

## Condonation of delay - Principles emerging from judicial precedents

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### Rano Jain

Ex-ITAT Member, Senior Partner at Ved Jain and Associates

Various statutes provide various authorities with the power to condone the delays in circumstances where statutory limits have been provided. Income Tax Act has also provided for such situations. Law of limitation has always been an integral part of any law. It is observed that short delays are always perceived by the authorities liberally, however, huge delays are always dealt with very harshly. In a recent judgement, in the case of *M/S vs. ITO* [\[TS-250-HC-2017\(MAD\)\]](#), Hon'ble Madras High Court held the action of ITAT in not condoning a delay of 1631 days on the part of assessee in filing the appeal as bad.

### THE CASE

Appeal against the order of the CIT, denying registration under section 12A of the Act, was filed before the ITAT, after an '*enormous*' delay of 1631 days. Application for condonation of delay was filed, signed by the Authorized Representative, without enclosing the affidavit of the assessee. In this background, the appeal was dismissed by the ITAT, in limine, without giving any finding on the merits of the case. The reason for delay stated in the application for condonation, as also reiterated before the hon'ble High Court was that the assessee, in the absence of a good legal advice by a counsel, who did not even know that an appeal against the said order lies with the ITAT, got the appeal filed late.

### VERDICT

On the issue of condonation application filed without affidavit, the hon'ble High Court was generous enough to assume that the application was filed on the instruction of the assessee only. Further, on the averment made by the assessee that it was ill advised by the counsel, whose name the counsel could not take before the hon'ble court, the same was taken to be true by the court as the name of the Chartered Accountant was appearing in the petition.

In the background of this factual matrix, hon'ble High Court proceeded to answer the question '*can a litigant be prejudiced on account of, virtually, ignorance of law displayed, by a professional engaged by him, to prosecute his case before the appropriate forum?*'

In the later part of the judgement, hon'ble High Court, relying on a landmark judgement of the Apex Court, in the case of *Motilal Padampat Sugar Mills vs. State of U.P.*, AIR 1979 SC 621, for the proposition that though ignorance of law cannot be an excuse, there cannot be a presumption that everyone knows the law, condoned the delay and sent the matter back to the ITAT to decide the issue on merits. Apart from the fact of the ill advice, another factor, which weighed in favor of the assessee, was the observation of the court, that even if the assessee succeeds on merits; no detriment would be caused to the revenue.

## **ANALYSIS**

It has been consistently held by the Hon'ble Apex Court in a number of cases that in the matter of condonation of delay, a liberal and pragmatic view should be taken by the Courts. Further, it is also equally well settled that when technicalities and substantial justice are pitted against each other, the Court will always lean in favor of substantial justice. The Income Tax Act has surely provided a limit for filing the appeal before the Income Tax Tribunal. However, as per provisions of section 253(5), the I.T.A.T. has also been given powers to condone the delay. In this way, the discretion has been given to the I.T.A.T. to condone the delay in cases where sufficient cause is proved by the defaulter.

In the case of Vedabai alias Vijayanatabai Baburao Patil Vs. Shantaram Banurao Patil & Ors. [[TS-5051-SC-2001-O](#)], the Hon'ble Supreme Court held as under:

*'In exercising discretion under s. 5 of the Limitation Act, 1963, to condone delay for sufficient cause in not preferring an appeal or other application within the period prescribed, 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 consideration of prejudice to the other side will be a relevant factor and calls for a more cautious approach, 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 construing the expression 'sufficient cause' the principles of advancing substantial justice is of prime importance. The expression 'sufficient cause' should receive a liberal construction.'*

In the case of Bharat Auto Center Vs. CIT [[TS-5625-HC-2005\(ALLAHABAD\)-O](#)], the Hon'ble Allahabad High Court observed that *the law of limitation is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

Further, in the case of Collector, Land Acquisition & Anr. vs. Mst. Katiji & Ors. (1987) 62 CTR (SC)(Syn) 23 : 1987 (28) ELT 185 (SC), the Supreme Court held that *the legislature has conferred the power to condone delay by enacting s. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserve the ends of justice that being the life-purpose for the existence of the institution of Court.*

## **CONCLUSION**

There can be no denial to the fact that the main reason to put a period of limitation to any legal procedure is to maintain the discipline and to avoid the legal chaos. However giving authorities the power to condone delay is mainly to avoid unnecessary hardship to the subjects and also to avoid the denial of justice on account of technicality.

The inclination of the courts have always been in condoning such delays if the delays are small, however larger delays have always been seen with apprehension. One common factor coming out of the most of the judicial precedents are that the courts have always been in favor of the doctrine that substantive justice should not be denied to a subject on account of such latches. Another important factor considered by courts in most of the cases is the resultant prejudice caused to the other party. In case no prejudice is caused to the other party, the courts lean in favor of the party praying for condonation. Under the Income Tax proceedings where such delays occur on the part of the assessee, the courts are liberal since the other party is always the state, hence no personal prejudice is caused by such condonation. In this view, on many occasions courts have also come very heavily, in cases where the department asks for delay to

be condoned, as this act of delay is seen as negligence on the part of government officials

It is observed, however, in all the cases, the term 'sufficient cause' plays a very important role. In fact it is this term which gives the courts discretion to an extent. Since what may be construed as sufficient to one may not be sufficient in the eyes of another. Still in such a scenario, it becomes the duty of the person requesting for condonation to demonstrate the cause for delay to be sufficient, it should be a genuine reason, not on account of negligence or for some superfluous reason.