**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"A" BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**
**AND**
**SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

| ITA No.972/Bang/2024 |
|---|
| Assessment Year:2017-18 |

| M/s. S.J.S. Enterprises<br>Sy.Nos.28 P16 Agra Village<br>85 P6 BM Kaval Village Kengeri,<br>Hobli, Thatagunj BO Bangalore<br>South<br>Bangalore 560 082<br><br>**PAN NO : AAJCS0794B** | **Vs.** | ACIT<br>DCIT Circle-6(1)(1)<br>Bangalore |
|---|---|---|
| **APPELLANT** | | **RESPONDENT** |

| **Appellant by** | : | Sri Rony Anthony, A.R. |
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| **Respondent by** | : | Ms. Neha Sahay, D.R. |

| **Date of Hearing** | : | 27.06.2024 |
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| **Date of Pronouncement** | : | 27.06.2024 |

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against the order of NFAC for the assessment year 2017-18 dated 21.3.2024. The assessee raised following grounds:

1. *"That Learned Commissioner of Income Tax Appeals - Delhi ["Ld. CIT(A)"] has failed to properly appreciate the facts as explained in the application for condonation of delay and therefore was unjustified in rejecting the appeal.*

2. *The Ld. CIT(A) was unreasonable and grossly erred by not considering the merits of the case before rejecting the appeal.*

3. *The Ld. CIT(A) ought to have appreciated that intimation under section 143(1) of the Act [rectification order under section 154 of the Act dated 10 May 2019] does not survive after an order under section 143(3) of the Act is passed, hence he ought to have considered the appeal on merits as the grievance actually arose from the order passed under section 143(3) of the Act.*

4. *The Ld. CIT(A) was unreasonable by considering the appeal filed by the Appellant as infructuous without appreciating the fact that the rectification order passed by the Centralised Processing Center ("CPC") under section 154 is bad in law as the proceedings were already initiated by the Learned Assessing Officer ("Ld. AO") under section 142(1) of the Act.*

5. *The Ld. CIT(A) violated the principles of natural justice by making addition to the Income without providing an opportunity of being heard.*

6. *The Ld. AO was not justified, rather grossly erred by adding income under Business and Profession amounting to INR 1,50,87,482 relating to compensation towards compulsory acquisition of land.*

7. *The Ld. AO was not justified and rather grossly erred in calculating excessive interest under section 234B and 234C of the Act, on account of the aforesaid addition, and is therefore liable to be quashed."*

**2.** At the outset, it is observed that there was a delay of 1141 days in filing the appeal before NFAC against the assessment order dated 18.11.2019, which was passed u/s 143(3) of the Act. The assessee explained the delay before the NFAC as follows:

> *"That the appellant humbly submits before your goodself that since the company's accountant during the relevant financial year left the company without proper handover, the appellant inadvertently missed the assessment order received u/s 143(3) and hence could not file the appeal within the stipulated time."*

**2.1** The said delay has not been condoned by the NFAC on the reason that there was no reasonable cause for filing the appeal belatedly before the NFAC. Against this assessee is once again in appeal before us.

**3.** We have heard the rival submissions and perused the materials available on record. The reason given by the assessee for dalay is as follows:

> *"That the appellant humbly submits before your goodself that since the company's accountant during the relevant financial year left the company without proper handover, the appellant inadvertently missed the assessment order received u/s 143(3) and hence could not file the appeal within the stipulated time."*

**3.1** Before us, the assessee reiterated the submissions made before the NFAC. In our opinion, under similar circumstances, the assessee came in appeal before this Tribunal for the assessment year 2018-19 in ITA No.327/Bang/2024, the Tribunal vide order dated 29.5.2024 held as under:

*"**2.** The main issue in this appeal is dismissing the appeal by the NFAC without admitting the same on the reason that there was no "sufficient cause" for filing appeal belatedly before him. As per the order of NFAC, the intimation u/s 143(1) of the Act was passed on 10.6.2019 served on the assessee on the same day. The time limit available to the assessee to file appeal before NFAC was up to 10.7.2019. However, the appeal was filed on 3.2.2023. The assessee explained the delay as follows:*

> *"That the Appellant humbly submits before your goodself that since the company's accountant during the relevant financial year left the company without proper handover, the Appellant inadvertently missed the intimation order received u/s 143(1) and hence could not file the appeal within the stipulated time."*

***2.1*** *The NFAC observed that the delay was not bonafide and it was only on account of negligence on the part of assessee. The assessee has not made out a case of "sufficient cause" for filing the appeal belatedly and the inaction or negligence of the assessee would not constitute as a reasonable cause to file appeal belatedly before NFAC. Accordingly, appeal was dismissed. Against this assessee is in appeal before us. The assessee reiterated the reasons for filing the appeal before NFAC. First of all, the due date for filing the appeal before NFAC was 30 days from the date of receipt of order. In this case, the intimation passed u/s 143(1) of the Act was served on assessee on 10.6.2019 and the due date for filing the appeal before NFAC was 10.7.2019. However, the appeal was filed on 3.2.2023. The main plea of the assessee is that assessee's accountant during the relevant financial year left the company without proper handing over the assessment order to the assessee and the ld. A.R. also made a plea that during the Covid period in view of the judgement of Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022 and in Miscellaneous Application No.665 of 2021 in Suo Moto WP No.(C) No.3 of 2020 in Re: Cognizance of Limitation dated 10.1.2022, the delay from 15.3.2020 to 28.2.2022 was already condoned by the Hon'ble Supreme Court. Even after considering this judgement, the assessee has to explain the delay before the Covid period i.e. from 10.6.2019 to 14.3.2020 and thereafter after the Covid period from 1.3.2022 to 3.2.2023, which has not been explained by the assessee. The assessee is making a bald statement that its accountant has left the employment with the assessee. The assessee in its petition not named the person who is handing over this matter and when he has left the job and what are the responsibilities assigned to him. Without naming the concerned person who is in-charge of income tax matters, assessee made a bald statement, which cannot be believed as true.*

***3.*** *The ld. D.R. relied on the orders of the lower authorities.*

***4.*** *We have heard the rival submissions and perused the materials available on record. The assessee explained the delay in filing the appeals belatedly before NFAC in these cases as follows:*

> *"That the appellant humbly submits before your goodself that since the company's accountant during the relevant financial year left the company without proper handover, the appellant inadvertently missed the intimation order received u/s 143(1) and hence could not file the appeal with the stipulated time.*
>
> *We humbly pray before your goodself to be generous and accept our petition for condonation of delay for the captioned appeal."*

***4.1.*** *As seen from the above, assessee has stated that assessee was failed to take note of the various notices and orders sent by the department as the said notices and orders were received by assessee's accountant who left the job in middle without intimating about any communication from the department to the assessee. Hence, there was delay caused in filing all these appeals before NFAC against the assessment.*

***4.2*** *The assessee herein has made an affidavit on oath before NFAC without giving any details. According to ld. A.R., assessment order has been sent by NFAC to the e-mail address of assessee which was noticed by assessee's employee. Thereafter, he left the job in middle without informing to the assessee. The assessee made averments in a general way that the assessment order has been sent to e-mail of assessee which was unnoticed by assessee. This is only hearsay statement and no facts were verified whether true or not by concerned employee. It is to be noted that the assessee not mentioned the name of the employee, date of joining and date of leaving job or date of receipt of assessment order. In our opinion, provisions of Limitation Act must not be considered so liberally that it would have an effect of taking away the benefit accruing to the other party in the mechanical manner, where the legislature spells out a period of limitation and provides for power to condone the reasons supported by the cogent and proper evidence. It is settled principle of law that the provisions relating to specific period of limitation must be applied with their rigor and effective consequences.*

***4.3*** *At this stage, we may refer to decision in the case of CIT vs. Ram Mohan Kalra 257 ITR 773 (P&H). It was held in this case, that delay can be condoned only for sufficient and good reasons supported by cogent and proper evidence. In this case, Hon'ble High Court upheld the decision of ITAT refusing to condone delay of five days in filing of Revenue's appeal because of the reasons that (a) affidavit of person who was dealing with file, was not filed (b) the relevant records were not produced before the authorities concerned (c) affidavit filed on behalf of the applicant was based on hearsay and no facts were true to the knowledge of the person who filed the affidavit in support of the application for condonation of delay. In this case, Hon'ble Punjab and Haryana High Court held as under:*

> *"The provisions relating to prescription of limitation in every statute must not be construed so liberally that it would have the effect of taking*

*away the benefit accruing to the other party in a mechanical manner. Where the Legislature spells out a period of limitation and provides for power to condone the reasons supported by cogent and proper evidence. Now it is a settled principle of law that the provisions relating to specified period of limitation must be applied with their regour and effective consequences.*

> *In this regard, reference can be made to the latest law in the case of P.K. Ramachandran vs. State of Kerala, AIR 1998 SC 2276. The relevant portion reads as under:*
>
> *"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes 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."*

*Once the concerned authority applies its mind and declines to condone the delay in filing the appeal for good and appropriate reasons, in that event it cannot give rise to a question of law for determination.*

*It is clear from the impugned order that the authorities concerned have given three reasons for not condoning the delay.*

a) *Affidavit of person who was dealing with the file, was not filed.*
b) *The relevant records were not produced before the authorities concerned.*
c) *Affidavit filed on behalf of the applicant was based on hearsay and no facts were true to the knowledge of the persons who filed the affidavit in support of the application for condonation of delay.*

*It will be appropriate to refer to the findings recorded by the Ld. Tribunal in the impugned order, which reads as under:*

> *"It is quite clear that the Ld. Departmental Representative himself asked time to produce the relevant affidavit of the relevant person, i.e., 'receipt clerk'. Even at the time of reference application no such 'affidavit' is available. The Income-tax Appellate Tribunal has given finding of fact and as such no question of law arises out of the finding of the Income-tax Appellate Tribunal. The reference application filed by the Revenue is accordingly dismissed."*

*The Supreme Court of India in the case of Oriental Investment Co. Ltd. vs. CIT [1957] 32 ITR 664, AIR 1957 SC 852, held as under (857 of AIR 1957 SC):*

> *"A finding on a question of fact is open to attack under section 66(1) as erroneous in law if there is no evidence to support it or if it is perverse."*

*A full Bench of the Orissa High Court, in the case of Brajabandhu Nanda vs. CIT (1962) 44 ITR 668, considering a somewhat similar question where the appeal was barred by time and reference of the question was declined, held as under:*

> *"That the questions referred were not questions of law but questioners of fact since it was a matter of discretion for the Tribunal to condone delay for sufficient cause on the facts and circumstances of each case."*

*The consistent view is that such question would be a question of fact simpliciter and would not be covered under the provisions of section 256 of the Act unless such exercise of discretion or conclusion arrived at was perverse or so illogical that no reasonable person could come to such a conclusion. The authorities have exercised their discretion and we find nothing perverse in the impugned orders. Specific reasons have been given in the order which are not only logical but even reflect the conduct of the appellant before the authorities in not producing the record in spite of seeking time.*

*The authorities which are exercising quasi-judicial powers in discharge of their statutory functions, inevitably have to be vested with some element of discretion in exercise of such powers. Merely because another view was possible or permissible on the same facts and circumstances, per se would not make such controversy a "question of law". So far as such decision of the authority is in conformity to the principle of law and is apparently a prudent one, the court would normally be reluctant to interfere in such exercise of discretion."*

***4.4*** *Thus, in the present case on viewing the reasons advanced by the assessee, in our opinion, there is no proper explanation from the assessee's side for filing the appeals belatedly before NFAC. Leave alone "sufficient cause" the fact is that no cause has been advanced by the assessee for the delay. As there is no explanation for the delay, the appeal deserves to be dismissed in limine, being barred by limitation. In our opinion, it was only negligence on the part of assessee for the above inordinate delay. It was the utmost duty of the assessee to keep track of this matter of filing appeal before NFAC and this gross negligence on the part of assessee to keep track of this important matter cannot constitute "sufficient cause" for inordinate delay within the meaning of section 253(5) of the Act. In other words, the assessee acted in a non-challant way with lackadaisical propensity for delay and the grounds on which condonation of delay has been sought, not only lack bonafides completely, but also, are not only fanciful and seems to be fully concocted on over all consideration of the facts and circumstances of this case. This gross negligence*

*is absent from sufficient cause. The assessee seeking an unfettered free play in filing the appeal at whatever time it pleases even after substantial delay without sufficient cause. The assessee sought the condonation of delay on fanciful and without any reasonable grounds. We do not wish to promote the notion that this Tribunal is required to condone the delay in filing the appeal even when there is complete absence of "sufficient cause" for the delay. We wish to discourage the tendency of perceive delay as a non-serious matter. The lackadaisical propensity exhibited for delay in a non-challant way needs to be curbed as the facts and circumstances of the present case before us, when there is a complete absence of sufficient cause within the meaning of section 253(5) of the Act.*

***4.5*** *The guiding principles are: (a) that lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact; (b) that concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play; (c) that the conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration; (d) that if the explanation referred is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expos the other side unnecessarily to face Litigation; (e) that the entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception; and,(f) that the increasing tendency to perceive delay as a nonserious matter and hence lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed within legal parameters. If we apply these principles, are against assessee.*

***4.6*** *The plea of the assessee before us is that the Tribunal expected to be considered the condonation liberally so as to advance cause of justice. However, in our opinion, there was no proper reasons advanced by the assessee before us and the reason advanced by the assessee is not free from doubt as it is not supported by any positive materials to support the case of the assessee. The reason advanced by the assessee shows the negligence and reckless approach of the assessee, which cannot be considered as a reasonable cause/sufficient cause and this gross carelessness shown by the assessee could not be a ground for condonation.*

***4.7*** *It is well settled, that a mistake in order to justify condonation of delay, must be a bona fide mistake; It is not as if mistake of an employee, however, gross and inexcusable, will not entitle an assessee to condonation of delay in filing of appeal. The facts of the case are to be examined to ascertain if there had been negligence or gross want of skill, competence or knowledge on the part of the employee; or whether there was only a mistake that even a skilled employee, well-versed and experienced make that mistake. It is only in the latter case that an assessee may justifiably seek condonation of delay. In any case, the assessee, in the case before us, has not proved that the assessee's employee had indeed received assessment order or its employee not informed the assessee with regard to passing of orders by ld. AO. The assessee should establish that (a) the employee is a competent person; (b) that such employee had exercised reasonable care; (c) that the committed mistake by the employee was such as would have been committed by a competent person exercising reasonable skill. A confirmation from employee must be filed in writing; and if it was oral, then sufficient material should be made*

*available to establish that there was no negligence or want of reasonable skill on the part of the employee.*

***4.8*** *In view of the foregoing, we are of the unequivocal view, in the facts and circumstances of this case; that there was absence of "sufficient cause", within the meaning of Section 253(5) of I.T. Act, for not presenting the appeal within period referred to in Section 253(3) of I.T. Act, leading us unhesitatingly to reject assessee's request for condonation of delay in filing of this appeal within time prescribed U/s 253(3) of I.T. Act.*

***4.9*** *Further, at this stage, it is pertinent to mention the various precedents as follows:*

***4.9.1*** *Hon'ble Supreme Court in the case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd. (1962) 2 SCR 762, observed as under:*

*"In construing s.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. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed. The other consideration which can't be ignored is that if sufficient cause for excusing dela is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.IJ.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."*

***4.9.2*** *Further, Hon'ble Supreme Court in the case of P.K. Ramachandran Vs. State of Kerala & Anr. (1997) 7 SCC 556, wherein held as under:*

*"In the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously."*

***4.9.3.*** *Hon'ble Supreme Court in the case of Pundlik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project (2008) 17 SCC 448, held as under:*

*"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of*

*limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litjum", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."*

***4.9.4*** *Hon'ble Supreme Court in the case of Basawaraj and Anr. Vs. Special Land Acquisition Officer (2013) 14 SCC 81, held as under:*
*"The discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then Chere cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonati011 of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature."*

***4.9.5*** *Further, in the case of R. Ramakrishnan Vs. CBDT (2020) (422 ITR 257), wherein the Hon'ble High Court of Karnataka held as under:*
*"14. Undisputedly, the petitioner has not questioned the validity of para 8 of the Circular which relates to pending application as on June 9, 2015. The petitioner had submitted application on May 24, 2011 before the Central Board of Direct Taxes and it was pending consideration as on June 9, 2015, the date on which the circular was issued. As long as the petitioner has not questioned the validity of para 8 of the circular, the petitioner is not entitled for relief sought in the present petition. That apart, conduct of the petitioner is required to be taken into consideration for the purpose of deciding whether the petitioner is entitled for the relief in the present petition or not?*

*15. On August 24, 2005, assessment order was passed. Feeling aggrieved and dissatisfied in respect of a portion of the order, the petitioner had filed an application under section 264 and it was rejected on July 21, 2006. Thus, the petitioner had a cause of action with reference to the assessment year 2003-04 on or before March 31, 2010 which is the outer limit in terms of the circular dated June 9, 2015. The petitioner has slept over the matter from July 21, 2006 to May 24, 2011 for which the petitioner has not appraised this court by adducing any documentary evidence so as to examine whether delay could be condoned or not. Even for condoning the delay, para 8 of the circular would be a hurdle which is not questioned by the petitioner. The cited decisions has no assistance to the petitioner having regard to the factual aspect of the present matter. The petitioner has not*

*explained the inordinate delay and laches from July 21, 2006 to May 24, 2011. The cited decision in the case of Dr. Sujatha (supra) was within the time limit in terms of circular dated June 9, 2015. As regards Dr. Sudha's case is concerned, matter relates to refund of tax deducted at source. In view of these facts and circumstances and preceding analysis, the writ petition stands dismissed."*

***4.9.6*** *Hon'ble Karnataka High Court in the case of Praxair India (P) Ltd. Vs. CIT 78 CCH 70 (Karn.), held as under:*
*"9. If the Tribunal had exercised its discretion to appreciate the explanation offered by the petitioner-company in its appeal before the Tribunal for condoning the delay and found there was no sufficient cause made out by the petitioner and had consequently dismissed the application seeking for condonation of delay and as a sequel of the dismissal of the application and also the appeal. We do not find any illegality in the order of the Tribunal. The Tribunal is justified in observing as to in what manner the petitioner-company runs its business is its own concern and that cannot be accepted as a legitimate or bona fide reason for seeking a delay of 229 days in preferring the appeal.*

*10. That apart, though it is sought to be urged that the petitioner-company was genuinely ignorant of the order of the Commr. having come into existence, as the said Priyaranjan was on contract basis in the services of the petitioner-company and he left the job and his whereabouts were not known and such circumstances are sought to be urged as a factor which should have. been taken into consideration, to condone the delay and to entertain the appeal and though it is also urged by Ms. Shwetha, learned counsel for the petitioner that pendency of similar matters before the Tribunal involving the very question is another ground, because of which the delay application should have been ordered in favour of the petitioner-company, we find that it is not the same as to hold that the Tribunal has committed an illegality in passing the impugned order and also to hold that the Tribunal should have condoned the delay, warranting interference in writ jurisdiction. If the Tribunal has exercised its discretion for the purpose of condoning the delay in preferring an appeal and on taking into consideration the explanation offered by the petitioner/appellant and consciously holds that a case for condonation is not made out, which conclusion even in an view is not an unreasonable conclusion then in a matter like this we are very clear that in the exercise of a jurisdiction under Arts. 226 and 227 of the Constitution of India, such an order cannot be quashed or set aside."*

***4.9.7*** *In the case of Catholic Syrian Bank Ltd. & Ors. Vs. DCIT (2018) 54 CCH 228 (Coch. Trib), where in it was held as under:*
*"There were no affidavits from the concerned persons who are handling the impugned issues and who are required to take proper steps in filing the appeals before the CIT(A). The reason as come out from the condonation petitions filed by the assessee, is that there was transfer of the officer who was handljng the issue. We cannot accept such proposition as it cannot be considered as good and sufficient reason to condone the delay. It was submitted that the delay is to be condoned since the issue on merit covered in favour of the assessee. This submission ignores the fact that the object of the law of limitation is to bring certainty and finality to litigation. Merely because the assessee is not vigilant, it cannot follow that the assessee is*

*bestowed with a right to the delay being condoned. We are conscious of the fact that the period of limitation should not come as a hindrance to do substantial justice between the parties. However, at the same time, a party cannot sleep over its right ignoring the statute of limitation and without giving sufficient and reasonable explanation for the delay, except its appeal to be entertained merely because the assessee is a Bank. Appeals filed beyond a period of limitation have been entertained by us where the delay has been sufficiently explained such as in cases of bonafide mistake. Thus, the assessee should be well aware of the statutory provisions and the period of limitation and should pursue its remedies diligently. It cannot expect their appeals be entertained because they are after all the assessee, notwithstanding the fact that delay is not sufficiently explained. Hence, the delay is not condoned and the appeals are unadmitted.*

*(Para 6)"*

***4.9.8*** *In the case of T. Kishan Vs. ACIT (2012) 32 CCH 463, where in it was held as under:*

*"There is no hard and fast rule which can be laid down in the matter of condonation of delay and Courts should adopt a pragmatic approach and discretion on the facts of each case keeping in mind that in considering the expression 'sufficient cause' the principles of advancing substantial justice is of prime importance and the expression 'sufficient cause' should receive a liberal construction. A liberal view ought to be taken in terms of delay of few days. However, when there is inordinate delay, one should be very cautious while condoning the delay. The delay of 2491 cannot be condoned simply because the assessee'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 assessee was diligent and was not guilty of negligence whatsoever. The sufficient case 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 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. WOere no negligence, nor inaction, or want of bona fides can be imputed to the assessee a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands. In the present case, the reasons advanced by the assessee do not show any good and sufficient reason to condone the delays. The delays are not properly explained by the assessee. There is no reason for condoning such delay in this case. The delay is nothing but negligence and inaction of the assessee which could have been very well avoided by the exercise of due care and attention. There exists no sufficient or good reason for condoning inordinate delays of more than 2491 days in filing appeal. Accordingly, this appeal is dismissed as barred by limitation. Accordingly, condonation of delay of 2491 days was declined, and dismiss this appeal of the assessee as barred by limitation."*

***4.9.9*** *Further, in the case of State of Uttar Pradesh & Ors. Vs. M/s. Satish Chand Shivhare and Brothers (2022) LiveLaw (SC) 430, where in it was held as under:*

*"22. When consideration of an appeal on merits is pitted against the rejection of a meritorious claim on the technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards 'sufficient cause' to condone the delay. The Court considering an application under Section 5*

*of the Limitation A may also look into the prima facie merits of an appeal. However, in this case, the Petitioners failed to make out a strong prima facie case for appeal. Furthermore, a liberal approach, may adopted when some plausible cause for delay is shown. Liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is glimsy. The Court should not wave limitation for all practical purposes by condoning inordinate delay caused by a tardy lackadaisical negligent manner of functioning.*

*23. It is true that the High Court has rejected the appeal on the misconceived ground that delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act is not condonable beyond 120 days by relying upon a two Judge Bench judgment of this Court in N.V. International v. State of Assam and Ors.* [2]*, which has since been overruled by a three Judge Bench of this Court in Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited* [1] *.*

*24. Mr. Rana Mukherjee, Senior Advocate appearing on behalf of the Petitioners strenuously argued, and rightly, that the High Court had erred in holding that delay beyond 120 days in filing an appeal under Section 37 of the Arbitration and Conciliation Act was not condonable.*

*25. This Court is, however, not inclined to entertain this Special Leave Petition since the Petitioners have failed to show sufficient cause for the condonation of the inordinate delay of 337 days in filing the Appeal in the High Court. Moreover, there are no grounds for interference with the arbitral award impugned."*

***4.9.10*** *Further, in the case of Vama Apparels (India) (P) Ltd. Vs. ACIT reported in (2019) 102 taxmann.com 398 (Bombay), Hon'ble Bombay High Court held as under:*

7. *"Having heard the learned counsel for the applicant and having perused the documents on record, we do n find that the applicant has appropriately explained the delay which is of 507 days. We are not insisting on the applicant explaining each day of delay. Nevertheless, when the delay is substantial, at least a proper explanation for the bulk of the period should be necessary. In the present case, principally, the explanation of the applicant, as noted above is that the ex-employee who received the order of the Tribunal put it in his drawer and left the company without intimating anybody. It was only about a month before filing or the appeal when his substitute new employee found the papers from the drawer.*

8. *For multiple reasons, this explanation does not inspire confidence. We had inquired with the learned counsel for the applicant why the ex-employee had not filed affidavit. It was stated that he was a part time employee and now having left the service was not traceable. It is intriguing that the applicant- company had entrusted such an important task of receiving Court's order to a part time employee whose whereabouts within short time of his leaving the service are not be available with the company. Further, there are inconsistencies in the declaration made by and on behalf of the applicant. 111 the present Motion, Mrs. Jaya Patel, the director of the company states that she came to know about the Tribunal's order on 30.5.2018.*

*It is also stated, as noted earlier, that the new employee Mr. Naidu was the first one to tumble upon the, order lying in the drawer of the previous employee. The applicant has filed affidavit of said Mr. Naidu who states that he had found the order of the Tribunal on 8.8.2()18 and showed the same to Mrs. Jaya Patel who was surprised to see it as she was not shown the same earlier.*

9. *We also notice that on 26.10.2016 when the Tribunal heard the appeal, it was the husband of the director of the company who was present before the Tribunal and who even going by the account of the deponent, was heard by the Tribunal on appeal despite his reluctance. If that is so, nothing prevented the appellant company and its officials from making inquiries with the Tribunal through their Tax Practitioner to 'find out the outcome of the appeal.*

*10. All in all, we do not find that the explanation rendered is either sufficient or one which would inspire confidence. Under these circumstances, Notices of Motions are dismissed."*

***4.9.11*** *Further, in the case of Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors. In Civil Appeal No.7696 of 2021 dated 16.12.2021, their Lordship relied on various judgements as under:*

*a) In the case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd. (1962) 2 SCR 762*
*b) P.K. Ramachandran Vs. State of Kerala and Anr., (1997) 7 SCC 556*
*c) Pundlik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project (2008) 17 SCC 448*
*d) Basawaraj and Anr. Vs. Special Land Acquisition Officer (2013) 14 SCC 81.*

***4.9.12*** *In the case of Majji Sannemma @ Sanyasirao cited (supra) the Hon'ble Supreme Court held as under:*

*"8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos. 1 and 2 herein — appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1 011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos. I and 2 herein — original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.*

*9. In view of the above and for the reasons stated above, the present Appeal is Allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos. 1 and 2 herein is hereby quashed •and set aside. Consequently, Second Appeal No.331 of 2021 preferred by respondent Nos. I and 2 herein stands dismissed on the ground of delay. The present appeal is accordingly allowed. However, there shall be no order as to costs."*

***4.10*** *In view of the above, we are of the opinion that assessee was not able to establish "sufficient cause" for filing the appeals belatedly before the NFAC and the assessee has made very bald and general statement that the orders of the lower authorities were delivered to the e-mail address of the assessee and it was taken note by assessee's employee who has left the job in middle without informing his principal that causes the delay, without furnishing name and address of that person and the details that when he has left his job with the assessee. Being so, we are not in a position to consider the reason advanced by assessee as good and sufficient so as to condone the delay in filing the appeal before NFAC. Accordingly, this appeal deserves to be dismissed in limine without admitting the same.*

***5.*** *In the result, appeal of the assessee is dismissed."*

**3.2** Since the facts and circumstances of the present case are similar that was considered by the Tribunal for the assessment year 2018-19 cited (supra), on the same reasons, this appeal of the assessee is unadmitted and dismissed in limine.

**4.** In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 27th June, 2024

**Sd/-**
**(Prakash Chand Yadav)**
**Judicial Member**

**Sd/-**
**(Chandra Poojari)**
**Accountant Member**

Bangalore,
Dated 27th June, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

**Asst. Registrar,**
**ITAT, Bangalore.**