

IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION (INCOME TAX)  
ORIGINAL SIDE

IA NO. GA/1/2020  
(Old No: GA/1043/2020)  
In  
ITAT/31/2020  
PRINCIPAL COMMISSIONER OF INCOME TAX-15,KOLKATA  
Vs  
DINESH KUMAR BANSAL (HUF)

IA NO. GA/2/2020  
(Old No: GA/1044/2020)  
In  
ITAT/31/2020  
PRINCIPAL COMMISSIONER OF INCOME TAX-15,KOLKATA  
Vs  
DINESH KUMAR BANSAL (HUF)

IA NO. GA/1/2021  
In  
ITAT/3/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX SILIGURI  
Vs  
NEETU AGARWAL

IA NO. GA/2/2021  
In  
ITAT/3/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX SILIGURI  
Vs  
NEETU AGARWAL

IA NO. GA/1/2021  
In  
ITAT/34/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX 13  
KOLKATA  
Vs  
SMT GANAPATI DEVI AGARWAL

IA NO. GA/2/2021  
In  
ITAT/34/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX 13  
KOLKATA  
Vs  
SMT GANAPATI DEVI AGARWAL

IA NO. GA/2/2021  
In  
ITAT/36/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX SILIGURI  
Vs  
NITIN KUMAR AGARWAL

IA NO. GA/1/2021  
In  
ITAT/36/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX SILIGURI  
Vs  
NITIN KUMAR AGARWAL

IA NO. GA/1/2021  
In  
ITAT/78/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-5,KOL  
Vs  
SUNITA GOYAL

IA NO. GA/2/2021  
In  
ITAT/78/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-5,KOL  
Vs  
SUNITA GOYAL

IA NO. GA/1/2021  
In  
ITAT/80/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX KOL 5  
Vs  
RANJIKA GUPTA

IA NO. GA/2/2021  
In  
ITAT/80/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX KOL 5  
Vs  
RANJIKA GUPTA

IA NO. GA/1/2021  
In  
ITAT/130/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA  
Vs  
KRISHNA KUMAR PARSURAMKA

IA NO. GA/2/2021  
In  
ITAT/130/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA  
Vs  
KRISHNA KUMAR PARSURAMKA

IA NO. GA/1/2021  
In  
ITAT/150/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX 9,  
KOLKATA  
Vs  
PUSPA DEVI TIKMANI

IA NO. GA/2/2021  
In  
ITAT/150/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX 9, KOLKATA  
Vs  
PUSPA DEVI TIKMANI

IA NO. GA/1/2021  
In  
ITAT/151/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
GOPAL PRASAD TIKMANI

IA NO. GA/2/2021  
In  
ITAT/151/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
GOPAL PRASAD TIKMANI

IA NO. GA/2/2021  
In  
ITAT/152/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
M/S GITESH TIKMANI HUF

IA NO. GA/1/2021  
In  
ITAT/152/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
M/S GITESH TIKMANI HUF  
IA NO. GA/1/2021

In  
ITAT/153/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
M/S. GOPAL PRASAD TIKMANI HUF

IA NO. GA/2/2021  
In  
ITAT/153/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
M/S. GOPAL PRASAD TIKMANI HUF

IA NO. GA/1/2021  
In  
ITAT/154/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
GITESH TIKMANI

IA NO. GA/2/2021  
In  
ITAT/154/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA  
Vs  
GITESH TIKMANI

IA NO. GA/1/2021  
In  
ITAT/155/2021  
PR CIT 9, KOLKATA  
Vs  
MANISHA TIKMANI

IA NO. GA/2/2021  
In  
ITAT/155/2021  
PR CIT 9, KOLKATA  
Vs  
MANISHA TIKMANI

IA NO. GA/2/2021  
In  
ITAT/156/2021  
PR CIT 9 KOLKATA  
Vs  
GIRISH TIKMANI

IA NO. GA/1/2021  
In  
ITAT/156/2021  
PR CIT 9 KOLKATA  
Vs  
GIRISH TIKMANI

IA NO. GA/2/2021  
In  
ITAT/157/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX 9 KOLKATA  
Vs  
M/S GIRISH TIKMANI HUF

IA NO. GA/1/2021  
In  
ITAT/157/2021  
PRINCIPAL COMMISSIONER OF INCOME TAX 9 KOLKATA  
Vs  
M/S GIRISH TIKMANI HUF

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 25<sup>th</sup> March, 2022.

Appearance:

Mr. Smarajit Roychowdhury, Adv.

Mr. Tilak Mitra, Adv.

Mr. Soumen Bhattacharjee, Adv.

Mr. Vipul Kundalia, Adv.

Mr. Om Narayan Rai, Adv.

Mr. Prithu Dudheria, Adv.

... for the appellants

Mr. Subash Agarwal, Adv.

... for the respondents

The Court : In all these applications the revenue has sought for condonation of delay in filing the appeals before this Court under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) challenging the orders passed by the Income Tax Appellate Tribunal, Kolkata (the Tribunal).

2. For the purpose of disposal of the applications filed under Section 5 of the Limitation Act, it may not be necessary to go into the factual aspects nor as to what would be the relevant assessment year which was subject matter before the Tribunal. Equally the length of delay may also not be very relevant factor as the submissions have been made on either side on the issue as to whether the Court should exercise discretion in condoning the delay in filing the appeals before this Court. There are cases where delay is only 90 days, there are also cases where delay is more than 300 days. As has been settled in various decisions, length of delay is always not a very relevant factor as even a meagre delay if shown to be on account of certain *mala fide* reasons, the Court will refuse to exercise discretion and will dismiss the applications. In other cases, where delay is substantial, the Court finds that sufficient cause has been shown and for reasons to be assigned will exercise discretion and condone the delay.

3. The case of the revenue is that the matters which are subject matter of the appeal are popularly known as 'Penny Stock Cases' and the Tribunal has granted certain relief to the assessee largely following the decision in *Swati Bajaj* and in the case of *Manju Agarwal vs. ITO* in *ITA No. 2662/Kol/2018* and other similar cases. In some of the impugned orders, there has been findings rendered by the Tribunal on the facts of the particular case but we find in most of the cases the Tribunal has merely extracted its earlier decisions and granted relief to the assessee. As we are considering the applications filed under Section 5 of the Limitation Act, we refrain from going into the merits of the decision taken by the Tribunal and we shall enter into

the merits only, if we are satisfied that the delay in filing the appeal has to be condoned.

4. The learned standing counsel appearing for the revenue contends that the cases on hand expose a large financial scam which is not only confined to Kolkata but it is spread over throughout the country. In this regard, learned standing counsel places reliance on the report of the Principal Director of Income Tax (Investigation), Kolkata dated 27.04.2015. This report is pressed into service to show that large scale financial scam had taken place and SEBI has also suspended the scripts of various companies in which the assessees had effected transactions and by providing bogus accommodation entries of long term capital gain/short term capital gain, substantial loss has been caused to the revenue which is as of now is conservatively estimated as more than Rs.38,000 crores. Therefore, it is submitted that the Court should take all these factors and exercise discretion and condone the delay. Further it is submitted that the Hon'ble Supreme Court in miscellaneous application No.21 of 2022 in Suo Motu Writ Petition (C) No. 3 of 2020 by order dated January 10, 2022 clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation prescribed under various enactments for the purpose of instituting proceedings before various forum. It is submitted by learned standing counsel that though in some of the cases the benefit of the order passed by the Hon'ble Supreme Court may not be directly applicable, yet the Court can take into consideration that on account of the pandemic situation, the Hon'ble Supreme Court has excluded the period from 15.03.2020 till 28.02.2022 for the purpose of computing limitation for filing petitions or appeals etc. Therefore, it is submitted that a

broader view may be taken in the matter, considering the sensitivity of the issue and wide ramification which has been brought out on account of the investigation, which is still in progress.

5. The learned standing counsel places reliance on the decision of the Hon'ble Supreme Court in *McDowell & Company Limited vs. Commercial Tax Officer* reported in *AIR 1986 SC 649* for the proposition that tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. Further it is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.

6. The learned standing counsel has also placed reliance on the decision of the High Court of Madras in the case of *The Commissioner of Income Tax, Chennai vs. Manish D. Jain (Huf)* in *TCA No. 223 of 2020* dated 16.12.2020 and *CIT vs. Pinky Devi* in *TCA No. 181 of 2020* dated 23.03.2021. Reference was also made to the order passed by this Court in the case of *PCIT vs. Sonal Saraf* in *ITAT 58 of 2021* dated 16.11.2021 wherein this Court condoned the delay of 750 days in filing the appeal by the revenue. Therefore, it is submitted that the Court should exercise discretion in the cases on hand and condone the delay.

7. Mr. Subash Agarwal, learned counsel appearing for the respondent/assessee submitted that the delay though may be 90 days or more than 300 days may not be relevant as the assessees have been precluded from exercising their rights under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 and such right could have been exercised by the



assessee, had the revenue filed appeal within the period of limitation or within the period when the scheme under the Act was in vogue i.e. up to 31<sup>st</sup> January, 2020. Therefore, it is submitted that such valuable right of the assessee has been taken away resulting in prejudice to the assessee and this factor needs to be borne in mind by this Court while considering the application for condonation of delay. Learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of *Balwant Singh vs. Jagdish Singh and others* reported in *AIR 2010 SC 3043* for the proposition that once a valuable right has accrued in favour of the party as a result of the failure of the other party to explain the delay by showing sufficient cause it will be unreasonable to take away that right on the mere asking of the applicant particularly when the delay is directly a result of negligence, default or inaction of that party. Reliance was also placed on the decision in the case of *Tamil Nadu Mercantile Bank Limited vs. Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai and others* in *MANU/TN/0726/1989* for the proposition that on account of the delay, the valuable rights of the respondent would be affected and there can be no pre-supposition that no prejudice would be caused by condonation of the delay. Reliance was also placed on the decision of the Hon'ble Supreme Court in *Office of the Chief Post Master General and others vs. Living Media India Ltd. and others* in *MANU/SC/0132/2012* wherein it was held that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available as the law of limitation undoubtedly binds everybody including the Government. Learned counsel also referred to the decision of

this Court in the case of *PCIT vs. Nitu Agarwal* in *ITA No. 4 of 2021* dated 10.12.2021 and submitted that in the said case there was delay of 331 days in filing the appeal by the revenue which was dismissed by taking note of the fact that the assessee could not avail the benefit of the Vivad Se Vishwas scheme. Further learned counsel submitted that though the revenue has produced a report of the investigation being of the Department, there is nothing to indicate that the assessees have been shown to be scamsters or involved in the process of defrauding revenue and therefore, the said investigation report is of little significance so far as the assessees are concerned who are generally medicore persons who have made small investments and probably might have earned little or negligible profits and therefore, the Court may not exercise discretion in condoning the delay in filing these appeals.

8. We have elaborately heard learned counsels for the parties and perused the materials placed on record. The celebrated decision of the Hon'ble Supreme Court in the case of *Collector Land Acquisition, Anantnag and another vs. Mst. Katiji and others* reported in *AIR 1987 SC 1153* is one of the earliest decisions where the expression 'sufficient cause' was explained. It was pointed out that the said expression is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice, that being the life-purpose for the existence of the institution of the Courts. Further it was pointed out that it is common knowledge that this Court has been making a justifiably liberal approach in matters instituted before the Hon'ble Supreme Court and also the other hierarchy of Courts and such liberal approach is adopted on various principles. In the said decision, the

principles have been enumerated. The sum and substance of the principles laid down is that, refusing to condone the delay can result in meritorious matter being thrown out at the very threshold and cause of justice will be defeated. Every day's delay must be explained does not mean that a pedantic approach should be made. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. There is no presumption that delay is occasioned deliberately. The judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. The Courts have taken note of these decisions and have consistently adopted the same approach and the bottom line of the decisions is that the facts of each case has to be considered before either condoning or refusing to condone the delay.

9. Bearing such legal principle in mind, we proceed to examine as to whether the delay in filing the appeals by the revenue has to be condoned or not. Undoubtedly, investigation has been commenced by the Income Tax Department and a report has been drawn during April, 2015. We are informed that the investigation is still in progress. Parallely the assessing officers throughout the country have been making assessments on the assesseees who had effected transactions. In these penny stock companies, some of the assessments have attained finality, some are pending as appeals before the appellate authority or the Tribunal or the respective High Courts.

10. In the background of these facts, we have to take note of not only the length of the delay, but the overall facts and circumstances leading to such delay. In many of the matters before us, the tax effect may be less than

the threshold limit fixed by the CBDT for pursuing appeals by the Department. The Department initially, applying the Circular, did not prefer appeals. It is much later CBDT clarified and issued further instruction that insofar as the penny stock matters irrespective of tax effect appeals have to be preferred. The object underlying such decision cannot be ignored as it is represented before us that investigation reveals large scale financial scam throughout the country. If such is the fact situation, the Court cannot be put under shackles on technical grounds. The case of the assessee as submitted by learned counsel for the respondent is that had the appeal been preferred within the period of limitation, the assessee would have exercised their right under the Vivad Se Vishwas scheme and would have purchased peace by remitting the tax as quantified. This having not been done, the assessee would submit that a valuable right or in other words vested right has been impinged.

11. The settlement scheme was introduced pursuant to an Act of Parliament called the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020). It was an Act to provide for resolution or disputed taxes and for matters connected therewith or incidental thereto. The assessee seeks to bring his case under proviso to Section 3 of the Act which provides that in a case where an appeal or writ petition or special leave petition is filed by the income tax authority or any issue before the appellate forum, the amount payable shall be one-half of the amount in the Table mentioned in Section 3, in such manner as may be prescribed. It is submitted that the scheme came to close as on 31.01.2020 and thereafter the assessee cannot avail the benefit of the scheme. Thus, it is submitted that by filing the above appeal belatedly, this valuable/vested right of the assessee has been taken away.

12. In our considered view, the first question would be as to whether a right to avail the benefit of settlement scheme is a valuable or vested right. Undoubtedly, the scheme has been brought about bearing in mind various factors. There is no compulsion on the assessee to avail the benefit of the scheme as it is purely optional. Therefore, an assessee may choose or may not choose to avail the benefit of the scheme. The assessee has filed an affidavit stating that she was advised to avail the benefit of scheme in the event the revenue prefers an appeal before this Court against the decision of the Tribunal which was in favour of the assessee. We cannot examine the case on abstract propositions or what would have been the intention of the assessee. On careful reading of all the provisions of Act 3 of 2020, it is clear that the benefit provided is optional, an assessee exercising such option is not automatically entitled to the benefit under the scheme and the authority is empowered to consider and refuse to entertain the application for reasons to be assigned. Section 9 has also enumerated the cases where the Act will not apply. Thus, on a complete reading of Act 3 of 2020 it is clear that the scheme propounded therein not only is optional but can never construed to be a vested or a valuable right. Therefore, on the assessee contemplating of going under the scheme cannot be said to have suffered prejudice only because the revenue preferred the appeal belatedly as we find the scheme does not confer any vested right on the assessee.

13. The learned counsel for the assessee placed reliance on the order passed by this Court in the case of *Nitu Agarwal (supra)*. In the said decision, the revenue had not placed any submission as to the effect of the provisions of Act 3 of 2020 nor there was any dispute raised on the submission of the

assessee that they wanted to avail the benefit of the scheme. In any event it is an order passed in a miscellaneous application refusing to exercise discretion and the same cannot be treated as precedent as each case has to be considered on the facts and circumstances contained therein.

14. Upon going through the affidavits filed in support of the applications and bearing in mind the facts and circumstances set out above, we are satisfied that the revenue has shown sufficient cause for not being able to prefer the appeal within the period of limitation.

15. Thus, we are of the considered view that cause of justice would be served if the delay in filing the appeal is condoned and the appeals are heard on merits so that the Court can consider as to whether any substantial question of law arises for consideration.

16. For all the above reasons, the applications are allowed and the delay in filing the appeal is condoned.

17. List the appeals on 18<sup>th</sup> April, 2022 under the same heading.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)