

## Delay of 318 days in filing appeal couldn't be condoned without furnishing sufficient reasons: HC

**Summary – The High Court of Bombay in a recent case of Lata Mangeshkar Medical Foundation, (the Assessee) held that Period of limitation should not come as an hindrance to do substantial justice between parties; however, at same time, a party cannot sleep over its right ignoring statute of limitation and without giving sufficient and reasonable explanation for delay, expect its appeal to be entertained merely because it is a State**

### Facts

- The Commissioner (Exemption) had prayed for condonation of 318 days delay in filing two appeals against order passed by the Tribunal.
- The impugned order dated 15-4-2016 was received by the Principal Commissioner on 5-7-2016. Thereafter, on 11-7-2016 it was forwarded to the Commissioner (Exemptions). Thereafter, the papers were transferred/handed over by it to the office of the Deputy Commissioner (Exemptions), On 21-9-2016 the Deputy Commissioner prepared his report which was approved by Joint Commissioner. Thereafter, sent on 29-9-2016 to the Commissioner (Exemptions). On receipt of the above reports, he forwarded it to the Chief Commissioner, New Delhi for approval which approval from the Commissioner, Delhi was received by on 29-5-2017. Thereafter, this appeal was filed on 20-7-2017.
- The Commissioner (Exemptions) submitted that the tax effect involved was over Rs. 6 crores for the assessment year 2009-10 and over Rs. 3.4 crores for the assessment year 2008-09. Thus, he prayed that the delay be condoned and appeals be heard on merits.

### Held

- There is no proper explanation for the delay on the part of the Commissioner. In fact, the affidavit, dated 16-9-2017 states that, he handed over the papers to his subordinate *i.e.* the Deputy Commissioner. This is also put in as one of the reasons for the delay. This even though when they appear to be a part of the same office. In any case, the date on which it was handed over to the Deputy Commissioner (Exemptions), Circle, Pune is not indicated. Further, the affidavit dated 16-9-2017 also does not explain the period of time during which the proposal was pending before the Chief Commissioner, Delhi for approval. The Chief Commissioner is also an Officer of the department and there is no explanation offered by the Chief Commissioner at Delhi or on his behalf, as to why such a long time was taken in approving the proposal. Infact, there is even no attempt to explain the same. The Commissioner being a Senior Officer of the revenue would undoubtedly be conscious of the fact that the time to file the appeals was running against the revenue and there must be averment in the application of the steps he was taking to expedite the approval process. Further, there is no proper explanation for the delay after having received the approval from the Chief

Commissioner of Delhi on 29-5-2017. No explanation was offered in the affidavits dated 16-9-2017 for having filed the appeal on 20-7-2017 *i.e.* almost after two months. The additional affidavits also does not explain the delay except stating that the Advocate to whom the papers were sent for drafting asked for some document without giving particulars. Thus, the reasons set out in the Affidavits and additional Affidavits in support were not sufficient so as to condone the delay in filing the accompanying Appeal.

- The officers of the revenue were conscious of the time for filing the appeal. This is particularly so as on an average over 2000 appeals every year from the order of the Tribunal is filed by it before this Court. In spite of the above, said callous delay. Thus, the delay could not be condoned.
- The reasons as come out from the Affidavits filed is, that the work takes time and, therefore, the period of limitation imposed by the State should not be applied in case of revenue's appeal where the tax effect involved is substantial. Such a proposition could not be accepted as it would be contrary to the law laid down by the Apex Court that there is no different period of limitation for the State and the citizen.
- One more submission made on behalf of the revenue is that, the assessee have been served and they have chosen not to appear. Therefore, it must necessarily follow that they have no objection to the delay being condoned and the appeal being entertained. Thus, it is submitted that the delay be condoned and the appeal be heard on merits. This submission ignores the fact that the object of the law of limitation is to bring certainty and finality to litigation. This is based on the *Maxim 'interest reipublicae sit finis litium'* *i.e.* for the general benefit of the community at large, because the object is every legal remedy must be alive for a legislatively fixed period of time. The object of law of limitation is to get on with life, if you have failed to file an appeal within the period provided by the Statute; it is for the general benefit of the entire community so as to ensure that stale and old matters are not agitated and the party who is aggrieved by an order can expeditiously move higher forum to challenge the same, if he is aggrieved by it. As observed by the Apex Court in many cases, the law assist those who are vigilant and not those who sleep over their rights as found in the *Maxim 'Vigilantibus Non Dormientibus Jura Subveniunt'*. Therefore, merely because the assessee does not appear, it cannot follow that the revenue is bestowed with a right to the delay being condoned.
- The period of limitation should not come as an 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, expect its appeal to be entertained merely because it is a State. Appeals filed beyond a period of limitation have been entertained, where the delay has been sufficiently explained such as in cases of bona fide mistake, *mala fide* action of the Officer of the State etc; however, to seek that the period of limitation provided in the statute be ignored in case of revenue's appeals cannot be accepted. The appeals which are filed by the revenue in this Court under section 260A of the Act are very large in number and on an average over 2000 per year from the orders of the Tribunal. Thus, the officers of the

revenue should be well aware of the statutory provisions and the period of limitation and should pursue its remedies diligently and it cannot expect their appeals be entertained, because they are after all the State, notwithstanding the fact that delay is not sufficiently explained.