

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'C' BENCH, KOLKATA**

**Before Dr. Manish Borad, Accountant Member  
&  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 92/KOL/2021  
Assessment Year: 2014-2015**

**&**

**I.T.A. No. 281/KOL/2021  
Assessment Year: 2014-2015**

***Deputy Commissioner of Income Tax,.....Appellant  
Circle-4(1), Kolkata,  
Aayakar Bhawan, 8<sup>th</sup> floor,  
P-7, Chowringhee Square,  
Kolkata-700069***

**-Vs.-**

***M/s. Manaksia Aluminium Co. Limited,.....Respondent  
8/1, Lalbazar Street, Bikaner Building,  
Kolkata-700001  
[PAN: AAGCM4560N]***

**Appearances by:**

*Shri Sunil Kr. Agarwala, CIT (DR), appeared on behalf of  
the Revenue*

*Shri Akkal Dudhwewala, A.R., appeared on behalf of the  
assessee*

**Date of concluding the hearing : July 26, 2023**

**Date of pronouncing the order : September 25, 2023**

**O R D E R**

**Per Dr. Manish Borad, Accountant Member:-**

These appeals at the instance of Revenue for assessment year 2014-15 are directed against the order of ld. Commissioner of Income Tax (Appeals)-22, Kolkata both dated 26<sup>th</sup> April, 2018, which are arising out of the order under section 143(3)/144C of the Act on 27.12.2017 framed by ld. DCIT, Circle-4(2), Kolkata.

2. We notice that both the instant appeals by Revenue are against the same order of ld. CIT(Appeals). Therefore, the later appeal bearing ITA No. 281/KOL/2021 is dismissed as infructuous.

3. The appeal bearing ITA Nos. 92/KOL/2021 has been filed before the Tribunal on 11.03.2021 and the Registry has pointed out that the appeal is time-barred by 975 days. In order to explain the delay, the Department in both the cases did not file any condonation petition.

4. On the other hand, ld. Ld. Counsel for the assessee contended that the Revenue should be more vigilant and should have filed the appeals within the time limit provided in the Act and placed reliance on judicial precedence.

5. With the assistance of the ld. Representatives, we have gone through the record carefully. We find that there is no proper

explanation offered by the Department for the delay in filing the appeal and the Department had miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay in filing the appeal. The Hon'ble Calcutta High Court in the case of *Principal CIT -vs.- Binani Industries Limited in IA No. GA/1/2018 (Old Nos. GA/639 & 640/2018), G.A./2/2018 (ITAT/65/2018)* vide judgment dated 23<sup>rd</sup> February, 2022 held as under:-

*"3. We have elaborately heard the learned Counsel for the parties and carefully perused the averment set out in the affidavit filed in support of the condone delay application giving certain reasons for condonation of delay. In the preceding paragraph while noting the fact we have taken note of the lack of explanation on the part of the department for not preferring the appeal within the time. The cumulative delay is more than twelve years. Though it can be stated that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold, we need to bear in mind the plight of the respondent when there is inordinate delay in preferring the appeal. Though it may not be required that every hour, every day, every week of the delay should be explained but the explanation offered for the delay should be reasonable and there should be sufficient cause for not being able to prefer the appeal within time. Each case has to be tested on its own facts. The length of delay at time is immaterial and even a meagre delay, would be refused to be condoned if it is established that for collateral purposes the appeal was presented belatedly. The case on hand unravels bureaucratic approach adopted by the department in handling the matter. The learned Counsel for the appellant would strenuously contend that substantial revenue is involved in the matter and, therefore, the Court should exercise discretion. The exercise of discretion has to be on reasonable basis and for us to do so, we have to examine the facts of each and every case. As pointed out earlier though the Ministry of Law, Justice and Company affairs had entrusted the matter to the learned panel counsel on 5-4-2006, the case papers were returned to the Ministry only on 19-1-2011 after more than five years. Though certain letters said to have been written by the erstwhile panel counsel have been referred to in the*

*affidavit filed by the department, the copies are not being enclosed along with the affidavit. In any event, those letters cannot in any manner advance the case of the department as it is the department who should have followed up the matter and ascertained the progress of the matter and they cannot shift the blame on the panel counsel who had initially been nominated to draft the Memorandum of appeal. Even thereafter there has been three other panel counsel who have been nominated and Mr. S.N. Dutta, is stated to be the fourth learned panel counsel, who has been now nominated in the matter. We fail to understand as to why Ministry of Law, Justice and Company affairs has complicated the entire process rather dealt with the matter in a very casual manner. It is not clear as to which of the empanelled counsel had drafted the Memorandum of Appeal and the affidavits which were given to the Ministry as the learned standing Counsel appearing in the matter before us today has not drafted the Memorandum of Appeal and affidavits. The draft Memorandum of Appeal and affidavits were submitted to the ministry for approval on 19-1-2012. The Ministry of law, Justice and Company affairs after perusal of the draft sent the draft to the Commissioner of Income Tax, Central -1 for their approval. It is only on 17-7-2017 the Principal Commissioner of Income Tax, Central - I, Kolkata had returned the approved drafts. The delay between 31-1-2012 and 17-7-2017 remain unexplained. Thus we are fully satisfied that this is not a case where any indulgence can be shown nor any discretion can be exercised by us.*

*For all the above reasons, the application for condonation of delay stands dismissed and consequently the appeal stands rejected.*

6. The Hon'ble Supreme Court vide judgment dated 24.02.2012 in the case of Office of the Chief Post Master General –vs.- Living Media India Limited in Civil Appeal Nos. 2474-2475 of 2012 [2012] 20 taxmann.com 347 (SC) held as under:-

*“13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government*

*departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.*

*14. In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs”.*

7. Recently Hon'ble Calcutta High Court in the case of Principal CIT –vs.- Smt. Uma Parasramka in IA No. GA/1/2022 & GA/2/2022 vide judgment dated 6<sup>th</sup> February, 2023 reported in [2023] 150 taxmann.com 485 (Calcutta) held as under:-

*“3. The delay in filing the appeal from 20th November, 2018 has not been explained. The averments are self serving and devoid of any substance. That apart, we find that the decision to file an appeal was taken by the department much after the decision of this Court in the case of Pr. CIT v. Swati Bajaj [2022] 139 taxmann.com 352/288 Taxman 403/446 ITR 56 (CAL.) 2022 in SCC Online Cal 1572. The appellant/department having not been diligent cannot now take advantage of the decision of Swati Bajaj {supra} and state that the delay of 1223 days has to be condoned. The law of limitation will not assist the person who is not diligent of his right. That apart, there is no separate law of limitation for the Government nor any latitude can be shown to the Government as the Government is as good as any other litigant and said to be the largest litigant.*

*4. Thus, for the above reasons, we are not persuaded to exercise in favour of the appellant/revenue. Consequently, the application for condonation of delay (IA No. GA/1/2022) is dismissed.*

5. *Consequently, the appeal filed by the revenue (ITAT/189/2022) stands rejected and the application for stay (IA No. GA/2/2022) also stands closed.*

8. By considering the totality of the facts and circumstances, we are of the view that the case on hand unravels shows that Department having not been diligent cannot take advantage of the decision of Swati Bajaj (supra) and the law of limitation will not assist the person who is not diligent of his right. That apart, there is no separate law of limitation for the Government nor any latitude can be shown to the Government as the Government is as good as any other litigant and said to be the largest litigation. Therefore, we do not deem it fit to condone the delay in filing of instant appeal. Thus Revenue appeal No. 92/KOL/2021 is dismissed being time-barred.

**9. In the result, both the appeals of the Revenue are dismissed.**

Order pronounced in the open Court on 25<sup>th</sup> September, 2023.

Sd/-  
**(Sonjoy Sarma)**  
**Judicial Member**  
**Kolkata, the 25<sup>th</sup> day of September, 2023**

Sd/-  
**(Manish Borad)**  
**Accountant Member**

*Copies to :(1) Deputy Commissioner of Income Tax,  
Circle-4(1), Kolkata,  
Aayakar Bhawan, 8<sup>th</sup> floor,  
P-7, Chowringhee Square, Kolkata-700069*

- (2) *M/s. Manaksia Aluminium Co. Limited,  
8/ 1, Lalbazar Street, Bikaner Building,  
Kolkata-700001*
- (3) *Commissioner of Income Tax (Appeals)-22,  
Kolkata;*
- (4) *Commissioner of Income Tax- ;*
- (5) *The Departmental Representative*
- (6) *Guard File*
- TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***