph No. 2 of the affidavit in support of the Notice of Motion, it has been stated that the

order of the Tribunal dated 20-5-2004 (wrongly mentioned as 20-10-2004 in the affidavit-in-support of Notice of Motion) was received in the office of the Director of income tax on 23-6-2004. Preparation of the report is stated to have taken some time and was forwarded to Director of income tax (International Taxation) on 21-9-2004, who granted his approval on 20-10-2004. The same was sent for drafting to the Central Government Advocate on 27-10-2004. Draft was received on 30-11-2004 and the Appeal has been filed in this Court on 25-2-2008. There is not even an iota of explanation as to what steps were taken by any Department right from 30-11-2004, when admittedly the Appeal was ready. It is averred that every authority had acted diligently, still there was a delay of 1223 days and there is public revenue involved. It is also vaguely stated that due to shortage of stamp paper in the office, the delay occurred. Nothing whatsoever has been stated, when there was shortage of stamp paper and whether even an effort was made to obtain the stamp papers. It is also not understandable why the Appeals could not be filed within the prescribed period of limitation or at least in November 2004 while praying to the Court for extending the time for payment of Court fee. In this case and all other cases where the delay is more than a year, similar vague averments have been made without any specific explanation. In fact, in most of these Notices of Motion, for every day's delay or even substantial cause for delay in fact for years together, no explanation has been rendered as in the present case between 30-11-2004 and 25-2-2008.

8. Having referred to the applications of the Revenue Department in some detail, we may also refer to the application for condonation of delay filed by the assessee being Notice of Motion No. 2281 of 2008, where there is delay of 190 days in filing the Appeal. It has been stated in the affidavit in support of the Notice of Motion that the order dated 29-3-2007 was received on 13-8-2007 and the Appeal ought to have been filed by 1-12-2007. It was filed after a delay of 190 days on 17-6-2008. The reason given is that the Board of Directors did not meet to take effective decision; Misc. Application No. 184/M/08 was also filed before the income tax Appellate Tribunal and they were waiting for the order on the Misc. Application which was passed only on 30-5-2008, which order was served upon them on 16-6-2008. Since the said miscellaneous application relating to the order of the Tribunal, the order dated 3-6-2008 had also bearing and relevancy where after the Appeal was filed without any further delay.

9. Having referred to the factual matrix of the Applications, now we would proceed to refer to certain judgments on the subject.

10. Section 5 of the Limitation Act in the recent times has been liberally construed but not so liberally that without any justification or cause an accrued right in favour of the non-applicant would be taken away in most casual manner. Another aspect of the case is that the revenue and/or even the assesseees are expected to act with care and expeditiousness and not to let things lie unprocessed for months together. Of course the limitation for the purpose of filing of Appeal u/s 260A of the Act commences from the date the copy of the

order is received by the parties in terms of section 260A(27)(a) of the Act. However, the knowledge of the proceedings and the judgment and its contents is known to the parties the moment the judgment is pronounced. The Tribunal is supposed to list and pronounce the judgments on a date fixed for pronouncement. Thus, the parties to the proceedings are well aware of the pronouncement of the judgment as well as the contents thereof and whether the Appeal of the assessee/Department has been accepted or rejected partly or completely accepted or rejected.

11. The law of limitation is normally to be construed strictly as it has the effect of vesting for one and taking away right from the other. To condone the delays in a mechanical or a routine manner may amount to jeopardizing the legislative intent behind section 5 of the Limitation Act. Statutes of limitation are designed to effectuate a beneficent public purpose viz., to prevent the taking away from one what he has for long been permitted to consider his own and on the faith of which he plans his life, habits and expenses. Long dormant claims are often more of cruelty than of justice in them. This principle is more based on public policy. Its aim being to secure the quiet of the community and to prevent oppression. These rules have been viewed by some as an infamous power created by positive law to decrease litigation and encourage dishonest defences. This may not be wholly true but still the limitation vests a definite right in a party after a lapse of period prescribed under law. It interpose a statutory bar after a certain period giving quietus to the rights arising from a judgment which is sought to be impugned. In other words, the law of limitation is thus founded on public policy. It is enshrined in the maxim "interest reipublicae ut sit finis litium" (it is for the general welfare that a period be put to litigation). The very scheme of proper administration of justice pre-supposes expediency in disposal of cases and avoidance of frivolous litigation. Where the parties chose to sleep over their rights for prolonged periods without any just cause, can hardly claim equity in justice particularly faced with the statutory provisions of section 5 of the Act. In construing enactments which provide period of limitation for institution of proceedings, the purpose is to intimate people that after lapse of certain time from a certain event, a proceeding will not be entertained where a strict grammatical construction is normally the safe guide. Law is not an exercise in linguistic discipline but the substance of legislative intention can also not be frustrated merely by uncalled for equity or sympathy. (Reference : U.N. Mitra's Law of Limitation and Prescription, 12th Edition 2006).

12. In the case of Banarasi Devi Vs. Income Tax Officer, Calcutta, , the Supreme Court clearly stated the principle that the provisions introduced to open up liability which had become barred by lapse of time will be subject to the rule of strict construction. This principle has prevailed may be with some variation relatable to the sufficiency of cause shown by the parties.

13. Even in the case of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. Collector of Central Excise, , it was held that a limited provision within which

steps have been taken for recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded, is again subject to the rule of strict construction.

14. To law of limitation, the argument of hardship or alleged injustice has to be applied with greater care. The argument "*ab inconvenienti*" said Lord Moulton, "is one which requires to be used with great caution". (Reference: Principles of Statutory Interpretation by Justice G.P. Singh, 11th Edition 2008).

15. The essence of the above enunciated principle thus reflects a simple but effective mandate that a provision must be construed on its plain and simple language. The provision of limitation should be construed strictly but at best its application could be liberalised where actual sufficient cause in its true sense is shown by an applicant who has acted bona fide and with due care and caution. An interpretation or application of the statutory provisions which would frustrate its very object necessarily has to be avoided.

16. We may also refer to the judgment of the other High Courts in the case of *Union of India v. C.L. Jain Woollen Mills (P.) Ltd.*, 2006 (131) DLT 360, where in some what similar circumstances as in the present case, the Court discussed the precedent on law of limitation at some length and held as under :--

7. The above are the reasons stated for condoning the delay. No reference of any office or date has been given in the application. The application lacks basic details which would be essential for the court to consider a request for condonation of delay. It is true that UOI unlike a normal litigant may not be called upon to explain each day's delay by giving a reasonable or plausible explanation but the entire delay has to be explained at least in a composite manner so as to enable the court to exercise the discretion in favour of the applicant, if the application satisfies the ingredients enunciated by different judicial pronouncements.

8. Learned counsel appearing for the appellants while heavily relying upon the judgment of the Supreme Court in the case of *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, contended that the power to condone the 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. Firstly, the facts of that case were entirely different as there was a seniority dispute of nearly 150 Inspectors and 400 officers of the rank of Deputy S.P. Secondly, reasons had been stated in detail in that case for condoning the delay. At this stage, it will be useful to refer to the view taken by a Division Bench of this Court in the case of *Delhi Wakf Board v. Balbir Singh* (RFA No. 80/82, decided on 20-3-2006) where the court after discussing the various judgments, held as under :--

We may also notice that even the present appeal is barred by time and application being CM No. 165/82 was filed for condonation of delay and the reason given is that the appellant came to know of the order of the Court only on

17-2-1982 whereafter he filed this appeal in March, 1982. Though the provisions of section 5 have received a liberal construction in recent past, still the Court cannot ignore that the fact 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 and without disclosure of good and a sufficient cause for condonation of delay.

The application filed for condonation of delay in the present case hardly gives any reason or cause much less a reasonable explanation for condoning the delay. Merely because there was no communication between the client and counsel could hardly be a reason for condoning the delay of 2 years as the order was pronounced on 5-11-1980 in the presence of the counsel and the appeal was filed in the year 1982.

At this stage, we may refer to the judgment of the Supreme Court in the case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., wherein the Court held as under :--

In construing section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. ILR 13 Mad. 269, Approved.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration....

Reference can also be made to a judgment of the Division Bench of the Punjab and Haryana High Court in the case of Sanjeev Babbar v. Dev Papers Pvt. Ltd. Vol. CXVIII-(1998-I). The Punjab Law Reporter 814 wherein the Court held as under :--

5. As is clear from the above facts that the present petitioner has been most negligent and irresponsible in pursuing his remedy. The revision petition as originally filed was barred by time as is clear from the afore-stated dates. In fact no revision was filed. It was only some papers with the impugned order which were filed without any grounds of revision as required under law. Even the requisite Court-fees was not levied. With a petition becomes barred by time, a right accrues to the other party and such a right cannot be taken away by the Court merely on an application which lacks bona fides and does not disclose any sufficient cause for condonation of delay. In the present case, the revision itself

may be barred not only by 67 days, but even more, because after its return on 3-7-1996 it was refiled on 3-4-1997 with grounds of revision. The delay in filing as well as in refileing has not been explained in any of the applications. It is unfortunate, but is true, that present case discloses the extent to which a petition can be irresponsible and negligent of his own rights. The provisions of Limitation Act cannot be so liberally construed so as to frustrate the very purpose of the provisions of the Limitation Act. In this regard reference can be made to a judgment of the Hon"ble Supreme Court of India in the case of P.K. Ramachandran v. State of Kerala, JT 1997 (8) S.C. 189, where the Hon"ble Court held as under :--

Law of limitation may hardly effect a particular party but it has to be applied with all its rigour when the statute so prescribe 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.

In the application for condonation of delay hardly any reason has been stated. All that has been stated is that no authorised person had appeared on behalf of the appellant when the decree was passed on 5-11-1980. Thereafter, application was filed under Order 9, Rule 9, CPC and later on another application was filed under Order 47, Rule 1, CPC. Both these applications were dismissed by the trial Court on 16-2-1980 as not maintainable and the appellant came to know about the said orders on 17-2-1982, thereafter an appeal was filed in this Court on 3-3-1982. Except giving these dates, the application gives no explanation, much less a sufficient cause for justifying the prayer for condonation of delay. The vague averments in the application cannot be the basis for denying a substantial benefit in law to the respondent. The right of the other party cannot be taken away on such averments, which would constitute no sufficient cause on the true and correct interpretation of the sufficient cause contemplated under the provisions of the Limitation Act.

We find no merit in this application and would decline to condone the delay.

9. Even in the case of UOI v. Tata Yodogawa Ltd. 1988 (38) ELT 739 (SC), the Supreme Court took the view that the Government being impersonal takes longer time in filing the Appeals/Petitions than the private bodies or the individuals. Even giving that latitude, there must be some way or attempt to explain the cause of such delay and as there was no whisper to explain what legal problems occurred in filing the special leave petition, the application for condonation of delay was dismissed by the Supreme Court. Still in another case reported as Collector of Central Excise, Madras Vs. A. Md. Bilal and Co., , the Supreme Court declined to condone the delay of 502 days in filing the appeal while observing that the application disclosed no satisfactory or reasonable

explanation. Still in a more recent case titled as P.K. Ramachandran v. State of Kerala 1997 (6) S 209, the Supreme Court reiterated the above principles and declined to condone the delay and held as under :--

Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe 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.

10. The judgments of the Supreme Court in the cases of Tata Yodogawa Ltd. (supra) and A.M.D. Bilal & Co. (supra) are squarely applicable to the facts and circumstances of the present case. The application for condonation is without any content, reasonable or satisfactory explanation. It was obligatory upon the part of the applicant-UOI to reasonably explain the delay, may be, by not giving explanation for each day of delay but to explain the delay in a composite manner. In the entire application, no reference of any date, officers and the need for sending the file to any particular section has been stated. This was a case simplicitor for recovery of money of Rs. 3,35,000 which had been decreed against the authorities and it was held that they were liable to pay interest. It does not appear to be such a complicated issue for determination by the Court which would require the UOI or its officers to take years and years to decide whether the appeal should or should not be filed. Then when it is filed after an year, it is incomplete in all respects for which action there is not even a whisper much less an explanation as to why the appeal was kept back for another one year and even the court fee for the appeal was purchased after the lapse of two years from the date of the judgment. This conduct of the applicants is nothing but a negligent attitude and they are taking it to be for granted that the UOI is entitled to claim condonation of delay de hors its averments in the application. For these reasons, we find no merits in these applications and decline to condone the delay and dismiss both these applications."

17. The judgment of C.L. Jain (supra), was referred and applied to the facts of the case in State of Maharashtra v. Shri Vithu Kalya Govari, Civil Application No. 3200 of 2007 in First Appeal (Stamp) No. 11231 of 2007 decided on 26-6-2008, where the Court was considering the question of condoning the delay in relation to the claim Petitions filed by the Claimants u/s 18 of the Land Acquisition Act, 1894. In those cases, the Supreme Court as well as various judgments of different High Courts have clearly held that neither the Court nor the Collector has the power to condone the delay or accept reference applications u/s 18 of the Act beyond the period of limitation provided under that provision. The Court also referred to the fact of liberal approach towards Government Departments and held as under :--

12. Before these files are consigned to record room, the Courts cannot help but notice that most of the appeals filed on behalf of the State are barred by time and the delay normally is inordinate. They suffer from defect of inordinate delay. Normally, it is expected of the State, in the modern times and with modern amenities and infrastructure, to govern its affairs to the much expected standards. It hardly stands to reason that most of the appeals filed by the State, particularly in land acquisition matters, should be barred by time. They are filed after much delay and normally after considerable delay which remains unexplained and is *ex facie* unjustified. Filing of appeal within limitation is an exception but filing appeals barred by time is the rule. Filing appeal in a mechanical manner beyond the period of limitation has become a rule. This needs to be checked by the concerned authorities at the earliest. Unreasonable delay on the part of the concerned authority in completion of execution proceedings, disbursement of compensation, determination of compensation and then in filing legal proceedings include the appeals invites twin disadvantages that are opposed to public policy and even good governance. Firstly, even in good cases because of inordinate and unexplained delay, the Court may decline to entertain the appeals. Secondly, the liability of statutory interest increases even passing day which burdens the public exchequer. Both these adverse rigours could be avoided by timely and co-ordinate actions. The authorities are required to have a more practical and pragmatic approach to provide solution to this problem. The inordinate delays occurring from inaction or non-co-operation of the departments, as is demonstrated by the facts of the present cases, needs to be corrected and it will be desirable to fix the responsibility of the erring officer/official....

18. The aspect of applying the principles of law of limitation with their rigours was also considered by a Bench of the Punjab & Haryana High Court in the case of *Sanjiv Babbar v. Dev Papers (P.) Ltd.* 1998 (1) PLR 814, where the Court held as under :--

.... The revision petition as originally filed was barred by time as is clear from the afore stated dates. In fact no revision was filed. It was only some papers with the impugned order which were filed without any grounds of revision as required under law. Even the requisite Court-fee was not levied. When a petition becomes barred by time, a right accrues to the other party and such a right cannot be taken away by the Court merely on an application which lacks bona fides and does not disclose any sufficient cause for condonation of delay. In the present case, the revision itself may be barred not only by 67 days, but even more, because after its return on 3-7-1996 it was ratified on 3-4-1997 with grounds of revision. The delay in filing as well as in re-filing has not been explained in any of the applications. It is unfortunate, but is true, that present case discloses the extent to which a petitioner can be irresponsible and negligent of his own rights. The provisions of Limitation Act cannot be so liberally construed so as to frustrate the very purpose of the provisions of the Limitation Act. In this regard reference can be made to a judgment of the Hon"ble Supreme Court of India in the case of

P.K. Ramachandran v. State of Kerala, JT 1997 (8) SC 189.

19. The law of procedure undisputedly takes in its ambit and scope the need to act expeditiously and not to delay the progress of the legal proceedings. The law of limitation *stricto sensu* is not law of procedure simpliciter but has the effect of creating a legal bar in exercise of a right which otherwise would have been available to a party but for lapse of time. As already noticed, the law of limitation is based on public policy and helps effective and proper administration of justice. It is expected of every litigant and particularly the litigants who have large litigation who have their own legal department and channels, to act within the period of limitation. It is only by way of an exception and upon showing sufficient cause that Appeals, if otherwise permissible, could be entertained beyond the prescribed period of limitation. It also be noticed that in the case of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, , the Supreme Court held that expression "sufficient cause" should receive a liberal construction so as to advance the purpose of justice particularly when there is no motive behind delay. This necessarily implies that parties must act bona fide, expeditiously and with due care. A casual or a negligent litigant who has acted with utter irresponsible attitude, cannot claim the condonation of delay in law when the right has accrued to the other side.

20. How long the Courts will condone defaults as a matter of course in Government departmental cases. In recent times, the Supreme Court and various High Courts have fairly applied the principle of public accountability and trust to the action of the Government officers/officials. It is expected of the concerned authorities to formulate their system and working methodology in a way which would endeavour to achieve the object of timely disposal of administrative files as opposed to "I will deal with the matter at leisure and my convenience". The practice of bureaucratic delay was dealt with by the Supreme Court with a pious hope that curse of Lord Curzon will not haunt wheels of administration in the case of *State of Kerala Vs. Kumari T.P. Roshana and Another*, . The Court held as under :--

45. We are aware that these various directions and orders call for high pressure activation. Perhaps, we may emphasise the need for guarding against the slow march of bureaucratic movement embodied in Lord Curzon's lament respecting the administration of his time, a state of affairs wholly opposed to the dynamic fulfilment of the imperatives cast by the Constitution upon the nation and its institutions. Said Lord Curzon in a despatch to the Secretary of State :

Your despatch of August 5 arrived. It goes to Foreign Department. Thereupon Clerk No. 1 paraphrases and comments upon it over 41 folio pages of print of his own composition, dealing solely with the Khyber suggestions in it. Then comes Clerk No. 2 with 31 more pages upon Clerk No. 1. Then we get to the region of Asstt. Secretaries, Dy. Secretaries and Secretaries. All these gentlemen state their worthless views at equal length. Finally we get to the top of the scale and we find the Viceroy and Military Member, with a proper regard for their dignity,

expanding themselves over a proportionate space of print. Then these papers wander about from department to department and amid the various members of Council. I am grappling with this vile system in my own department, but it has seated itself like the old man of the sea upon the shoulders of the Indian Government and every man accepts, while deploring the burden.

Hopefully, we part with this case with the thought that there will be no occasion for any party to move for extension of time or to prove that the curse Lord Curzon spelt out still haunts the wheels of administration. The appeal is allowed; so also the writ petition - in the manner and to the extent we have directed. The parties will bear their costs. The decisional guidelines herein given will, we dare say, so help dispose of the many writ petitions pending in the High Court. The journey to the Supreme Court is not always necessitous for final justice." (p. 589)

21. Despite use of such frank language, the expectation of the Courts that the Departments would file their Appeals in time and deal with such matters administratively with expeditiousness have resulted in fox pass. There is hardly any improvement. On the contrary, the period of delay has increased from days to months and months to years. Quantum of litigation by itself may justify in given cases part of delay, but this cannot be an excuse of panacea to all delays in the different Departments of the Government.

22. In performance of their functions, public officers or public servants have the duty to act judiciously, fairly and expeditiously. An officer can hardly justify that a file would lie on his table for months or days together and he would not act on the said file just because he claims to be pre-occupied. Another argument advanced on behalf of the Department was that there are time bar cases and in that rush the officers are not able to act. Firstly, there is no specific averment in this regard with any dates in the affidavit filed in support of the Notice of Motion. Secondly, the time barring cases are completed by 31st March or immediately thereafter, while all these cases relate to the period subsequent to March of the respective assessment year. Pre-occupation of an officer or officials can be a reasonable excuse, but for a short period and nothing justifies the inaction for a pretty long period running into months. If such an excuse is to be permitted in law, then the Courts would have to completely ignore the law of limitation. Public interest imposes an obligation upon the Department as a whole to act in a channelised manner and to ensure that every appeal which is sought to be preferred by the Department is not rendered barred by time that too by inordinate and unexplained delays. In fact, some of the cases before us, particularly where the delay is more than a year, ex facie reflects negligence and callous attitude of shifting responsibilities. If the file was pending with the lawyer, there is not even an averment that the lawyer who retained the file for few months was contacted or any officer of the Department went to the lawyer to either take back the papers or to get the draft ready for filing in the Court of competent jurisdiction. It is too far fetched an excuse to be put forth before the Court of law that the lawyers retained the files for months together and the

Department was so helpless that it could take no steps to file its appeals within a reasonable time. The expression "sufficient cause" will always have relevancy to reasonableness. The actions which can be condoned by the Court should fall within the realm of normal human conduct or normal conduct of a litigant. It is neither expected nor it can be a normal conduct of a public servant or a litigant that they would keep the files unmoved, unprocessed for months together on their tables. Some extent of public accountability and responsibility will have to be the basis for looking into such conduct. The consequences of such inordinate delay can be very fatal besides rendering remedy barred by law also leads to loss of public exchequer. This aspect of the matter introduces larger responsibility and consciousness in the conduct of the affairs of the revenue department. Certain amount of leverage or relaxation for departmental functions would be permissible, but this cannot be extended to the limits protecting negligence and irresponsibility simplicitor. For example, in Notice of Motion No. 2335 of 2008, the copy was received on 6-12-2006. The prescribed period of limitation was permitted to expire. There is nothing in the application to say what steps were taken before 4-4-2007, when the Appeal was alleged to have been sent for drafting. There is no averment as to what steps were taken for getting the draft appeal prepared and filing of the same in Court right from 4-4-2007 till 27-2-2008. Even when the Appeal was ready in February 2008, there is no explanation as to why it was filed on 26-6-2008, after a lapse of more than four months. Similarly, in Notice of Motion No. 2059 of 2008, the copy was received on 23-6-2004 and no steps whatsoever were taken between 23-6-2004 till 20-9-2004. Thereafter, various persons claimed to have acted in regard to various aspects of the case, like scrutiny, Assessing Officer's report, approval and authorisation. The draft Appeal was received in the office of the Appellant on 30-11-2004, but the Appeal has been filed in the High Court on 25-2-2008. No reason whatsoever has been given as to what was being done for the intervening period for more than three months. Apart from the standardised proforma giving chronology of dates and events in the affidavit in support of the Notices of Motion attempting to show sufficient cause for condonation of delay, no event whatsoever during this period has been referred to so as to render the cause sufficient and delay reasonable. These facts clearly show that there was utter negligent and irresponsible attitude on the part of the officers/officials.

23. In all the applications for condonation of delay, similar tables have been given with more or less similar facts but of course the dates are different in different cases. In fact, even dates in some cases are common. In other words, it is a collective excuse shown for condonation of delays, stages in different cases are the same but the period of delay varies from 18, 190 to 1474 days. In the cases where the delay is of 18 or 190 days or even up to a year, some plausible explanation has been rendered which the Court may, keeping in view the concept of public interest and public revenue, show indulgence and condone the delay. Even in such cases, there is unexplained delay, but as stated in different cases, the Department may not be called upon to explain each day's delay because of

their office procedures and competency to take decision in the hierarchy of the Department. All this can be excused, but to a limited extent. Normally, file may take few days or a week on a table, but cannot take months and years. In the cases where the delay is more than 400 days or above 1000 days, there has been no justification, much less a sufficient cause shown, for condonation of delay. In these cases, where inordinate delay is unexplained, explanation given either is fanciful or opposed to normal course of human conduct and official conduct coupled with element of negligence and irresponsible attitude. Vague explanation or in some cases no explanation further adds to the gravity of the situation in the Department of Revenue.

24. In the Appeals preferred by the Department, obviously before the Appellant approaches the High Court, they have exhibited three different levels under the Act, i.e. order of Assessing Officer, order of the Commissioner of Appeals and then the order of Tribunal. Recourse to special remedy u/s 260A of the income tax Act which specifies the period of limitation, the Appellants are expected to act with responsibility and vigilance. In all these cases, the distinction in the case to be founded on the extent of the delay, unexplained and inordinate delay and the negligence and casual attitude of the officers/officials dealing with the matter. Where all these three elements are collectively present and the delay is beyond the period of 400 days i.e., more than a year, there would be no justification with the Court to divest the non-applicant of a right which has accrued to him in law and in fact because of the unreasonable conduct of the applicant.

25. From the copies of the orders of the Tribunal placed on record, it is obvious that the orders were pronounced in accordance with law much prior to the dates when the copies were received by the Department. In other words, the Department was fully aware of the fate of the case before the Tribunal and its responsibilities arising from such a judgment and order. The plea of time barring cases, overload work are hardly of any consequence in the present case. We have already noticed that majority of the cases where the delay is large, they all are stated to be in process only after the expiry of 31st March of the respective year. The question of public revenue cannot be used as an excuse. It in fact adds to the responsibility and liability of the Department. Wherever there is higher public revenue, greater is the responsibility to act with utmost expeditiousness. It cannot justify the conduct that you sleep over and ignore your statutory rights for years and then take up the plea of public revenue. The Court can also not completely ignore the interest of the assessee who might have succeeded in the previous proceedings leading to the filing of the Appeal.

26. The learned Counsel appearing for the assessee in these cases have also relied upon the judgment of the Supreme Court in the case of Union of India v. Tata Yodogawa Ltd. 1988 (38) ELT 739 (SC) to contend that inter-departmental correspondence and processing is not a sufficient cause for condonation of delay as well as in the case of Union of India and others Vs. Visveswaraya Iron and Steel Ltd., to further contend that without giving detailed circumstances and

merely referring to list of dates and stating that it was a Government procedure responsible for delay of the action not be a sufficient cause for condonation of delay. The sufficient cause would take in its ambit reasonable acts, reasonable conduct and reasonable delay. Where there is unreasonable delay and where hardly any reasons are given to explain the delay and the conduct of the officers/officials is negligent, irresponsible or callous to the extent of rendering the remedy of the Department hopelessly barred by time, the equitable relief from the Court can hardly be granted to the Applicants.

27. Having given our considered attention to the various aspects of these cases, in our opinion, interest of justice would be better served if some latitude and relaxation is given to the Applicants (Commissioners of income tax). We would condone the delay in all the Appeals where the delay is less than a year and which has been reasonably explained. But in the case where the delay is beyond one year and up to 1474 days, we would reject the applications for condonation of delay as there is no proper explanation and no sufficient cause shown for condonation of delay and there is apparent negligence and callousness on the part of the officer/officials of the Department to the extent that even correct statements have not been made in those cases.

28. Resultantly, Notices of Motion Nos. 2281 of 2008, 1898 of 2008, 2155 of 2008, 2076 of 2008, 1897 of 2008, 2005 of 2008, 2073 of 2008, 2074 of 2008, 2185 of 2008, 2186 of 2008, 2246 of 2008, 2247 of 2008, 2304 of 2008, 2305 of 2008, 2330 of 2008, 2358 of 2008, 2322 of 2008, 2338 of 2008 and 2368 of 2008 are allowed and Notices of Motion Nos. 1896 of 2008, 2292 of 2008, 2335 of 2008, 2058 of 2008, 2094 of 2008, 2291 of 2008, 2339 of 2008, 1963 of 2008, 1960 of 2008, 2044 of 2008, 2045 of 2008, 2049 of 2008, 2059 of 2008, 2060 of 2008, 2093 of 2008, 2095 of 2008, 2248 of 2008, 2249 of 2008, 2289 of 2008, 2290 of 2008, 2294 of 2008, 2324 of 2008, 2336 of 2008, 2337 of 2008 and 2340 of 2008 are rejected.

29. Having dealt with all these Notices of Motion on merits and having allowed some or disallowed the others, we consider it as the duty of the Court to ensure due compliance of law. It is also a settled principle of law that Court should pass such directions which would help in avoiding unnecessary litigation or where the root cause of litigation can be so managed as to reduce the burden of justice delivery system. *Boni judicis est causas litium dirimere*.

30. Where there is unreasonable and unexplained delay on the part of the authorities concerned in instituting the Appeals within the period of limitation it is detrimental to the public revenue, it is also opposed to public policy and good governance of the Department. Furthermore, the case where the law is in favour of the Department or where departmental appeal makes out a good case as understood in common parlance, because of inordinate and unexplained delay if it is dismissed as barred by time as Courts decline to hear the matters on merits, it will have adverse consequences. These adverse consequences can certainly be avoided by timely and coordinated action. It is expected of the authorities

concerned to adopt a more practical and pragmatic approach and handle the judicial matters with utmost efficiency and expeditiousness. It will also be desirable to fix responsibility of the officers while introducing the mandate of public accountability for default in performance of duties. The doctrine of public accountability would require the authorities to act timely and be responsible for their acts. Thus, before parting with these cases finally, we consider it necessary and in the interest of justice, to issue following directions for compliance by the authorities concerned :--

(a) The concerned authority, highest in the hierarchy of the Department, is hereby directed to issue Circular to all the concerned officer/officials to file the Appeals arising from the income tax Act particularly section 260A of the income tax Act, within the period of limitation provided under law.

(b) The said Circular shall also introduce the concept of public accountability and responsibility in discharge of its official duties. Applying this principle, the concerned authority shall provide for a mechanism which will fix responsibility and consequences thereof in relation to the officer/official dealing with the approval, preparation and filing of income tax Appeals in this Court.

(c) The directives in the Circular shall also specify the time within which the authorities are expected to take action and have due co-operation and co-ordination between the concerned Departments.

(d) It should be the responsibility of the senior officer in the hierarchy of the Department to ensure compliance of the directives contained in the said Circular as due Compliance to the directives would help in achieving greater public purpose and help in saving huge public revenue.

(e) It may be useful for the said authority even to provide directives in relation to engagement of Counsel, preparation of Appeal and its filing. It may be desirous to have more Advocates working on the panel of the Department so as to ensure that neither the Appeals are rendered barred by time nor they are dismissed for default of appearance of the Advocate for the Department when listed before the Court for hearing.

31. We have dismissed Notices of Motion Nos. 1896 of 2008, 2292 of 2008, 2335 of 2008, 2058 of 2008, 2094 of 2008, 2291 of 2008, 2339 of 2008, 1963 of 2008, 1960 of 2008, 2044 of 2008, 2045 of 2008, 2049 of 2008, 2059 of 2008, 2060 of 2008, 2093 of 2008, 2095 of 2008, 2248 of 2008, 2249 of 2008, 2289 of 2008, 2290 of 2008, 2294 of 2008, 2324 of 2008, 2336 of 2008, 2337 of 2008 and 2340 of 2008. Resultantly, income tax Appeal (Lodging) Nos. 1136 of 2008, 612 of 2008, 1940 of 2008, 532 of 2008, 1672 of 2008, 541 of 2008, 1941 of 2008, 1463 of 2008, 1465 of 2008, 1718 of 2008, 1719 of 2008, 1720 of 2008, 533 of 2008, 534 of 2008, 1673 of 2008, 1671 of 2008, 1255 of 2008, 1251 of 2008, 539 of 2008, 540 of 2008, 614 of 2008, 1931 of 2008, 1943 of 2008, 1942 of 2008 and 1944 of 2008 do not survive for consideration and are accordingly dismissed. We have allowed Notices of Motion Nos. 1898 of 2008, 2155 of 2008,

2076 of 2008, 1897 of 2008, 2005 of 2008, 2073 of 2008, 2074 of 2008, 2185 of 2008, 2186 of 2008, 2246 of 2008, 2247 of 2008, 2304 of 2008, 2305 of 2008, 2330 of 2008, 2358 of 2008, 2322 of 2008, 2338 of 2008 and 2368 of 2008 condoning the delay filed by the Department as well as Notice of Motion No. 2281 of 2008 filed by the Assessee. Resultantly, income tax Appeal (Lodging) Nos. 1107 of 2008, 1231 of 2008, 451 of 2008, 1106 of 2008, 970 of 2008, 1236 of 2008, 1235 of 2008, 1256 of 2008, 1249 of 2008, 1761 of 2008, 1760 of 2008, 1784 of 2008, 394 of 2008, 369 of 2008, 368 of 2008, 1930 of 2008, 1945 of 2008 and 1625 of 2008 be listed for hearing for admission.