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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 24.11.2023**Judgment pronounced on: 12.12.2023*

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ITA 371/2022 & CM APPL. 42496/2022PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Ms Hemlata, Jr. Standing Counsel for
Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

VERSATILE POLYTECH PVT. LTD.

..... Respondent

Through: Mr Gaurav Jain and Mr Shubham,
Advs.

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ITA 526/2022 & CM APPL. 53804/2022PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Ms Hemlata, Jr. Standing Counsel for
Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

VERSATILE POLYTECH PVT. LTD.

..... Respondent

Through: Mr Gaurav Jain and Mr Shubham,
Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]**



GIRISH KATHPALIA, J.:

CM APPL. 42496/2022 in ITA 371/2022

CM APPL. 53804/2022 in ITA 526/2022

1. By way of these two applications, filed under Section 5 Limitation Act, the appellant/revenue sought condonation of delay in re-filing the respective appeals as captioned after removal of defects raised by the Registry of this court. Despite the original filing of these appeals being beyond prescribed period of time, no specific application for condonation of delay in filing the appeals was filed with either of these appeals. Vide order dated 19.12.2022, learned counsel for the appellant/revenue sought and was allowed to file an affidavit containing better particulars to explain the delay between the date of the receipt of the impugned orders and institution of the earlier appeals (*which were dismissed as withdrawn on 12.02.2021*), and the delay which occurred thereafter. Accordingly, two affidavits, both dated 17.05.2023 were filed in these appeals.

2. We heard learned counsel for both sides and examined the records mainly on the aspect of delay in original filing of these present appeals, before considering the delay in re-filing the same after removal of Registry objections.

3. Both these appeals brought under Section 260A of the Income Tax Act by the revenue assail the common order dated 15.03.2019 of the Income Tax Appellate Tribunal, whereby appeals of the revenue against the assessee



(respondent herein) pertaining to the Assessment Years 2009-10 and 2014-15 were dismissed. The appeal registered as ITA 371/2022 was instituted on 27.05.2022, while the other appeal registered as ITA 526/2022 was instituted on 20.05.2022 in the Registry of this court, as per filing logs.

4. In the affidavits dated 17.05.2023, filed in each of these appeals, it is stated on behalf of revenue that a copy of the impugned common order dated 15.03.2019 was received in the office of PCIT (Central-2) on 11.04.2019, and on 06.08.2019 scrutiny of the impugned order was done by the CIT to decide as regards filing of the appeal; that on 08.08.2019, draft appeal was sent to the Standing Counsel and the same was received back on 03.10.2019; that on 14.10.2019, after signatures, Memo of Appeal was sent to the Standing Counsel for being filed; that on 12.02.2021, on account of technical defect, this court allowed the appellant/revenue to withdraw the appeal with liberty to file fresh appeal; that on 06.01.2022 legal opinion of the Standing Counsel was sought and the same was received by the revenue on 10.01.2022 for filing of a fresh appeal; that on 09.03.2022, the impugned order was scrutinized by the CIT, and Standing Counsel was asked to prepare draft appeal; that on 03.05.2022, draft appeal was received from the Standing Counsel and on 05.05.2022 the Memo of Appeal was signed and sent back to the Standing Counsel, who filed the same on 27.05.2022. As mentioned above, even after 27.05.2022 there were repeated filing objections from the Registry, which objections were removed with further delays and ultimately the appeals were listed for first hearing on 27.09.2022 and on 13.12.2022.



5. During arguments on the issue of condonation of delay in filing these appeals, learned counsel for appellant/revenue took us through the above mentioned dates and stages, contending that this is a fit case to condone delay in filing these appeals. It was also submitted by learned counsel for appellant/revenue that while considering the sufficiency of cause explaining the delay, the court ought to be liberal keeping in mind that the appellant is a government machinery. On the other hand, learned counsel for respondent/assessee strongly opposed the request for condonation of delay, pointing out that not only there is no sufficient cause but even there is no formal application seeking condonation of delay in filing these appeals.

6. We are of the considered view that the appellant/revenue ought to have filed a formal application seeking condonation of delay so as to enable the rival side effectively respond, which was not done. But that in itself cannot be a ground to throw out the appeals as time barred. If from material available on record the court is satisfied that an appellant was precluded by a sufficient cause from filing the appeal within prescribed period, the delay can be condoned even on oral request. It is against this backdrop that the appellant/revenue was allowed to file affidavits as detailed above. The question is as to whether the dates and stages enlisted in the said affidavits successfully set up a case that there was sufficient cause which precluded the appellant/revenue from filing the appeals within the prescribed period.

7. At this stage, it would be apposite to briefly traverse through the relevant legal position.



7.1 As stipulated in Section 260A(1) of the Act, from every order passed by the Income Tax Appellate Tribunal, an appeal shall lie to the High Court if the High Court is satisfied that it involves a substantial question of law. The provision under Section 260A(2) of the Act mandates that the revenue or the assessee, aggrieved by any order passed by the Tribunal may file an appeal to the High Court within 120 days from the date on which the order appealed against is received by the aggrieved party. By way of Finance Act, 2010, brought into effect from 01.10.1998, sub-section (2A) was inserted in Section 260A of the Act and the same lays down that the High Court may admit an appeal after expiry of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within time. As held in plethora of judicial pronouncements dealing with the provision under Section 5 Limitation Act, the expression “sufficient cause” must be construed liberally in favour of the defaulting applicant so that the dispute could be decided as far as possible on merits and not on defaults. It has also been held in various precedents that in cases involving governmental bodies the court must keep in mind that owing to the impersonal State machinery, delays and defaults on the part of government must be accepted with latitude to a certain extent.

7.2 At the same time, law on the expression “sufficient cause” while dealing with limitation questions evolved also to the extent that the concepts of liberal interpretation and substantial justice cannot be over stretched to render the law of limitation otiose, especially where the court finds absolutely no justification for the delay in question. While looking for “sufficient cause” as an explanation of delay, the court must bear in mind that expiration of limitation period for filing an appeal gives rise to a



substantive right in favour of the successful litigant to treat the subject order or decree as final and binding between the parties.

7.3 The condonation of delay being the discretionary power, the exercise of discretion must be guided by sufficiency of cause and degree of acceptability of the explanation irrespective of the length of delay, in the sense that for want of sufficient cause or an acceptable explanation, delay of shortest period may not be condoned while if the explanation is satisfactory and acceptable, long delay of years can be condoned. The court must keep in mind the distinction between an “explanation” and an “excuse”. An explanation is designed to give someone all of the facts and lay out the cause for something, and it helps to clarify the circumstances of a particular event, allowing the person to point out that something which has happened is not his fault. Between “explanation” and “excuse”, there is a distinction which, though fine, is real. An “excuse” is often offered by a person to deny responsibility and consequences when under attack and it is sort of a defensive action. Calling something as just an “excuse” would imply that the explanation proffered is believed not to be true.

7.4 In the case of *Finolux Auto Pvt. Ltd. vs Finolex Cables Ltd.*, 136 (2007) DLT 585 (DB), a Division Bench of this court held thus:

*“6. In this regard, we may refer to a decision of the Supreme Court in P.K. Ramachandran vs State of Kerala, IV(1997) CLT 95 (SC). In the said decision, the Supreme Court has held that **unless and until a reasonable or satisfactory explanation is given, the inordinate delay should not be condoned.** In para 6 of the judgment, the Supreme Court has laid down in the following manner:*

“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.”*
(emphasis is ours)

7.5 In the case of ***Pundlik Jalam Patil (dead) by LRs vs Executive Engineer Jalgaon Medium Project***, (2008) 17 SCC 448, while dealing with the issue of condonation of delays on the part of the governmental bodies in filing the appeals, the Supreme Court held thus:

*“31. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such. **It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings”.***

(emphasis is ours)

7.6 The concepts of “liberal approach” and “reasonableness” in the exercise of discretion by the courts in condoning delay were again considered by the Hon'ble Supreme Court in the case of ***Balwant Singh(dead) vs Jagdish Singh & Others***, (2010) 8 SCC 685, holding thus:



“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction is normally to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the rights and obligations of party to arise. These principles should be adhered to and applied appropriately depending upon the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of failure of the other party to explain the delay by showing sufficient cause and its own conduct, 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. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

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35. The expression “sufficient cause” implies the presence of legal and adequate reasons. The word “sufficient” means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men.

36.The party shows that besides acting bonafide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it would have been avoided by the party by the exercise of due care and attention.”

(emphasis is ours)

7.7 In the case of **Union of India vs C.L. Jain Woollen Mills Pvt. Ltd.**, 131 (2006) DLT 360, one of the arguments of the applicant Union of India seeking condonation of delay in filing the appeal was that the power to



condone delay has been conferred to do substantial justice and the court should adopt a liberal approach and the delay resulting from official procedures should normally be condoned. This court rejected the argument, placing reliance on the judgment in the case of **P.K. Ramachandran** (supra) and observed that although the provisions under Section 5 Limitation Act have to receive liberal construction, but the court cannot ignore the fact that where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner without disclosure of good and a sufficient cause for condonation of delay.

7.8 As regards the delays in appeals filed by the government departments on account of impersonal official machinery, this court dealt with the issue in the case of **Union of India vs Wishwa Mittar Bajaj & Sons**, 141 (2007) DLT 179 and held thus:

“41. It is well settled that administrative delays which are urged by the respondents have to be properly and adequately explained. Negligence or indifference on the part of the authority or its officers in pursuing a matter cannot be condoned simply because the applicant is a State or government undertaking. The law of limitation remains the same and certainly there cannot be two laws, one governing the State and the other governing individuals. Cryptic and routine explanations for condonation of delay cannot be accepted as adequate explanation or sufficient cause for condonation of delay. (Re: DDA vs Ramesh Kumar) This Court in several judgments has noted the manner in which matters are proceeded with utmost casualness on the part of the State and its officials. In this behalf, in a decision rendered on 2nd December, 1988 reported as UOI vs Mangat, noticing the judgments of the Apex Court where delay was condoned observed thus:

“4. ...The Supreme Court was thus concerned with isolated cases of said aberrations. What we are facing in this Court is a spate of delayed appeals without any proper



and convincing explanation or even an attempt in doing so. It is a common experience of Benches of this Court that the condonation applications are in a cyclostyled form and only the dates and days are filled in hand. The stay applications are also mechanically drafted and are in one standard cyclostyled form. Usually, the appeals are filed with defects. After the Registry points out the defects, the defects are not removed for months together. We do not think that the Supreme Court judgments can be usefully availed of by the Union of India in the colossal situation of negligence and delays as we find in this Court. In fact, it appears that the liberal approach of the higher courts and the understanding of the difficulties of the Government departments shown by the courts have not been appreciated in its proper perspective by the Government departments. Nobody in the Government Department feels any responsibility or takes any responsibility for the delay caused in the movement of files. There is no conscious and systematic efforts to keep the deadline of limitation in view and to speed up the disposal at various stages. If a serious effort is made in the Government Departments to fix the responsibility on the persons causing delay the present sorry state of affairs can be rectified substantially within short time. Occasionally, important questions of law or principles of compensation or heavy financial stakes are involved in land acquisition matters. The agencies of the Government involved in the acquisition, unfortunately, seems to be completely oblivious of these considerations. In some cases there is great urgency of acquisition of land for urgent developmental projects. They are likely to be frustrated by the habitual negligence of Government departments.

5. The practical problem in the day to day cases is how to reconcile the two principles laid down by the Supreme Court, namely - (i) the doctrine of equality before law demands that all litigants including the State as litigant should be accorded the same treatment and the law is administered in an even-handed manner, and (ii) it would perhaps be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. The Supreme Court in the judgments referred to above had observed that the State should not be given step-motherly treatment. If all the petitions of condonation of delay filed in the large number of cases are to be



accepted, as requested by the Government Advocate, a citizen would naturally complain that the State is being given a 'son-in-law' treatment. In *State of M.P. & Ors vs Vishnu Prasad Sharma & Ors.* AIR 1996 SC 1593 at page 1598 the three Judges Bench of the Supreme Court observed: "In interpreting these provisions the court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent." The Supreme Court further held: "the provisions of the statute must be strictly construed as it deprives a person of his land without his consent." A golden rule for reconciliation of these conflicting considerations would be to use the discretion with common sense. Extreme positions of either not condoning the delay howsoever negligible it may be or to condone the delay howsoever large and unjustifiable it may be should be avoided. The discretion has to be exercised on the basis of the facts of each case with common sense and public interest in view."
(emphasis is ours)

7.9 Recently, in the case of *The State of Madhya Pradesh vs Bherulal*, (2020) 10 SCC 654, the Hon'ble Supreme Court observed thus :

"3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in *Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.* (2012) 3 SCC 563 where the Court observed as under:

"27) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a



wing of the Government is a party before us.

28) *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. **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.** The law of limitation undoubtedly binds everybody including the Government.*

29) *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red- tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few”.*

(emphasis is ours)

7.10 Most recently on 23.08.2023 this court in the case of **Principal Commissioner of Income Tax-4 vs National Fertilizers Ltd**, 2023:DHC:6017-DB recapitulated the legal position as discussed above, observing that despite anguish expressed by courts at all levels through various judicial pronouncements, no change in the work attitude of the officials of some of the government departments has taken place. It was further held that the legislature under Section 260A of the Act has already granted comparatively much longer period of 120 days to the aggrieved



party to file an appeal, which in itself is a factor calling for a rather stricter scrutiny of the factual matrix set up by the delayed appellant in order to explain the delay in filing the appeal.

8. Falling back to the present case, copy of the impugned common order dated 15.03.2019 having been admittedly received in the office of PCIT (Central-2) on 11.04.2019, the limitation period to file these appeals expired on 09.08.2019, while the present appeals were filed on 27.05.2022. According to the appellant/revenue, earlier also it had filed appeals against the presently impugned common order but the same were withdrawn with liberty to file fresh appeals. The said earlier appeals were signed according to the appellant/revenue on 14.10.2019 for being filed. However, the appellant/revenue did not disclose in their affidavits the dates when those earlier appeals were filed. Here, it would be significant to keep in mind that the unfortunate pandemic of Covid-19 commenced in India much later in the month of March, 2020.

9. The lack of sincerity, or rather complete absence thereof on the part of appellant/revenue in this case is glaringly conspicuous by their having not even filed an application seeking condonation of this colossal delay of about 03 years in filing these appeals, that too despite having faced a situation where they had to withdraw the earlier appeals and were granted liberty to file afresh. Apparently, the appellant/revenue remains under mistaken impression that being government department, all its laxities deserve to be ignored by the court. At the same time, we are also unable to clearly read in or rule out a conscious decision on the part of the responsible quarters of



revenue to extend covert advantage to the assessee by filing the appeals with inordinate delay and that too, without any application seeking condonation of the delay. Be it the former or the latter, we find no reason in the present case to extend any further latitude to the appellant/revenue at the cost of frustration of the assessee, who certainly had reasons to believe across this period of three years that the revenue had accepted the decision of the Tribunal.

10. The circumstances enumerated in the affidavits dated 17.05.2023 of the appellant/revenue as aforesaid, sound merely an “excuse” and not an “explanation” of delay. As discussed hereafter, none of the dates and stages recorded above can be accepted by any stretch of imagination as disclosure of factors beyond the control of the revenue and thereby sufficient cause which led to delay in filing the appeals.

10.1 As mentioned above, even according to the appellant/revenue, the copy of the impugned common order was received in the office of PCIT (Central-2) on 11.04.2019; that being so, limitation period to file these appeals was to expire on 09.08.2019, but for reasons best known to the revenue and not disclosed before this court, scrutiny of the impugned common order was done only on 06.08.2019. And thereafter, just a day before expiry of limitation period, a draft was sent to the Standing Counsel on 08.08.2019. Even thereafter, the draft appeal was received back by the revenue after an unexplained hiatus of two months on 03.10.2019.

10.2 Further, according to the appellant/revenue, after signatures the memo



of appeal was sent to the Standing Counsel on 14.10.2019 for being filed in court. It has not been disclosed as to when the said earlier appeals were filed, though it has been stated by appellant/revenue that the said appeals were withdrawn on 12.02.2021 with liberty to file fresh appeals. As reflected from order dated 12.02.2021, when counsel for the appellant/revenue sought permission to withdraw those appeals with liberty to file afresh, learned counsel for the respondent/assessee strongly objected to grant of liberty, but the coordinate bench was pleased to allow liberty to file the appeals afresh on account of technical defects in those appeals. Despite having withdrawn those appeals in such circumstances on 12.02.2021, the appellant/revenue filed the present appeals after a delay of more than one year on 27.05.2022.

10.3 Coming to the explanation of time spent between 12.02.2021 (*when earlier appeals were withdrawn*) and 27.05.2022 (*when the present appeals were filed*), the explanation rendered on behalf of the appellant/revenue is that after withdrawal of the earlier appeals, it is only on 06.01.2022 that legal opinion of the Standing Counsel was sought. There is not even a whiff of explanation as to why it took almost one year for the appellant/revenue to seek legal opinion from Standing Counsel, that too when earlier the appeals had already been filed but had to be withdrawn merely on account of technical defect.

10.4 Further, after obtaining the legal opinion on 10.01.2022, it took further two months for the CIT to scrutinize the impugned common order on 09.03.2022 so as to direct the Standing Counsel to prepare draft appeal. The



said draft appeal also took another period of 02 months for being placed before the concerned officer of the revenue for signatures and the same was filed on 27.05.2022. There is not even a whisper, explaining the delays on these stages as well, especially in the light of the previous stages enumerated above.

10.5 Evidently, in the name of submitting through affidavits the sufficient cause to explain delay in filing the appeals, the appellant/revenue has presented merely a chronology of dates and stages, that too with prolonged vacuum periods. The same cannot be treated as an explanation of delay, much less setting up of circumstances which were beyond the control of the appellant/revenue, thereby precluding it from filing the appeals in time.

11. In the said affidavits dated 17.05.2023, on behalf of the appellant/revenue it was stated that for calculating the period of limitation, COVID-19 period from 15.03.2020 to 28.02.2022 is liable to be excluded. But in our view, this benefit is not applicable in the present case. By way of order dated 10.01.2022 passed in the *Suo Motu Writ Petition(C) No. 03/2020*, titled ***In re: Cognizance for Extension of Limitation***, the Supreme Court *inter alia* directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings, whereas in the present case, as mentioned above, the prescribed period of limitation had already expired on 09.08.2019, i.e., much prior to the applicability period of the said order dated 10.01.2022 of the Supreme Court.



12. Although the appellant/revenue did not specifically plead, we also examined if the delay in filing of these appeals could be attributed to the generalised paralysis of movements and functions on account of pandemic of Covid-19. But the present case does not fall even in that category. As mentioned above, the limitation to file appeals in order to assail the impugned common order dated 15.03.2019 (*copy whereof was received by the appellant/revenue on 11.04.2019*) expired on 09.08.2019, by which date nobody across the world had, even in his wildest apprehension, thought of such global pandemic. For the first time, it was in the month of March, 2020 that vide circular dated 13.03.2020 of this court an Advisory was issued towards commencement of restricted functioning of courts in Delhi. By way of Office Order dated 23.03.2020, the Administrative and General Supervision Committee of this court suspended the functioning of this court and the subordinate courts of Delhi till 04.04.2020. Thereafter, the suspension of work was extended periodically by way of various officer orders and circulars. The said suspension of work was tapered down and gradually complete functioning of the courts resumed. Across major part of this period, Registry of this court remained functioning and in any case, online filing of cases continued. Finally, with effect from 31.08.2021 even physical hearings in this court were resumed vide office order dated 19.08.2021. The present appeals, as mentioned above were filed on 20.05.2022 and 27.05.2022. Therefore, on this count also, we are unable to find any ground to exercise discretion of condonation of delay in favour of the appellant/revenue.



13. There is another aspect relevant in order to ascertain the diligence or lack thereof on the part of the appellant/revenue in filing these appeals. Had the earlier filed appeals (*which were dismissed as withdrawn on 12.02.2021*) been filed within the prescribed period of limitation or there was some sufficient cause to explain delay in those earlier appeals, situation could have been different. But the appellant/revenue in their affidavits dated 17.05.2023 did not even disclose the date of filing of those earlier appeals. From records of Registry it is found that those earlier appeals were filed on 09.02.2021, i.e., much subsequent to expiry of the limitation period. Even if Covid-19 lockdown is kept in mind, it started much later on 15.03.2020 as narrated above, i.e., much later than expiry of limitation period (*which expired on 09.08.2019*). The appellant/revenue has failed to disclose any sufficient cause for not having filed these appeals during the period from 09.08.2019 to 15.03.2020.

14. We also examined if the delay, despite being such a colossal one be condoned in case there is some merit in the main appeals. But on this aspect also we would be guided by the view taken by the apex court in the case of ***Bherulal*** (supra) that the proposition is preposterous that if there is some merit in the case, the delay is to be given a go-by. As observed in the said case, the irony is that no action is taken against the officers who sit on files and do nothing under presumption that the court would condone delay in routine and it is time when the concerned officers responsible for such laxity bear the consequences. This court, in the case of ***National Fertilizers*** (supra) before parting had even recorded an expectation that all the learned counsel who represent revenue in this court would sensitize their officers regarding



the view taken by the apex court on such issues in the case of *Bherulal* (supra). But sadly, there appears no change. We still would prefer to remain hopeful that some serious soul searching would be done by the revenue by way of a meticulous enquiry to rule out if in such cases the defaults were tailored to extend a covert help to the rival side, and to ascertain the fault lines.

15. The appellant/revenue has failed to set up any circumstance to satisfy us that they were precluded from filing the present appeals in time by any cause beyond their control. We are unable to find any sufficient cause to condone this inordinate delay in filing these appeals after removal of filing defects. Consequently, there is no occasion to condone the delay in re-filing these appeals. Both applications are therefore, dismissed.

ITA 371/2022 & ITA 526/2022

16. Consequently, both these appeals are dismissed as time barred.

**(GIRISH KATHPALIA)
JUDGE**

**(RAJIV SHAKDHER)
JUDGE**

DECEMBER 12, 2023/RV