

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 554/Hyd/2014  
Assessment Year: 2010-11**

Maddi Narsaiah, Hyderabad. PAN – ADGPM 5768G  (Appellant)	vs.	Dy. Commissioner of Income- tax, Central Circle – 2, Hyderabad.  (Respondent)
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Assessee by	:	Shri S. Rama Rao
Revenue by	:	Shri K.E. Sunil Babu

Date of hearing	07-08-2016
Date of pronouncement	09-09-2016

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.:**

This appeal is preferred by the assessee against the order of the learned Commissioner of Income-tax(A) - I, Hyderabad for AY 2010-11.

2. On perusal of record, we find that the assessee filed this appeal before us with a delay of 395 days. In this connection, the assessee filed a petition requesting for condonation of the said delay wherein it was stated as follows:

*The petitioner is an individual. He is the Managing Director of Shanta Sriram Constructions Pvt. Ltd. The Income-Tax authorities conducted search and seizure operations at the residential premises of the petitioner on 25.3.2010. In response to notice u/s 153A of the I.T. Act, the petitioner filed the return of income for the assessment year 2010-11 on 26.7.2011 declaring an income of Rs.72,40,000/- as admitted before the DDIT (Inv). The Assessing Officer completed the assessment u/s 143(3) I.T. Act on 30.12.2011. Aggrieved with the order of assessment, the*

*petitioner filed an appeal before the Commissioner of Income-Tax (Appeals)- I, Hyderabad. The learned CIT (Appeals) disposed of the said appeal vide order in ITA No.0572/CC-2,Hyd/CIT(A)-I/11-12 dated 27.12.2012. During the relevant period i.e. January & February 2013, the petitioner was pre-occupied with the criminal case of embezzlement of cash of Rs.14 lakhs belonging to Shanta Sriram Constructions. The criminal case was posted before the XV Metropolitan Magistrate, Cyberabad at Medchal, RR District for recording the evidence of the petitioner. On 6.3.2013 the petitioner's evidence was recorded by the said Court (copy annexed). The petitioner due to his pre-occupation with the legal proceedings in the criminal case mentioned above, could not pay his attention on this matter. The petitioner humbly submits that during the year 2013, the company Shantha Sriram Constructions Pvt. Ltd., was undertaking construction work at about 12 different sites at different locations and was also preparing ground work for entering into Development agreements at three new sites at Manikonda, Hyderabad, Blue Moon venture at Begumpet and Sunshine Venture, Gachibowli, Hyderabad. All such works were to be personally looked after by the Managing Director. The maintenance of the records of all the works was centralized at the registered office of the company and the Managing Director was not able to bestow his attention on other matters.*

*When the Assessing Officer issued letter dated 28.1.2014 regarding penalty proceedings u/s 271(1)(c) of the I.T. Act, the petitioner approached the Advocate on 24.2.2014 for preparation of appeal. When the Advocate has enquired about the status of appeal against the quantum, it was known that the order of the learned Commissioner of Income-Tax (Appeals) was not contested before the Hon'ble ITAT. Thereafter, on verification of the records in the office of the Shantha Sriram Constructions Pvt. Ltd., the order of the learned CIT (Appeals) was traced on 25.3.2014 and the appeal was got prepared on 26.3.2014 and the same was filed before the Hon'ble ITAT on 27.3.2014. The petitioner did not record the date of service of the order. Therefore, reckoning the date of the order of CIT (Appeals) as date of service, there is a delay of 395 days. The petitioner humbly submits that the delay is for the reasons submitted above which are beyond the control of the assessee and is not intentional. The petitioner, therefore, prays the Hon'ble ITAT to kindly condone the delay and pass appropriate order granting relief as prayed for.”*

3. On perusal of the assessee's application for condonation of delay supported by the affidavit of assessee, it is observed that the CIT(A) disposed of the order on 27/12/2012. The assessee stated in

the petition that during the relevant period i.e. January & February 2013, the petitioner was pre-occupied with the criminal case of embezzlement of cash of Rs.14 lakhs belonging to Shanta Sriram Constructions. The criminal case was posted before the XV Metropolitan Magistrate, Cyberabad at Medchal, RR District for recording the evidence of the petitioner. On 6.3.2013 the petitioner's evidence was recorded by the said Court (copy annexed). The petitioner due to his pre-occupation with the legal proceedings in the criminal case mentioned above, could not pay his attention on this matter. The petitioner humbly submits that during the year 2013, the company Shantha Sriram Constructions Pvt. Ltd., was undertaking construction work at about 12 different sites at different locations and was also preparing ground work for entering into Development agreements at three new sites at Manikonda, Hyderabad, Blue Moon venture at Begumpet and Sunshine Venture, Gachibowli, Hyderabad. All such works were to be personally looked after by the Managing Director. The maintenance of the records of all the works was centralized at the registered office of the company and the Managing Director was not able to bestow his attention on other matters.

4. We are of the view that the reasons mentioned in the petition for condonation are not convincing as the reasons mentioned for delay in filing the appeal before the ITAT are that the assessee's attention was diverted due to criminal cases and pre-occupation in the business activities. The criminal proceedings were over by 06/03/2013 but the delay beyond this day is pure negligence on the part of the assessee, the delay of which cannot be condoned as per the reasons mentioned in the petition. In this connection, we refer to the following judgments:

4.1 The Hon'ble Supreme Court in the case of Ramlal Vs. Rewa Coalfields Ltd., AIR 1962 SC 361 has held that cause for delay in filing the appeal which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of the

limitation provision. It is only where no negligence, or inaction, or want of bonafides can be imputed to the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice. But, where there is a gross negligence, inaction or want of bonafides on the part of the appellant, the provision to condone the delay in filing the appeal cannot be so liberally construed particularly in view of the fact that where the delay is of a substantial period.

4.2 The Hon'ble Apex Court in the case of Vedabai alias Vaijyanatabai Baburao Patil Vs. Shantaram Baburao Patil, (2002) 253 ITR 798 has held that though in exercising discretion, under section 5 of the Limitation Act, 1963, to condone the delay for sufficient cause in not preferring an appeal or other application within the time prescribed, the Court should adopt a pragmatic approach. A distinction must be made where the delay is inordinate and a case where the delay is of few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor and calls for a more cautious approach, but in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise its discretion on the facts of each case keeping in mind that in considering the expression "sufficient cause", the principle of advancing substantial justice is of prime importance. In this view of the matter, I have no hesitation in saying that where no negligence, or inaction, or want of bonafides can be imputed to the petitioner, a liberal consideration is to be given to the expression 'sufficient cause' while exercising a discretion to condone the delay in not preferring an appeal, but where there is a gross negligence, inaction or want of bonafides is prima-facie imputed on the petitioner, the provision to condone the delay cannot be so liberally construed, and more so where the delay is not of a few days only.

4.3 In this context, we may refer to a recent decision of ITAT, Chennai Bench "B" (TM) in the case of of JCIT Vs. Tractors & Farm Equipments Ltd., (2007) 104 ITD 149(Chennai) (TM) where the Third Member agreeing with the view of the Accountant Member and after deliberating upon the decision in the case of Srinvasa Charitable Trust Vs. DCIT, (2006) 280 ITR 357 (Madras), Vedabai alias Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil(supra), Collector Land Acquisition Vs. Mst. Katigi, (1987) 167 ITR 471(SC) and Rmalal V. Rewa Coalfields Ltd(supra) has held that there exists no sufficient and good reason for delay of 310 days and had thus observed as under:-

*"4. The learned counsel for the assessee vehemently relied on the decision of the Apex Court rendered in the case of Mst. Katiji (supra) wherein it was held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. In this case an appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose to the extent of nearly 14 lakhs rupees by making an upward revision of the order of 800 per cent which also raised important questions as regards principles of valuation was dismissed as time barred being 4 days beyond time by rejecting an application for condonation of delay. Hence, the Collector of Land Acquisition filed appeal by special leave before the Apex Court. The Hon'ble Supreme Court held that there is no warrant for according a step-motherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve litigant non-grata status. The courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which settles a decision on merits. On facts it was found that there existed sufficient cause for the delay.*

Therefore, the order of the High Court dismissing the appeal before it as time barred was set aside and the delay of 4 days was condoned.

5. In the case of Sreenivas Charitable Trust (*supra*) the assessee was a charitable trust. The copy of the order served on the assessee was misplaced and thereafter it was found and sent to the counsel for preparing the appeal and then the appeal was prepared and filed before the Tribunal and in that process the delay of 38 days occurred. The delay of 38 days was condoned by the Apex Court in view of the decision of the Apex Court rendered in the case of Vedabai alias Vaijayanatabai Baburao Patil (*supra*). In this case it was held that in exercising discretion under section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in considering the expression "sufficient cause", the principle of advancing substantial justice is of prime importance.

6. It is pertinent to note that in the case of Mst. Katiji (*supra*) the delay was only four days. In the case of Vedabai alias Vaijayanatabai Baburao Patil (*supra*) there was a delay of seven days in filing the appeal. In this case, the Apex Court clearly laid down that a distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. The law assists those who are vigilant, not those who sleep over their rights. This principle is embodied in the dictum: *vigilantibus non dormientibus jura subveniunt*.

7. The delay cannot be condoned simply because the appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay it must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The Hon'ble Supreme Court in the case of Ramlal Vs. Rewa Coalfields Ltd., AIR 1962 SC 361 has held that the cause for the delay in filing the appeal which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, nor inaction, or want of bonafides can be imputed

*to the appellant a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands.*

*8. In the present case, I find that the assessee justified the delay only with reference to the affidavit of Shri M.L.S. Rao, Director of the company. In the said affidavit Mr. Rao stated that the Commissioner (A)'s order was misplaced and forgotten. It was found while sorting out the unwanted papers. Thereafter steps were taken for the preparation of the appeal. Consequently the delay was caused. This clearly shows that the delay was due to the negligence and inaction on the part of the assessee. The assessee could have very well avoided the delay by the exercise of due care and attention. In my opinion there exists no sufficient and good reason for the delay of 310 days. I, therefore, concur with the reasonings adduced by the learned Accountant Member."*

4.4 The decision of ITAT, Chennai Bench (TM) (supra) is a decision of three Member Bench and, thus, it has binding force on the Division Bench consisting of two Members. In the case of DCIT Vs. Padam Prakash (HUF), (2007) 104 ITD 1(Delhi) (SB), the Hon'ble Special Bench has held that majority decision in the Third Member case is entitled to as much weight and respect as a decision of a Special Bench and it should be followed and applied by regular Benches and cannot be disregarded unless its views are contradictory to the decision of Special Bench constituted by the Hon'ble President u/s 255(3) of the Act. The relevant observation of the Hon'ble Special Bench, ITAT, Delhi, as extracted from the Head Note, is as under:-

*"The Delhi High Court in the case of P.C. Puri Vs. CIT(1985) 151 ITR 584 had clearly laid down that where decision is given by the Third Judge on account of difference between the two Judges hearing a matter, his opinion is decisive and, therefore, for that reason, decision by three Judges should be taken as decision by the Full Bench. Therefore, the majority decision in the Third Member case is entitled to as much weight and respect as a decision of a Special Bench and it should be followed and applied by regular Benches and cannot be disregarded. Further, from a reading of sub-section (3) and sub-section (4) of section 255, it is evident that the Special Bench can be constituted by the President under sub-section (3) of section 255. The purpose of constitution of a Special Bench is somewhat different from the purpose mentioned in sub-section (4) of section 255, namely, to resolve difference in opinion of*

*the members of the Bench by referring the point of difference to the Third Member for getting the majority view as envisaged in the provision. It is possible that on account of development in law, and several other reasons, facts and circumstances not considered by a Third Member, it becomes necessary for the President to constitute a Special Bench to consider the matter which was earlier considered by the Third Member. Hence, there is no impediment to the constitution of a Special Bench. Therefore, the decision of the Special Bench even of three Members is entitled to all the weight and must have precedence over the decision of a Third Member. Regular Benches are required to follow and act upon the decision of the Special Bench and in case its views are contradictory to the views of the Third Member, preference is required to be given to the Special Bench.*

4.5 The Hon'ble Supreme Court in the case of Basawaraj & Anr. Vs.The Spl. Land Acquisition Officer,(2013) 14 SCC 81 1 has held as follows:

*"5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.*

*6. Admittedly, there was a delay of 5-1/2 years in filing the said appeals under Section 54 of the Act before the High Court. The only explanation offered for approaching the court at such a belated stage has been that one of the appellants had taken ill.*

*7. Shri Patil, learned senior counsel, has taken us through a large number of judgments of the High Court wherein delay had been condoned without considering the most relevant factor i.e. "sufficient cause" only on the condition that applicants would be deprived of interest for the delay period. These kinds of judgments cannot be approved. The High Court while passing such unwarranted and uncalled for orders, failed to appreciate that it was deciding the appeals under the Act and not a writ petition where this kind of order in exceptional circumstances perhaps could be justified.*

*8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.*



*Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR 1995 SC 705, M/s. Anand Buttan Ltd. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab, AIR 2010 SC 1937).*

*9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v. Veena @ Bharti AIR 2011 SC 1150; and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629.)*

*10. In Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993 this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".*

*11. The expression "sufficient cause"*

should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: Madanlal v. Shyamlal, AIR 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., AIR 2002 SC 1201.)<sup>12</sup> It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. **The Court has no power to extend the period of limitation on equitable grounds.** "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.<sup>13</sup> The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. **According to Halsbury's Laws of England, Vol. 24, p. 181: "330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence". An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.** (See: Popat and Kotecha Property v. State Bank of India Staff Assn. (2005) 7 SCC 510; Rajendar Singh & Ors. v. Santa Singh & Ors., AIR 1973 SC 2537; and Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448).

14. In *P. Ramachandra Rao v. State of Karnataka*, AIR 2002 SC 1856, this Court held that **judicially engrafting principles of limitation amounts to legislating and would fly** in the face of law laid down by the Constitution Bench in *A. R. Antulay v. R.S. Nayak*, AIR 1992 SC 1701.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to

*approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. 16. In view of above, no interference is required with impugned judgment and order of the High Court. The appeals lack merit and are, accordingly, dismissed."*

4.5 Since, in the present case, the assessee could have very well avoided the delay by exercising of due care and attention at least after the month of March'2013, we are of the considered opinion that there exists no sufficient and reasonable cause for the delay of an inordinate period of 395 days and applying the principle laid down by Hon'ble Courts in the aforesaid decisions, we are not inclined to condone the said delay in filing the appeal before us. Accordingly, the appeal filed by the assessee is dismissed as barred by limitation.

5. In the result, the appeal of the assessee is dismissed in the manner as indicated above.

Pronounced in the open court on 9<sup>th</sup> September, 2016.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 9<sup>th</sup> September, 2016

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