

## HC condones delay in filing appeal on demise of assessee's mother

**Summary – The High Court of Bombay in a recent case of Anant B. Shinde (HUF), (the Assessee) held that where assessee against assessment order dated 21-12-2009 filed appeal before Commissioner (Appeals) on 15-11-2010 and sought condonation of delay stating that (i) his mother was not keeping good health for last many years and died on 23-12-2008, and (ii) he was only person to look after his mother, delay in filing appeal deserved to be condoned.**

### Facts

- The Assessing Officer passed the assessment order on the assessee on 21-12-2009. Against the impugned order, the assessee filed an appeal before the Commissioner (Appeals) belatedly on 15-11-2010. He filed an application for condonation of delay stating that (i) his mother was not keeping good health for last many years and died on 23-12-2008, and (ii) he was only person to look after his mother and after her death was not in proper state of mind for long time resulting in delay in filing the appeal.
- The Commissioner (Appeals) rejected the application for condonation of delay and accordingly dismissed the appeal as time barred.
- On second appeal, the Tribunal held that the assessee had not given cogent reasons for condonation of delay and he had been negligent. It accordingly upheld the order of the Commissioner (Appeals).
- On appeal to High Court:

### Held

- It is true that the assessee's mother died on 23-12-2008 and the assessment order was passed on 21-12-2009. Therefore, there was considerable time gap between two events. Similarly the appeal was filed on 15-11-2010. However, each person reacts differently to the shocks which life administers from time to time. There can be no uniform standard of reaction by all persons to the unfortunate events.
- In the peculiar facts and circumstances of the case, the Commissioner (Appeals) as well as Tribunal ought to have taken the liberal view and condoned the delay in filing the appeal. Even if the Commissioner (Appeals) was not satisfied with the ground set out in the appeal memo at the time of filing the appeal, he should have called upon the consultant appearing for the assessee before him to explain the delay, as there was gap of almost one year between the death of the assessee's mother and the date of the assessment order. This does not appear to have been done. In the peculiar facts and the circumstances of the case, interests of justice would be served if delay is condoned and the appeal is heard on merits by the Commissioner (Appeals) subject to payment of costs.

- Therefore, the orders passed by the appellate authorities were liable to be set aside and matter required to be restored to the file of the Commissioner (Appeals) for decision on merits.