



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 30896 OF 2026
IN
INCOME TAX APPEAL (L) NO. 30455 OF 2025

GS Strategic Investments Limited
Versus

...Applicant/Appellant

Assistant Commissioner of Income Tax

...Respondent

Mr. Madhur Agrawal a/w Punit J. Shah i/b Mint & Confrers for Applicant.

Mr. Subir Kumar a/w Ashita Aggarwal for Respondent.

CORAM : G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

RESERVED ON : 9th OCTOBER 2026
PRONOUNCED ON : 27th OCTOBER 2026

JUDGMENT(Per Dr. Neela Gokhale, J.):

1. By this Application the Applicant/Appellant seeks condonation of delay of 88 days in filing the Income Tax Appeal (L) No.30455 of 2025. The Applicant/Appellant has preferred the accompanying Appeal assailing the Judgment and Order dated 22nd October 2024 ('**impugned Judgment**'), passed by the Income Tax Appellate Tribunal, Mumbai, ('ITAT') in ITA No.4401/MUM/2023 filed for the assessment year 2021-2022.

2. By the impugned Judgment, the ITAT remanded the issue involved in the appeal on the ground that the Applicant/Appellant's contention that the long-term capital gains earned by the Applicant/Appellant during the relevant previous years are exempted from tax, has not been tested during the assessment proceedings and

for that reason the necessary facts are not on record. Thus, the ITAT has directed the Assessing Officer to decide the issue as in accordance with law after granting an opportunity of being heard.

3. Mr. Madhur Agrawal, learned Counsel for the Applicant/Appellant, contends that the executed signed copy of the impugned Judgment dated 22nd October 2024 was received by the Applicant/Appellant on 27th February 2025. He thus submits that the limitation period for preferring the Appeal expired on 27th June 2025. Admittedly, the Appeal is filed on 23rd September 2025 and hence, Mr. Agrawal states that there is a delay of 88 days in preferring the Appeal. Mr. Agrawal states that the delay is neither intentional nor deliberate. He submits that on the perusal of the impugned Judgment the Applicant/Appellant initially decided to file miscellaneous application under Section 254(2) of the Income Tax Act, 1961 ('the Act') before the Tribunal. Thus, the Applicant/Appellant's Chartered Accountant drafted a miscellaneous application and forwarded the draft to the Applicant/Appellant on 4th June 2025 for signatures. The same were reverted to the Chartered Accountant for filing before the ITAT. On 26th June 2025, the Applicant/Appellant downloaded a copy of the impugned Judgment from the Income Tax Portal, giving effect to the order of the Tribunal dated 20th June 2025, passed by the Assessing Officer. Ultimately, after consideration and deliberations with the Chartered Accountant as well as the Advocate, the Applicant/Appellant chose not to file the miscellaneous application but to prefer the present Appeal before this Court. Accordingly, on 28th July 2025, the papers of the proceedings were sent by the Applicant/Appellant to its counsel for drafting the Appeal for the

purpose of filing before this Court. On 12th August 2025, the draft order sent by the counsel to the Applicant/Appellant for consideration and signatures. In the meantime, the Applicant/Appellant collected the documents and on 14th August 2025 all the documents necessary for the purpose of filing the Appeal were sent to the Advocate-on-record to facilitate filing of the Appeal. Ultimately, the Appeal was filed before this Court on 23rd September 2025. In these circumstances, Mr. Agrawal states that there is no deliberate delay on the part of the Applicant/Appellant in preferring the Appeal and the delay is purely due to procedural reasons. Mr. Agrawal also placed reliance on various provisions of the Act as well as the Rules made thereunder. Mr. Agrawal, thus urged the Court to allow the application by condoning the delay.

4. Mr. Subir Kumar, learned Counsel for the Respondent–Revenue, vehemently contested the present Application and stated that the delay has not been adequately explained. He also stated that the Applicant/Appellant was well aware of the dismissal of the proceeding before the ITAT on the day and date on which the impugned Judgment was pronounced and hence, the computation of delay ought to have been done from that date. He also stated that the Applicant/Appellant has not explained the delay from the date on which the impugned Judgment was pronounced. He prays that the Application be rejected. He also contended that sufficient cause justifying delay is not made out.

5. Having heard learned Counsel for the parties and perused the record of the case, two issues arise for our consideration. Firstly, whether the limitation for

preferring an Appeal starts from the date on which the certified copy of the impugned Judgment and Order was received by the Applicant/Appellant or the limitation commences from the date on which the Applicant/Appellant got knowledge of the order passed by the Income Tax Appellate Tribunal; and secondly, whether the Applicant/Appellant has made out sufficient cause warranting condonation of delay.

6. Before advertng to the merits, it is necessary to note the provisions of Income Tax Act, 1961 and the Rules made thereunder. Section 254 (3) of the Income Tax Act, 1961, reads thus:

“254. Orders of Appellate Tribunal.

(1) * * *

(1A) * * *

(2) * * *

(2A) * * *

(2B) * * *

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Principal Commissioner or Commissioner.”

(4) * * *”

7. Rule 35 and 49 of the Income-Tax (Appellate Tribunal) Rules, 1963 (‘ITAT Rules’) are also relevant for the purpose of determining the issue involved in the present matter. Rules 35 and 49 of the read thus:

“35. Orders to be communicated to parties.

The Tribunal shall, after the order is signed, cause it to be communicated to the assessee and to the Commissioner.”

“49. Scale of copying fees

(1) Copying fees for supply of certified copies shall be charged as under:

(i) For a full page or part thereof, [Rs.10] irrespective of whether the copy is typed or xeroxed.

(2) Except in cases where copies are supplied free under the rules or instructions for the time being in force and in cases covered by sub-rule (3), the scale of fees to be charged for the supply of copies urgently shall be twice those prescribed by sub-rule (1) where the

copies are typed and in such cases, fifty per cent of the fees so charged shall be paid to the official who types such copies.

(3) Where a party applies for immediate delivery of a copy of evidence taken down by a stenographer, the fee charged shall be twice those prescribed by sub-rule (1), and in case a typed copy is supplied, fifty per cent of the fees so charged shall be paid to the official who types such copies.

(4) If a publisher applies for a copy of an order of the Tribunal for the purpose of publication, the fee for such copy shall be [Rs. 15] per page or part thereof.

(5) Copying fees for supply of certified copies, whether typed or xeroxed, shall be recovered in advance in cash.]]”

8. A plain reading of Section 254(3) of the Act contemplates that a copy of any order(s) passed by the Appellate Tribunal is sent to the assessee and to the Principal Commissioner (“PCIT”) or Commissioner. Thus, this clearly denotes that once the Judgment and Order is pronounced by the Tribunal, a copy of the same is sent by the Tribunal to the Principal Commissioner or Commissioner of the Income Tax. Rule 35 also contemplates that once the orders is signed the Tribunal communicates the same to the Assessee and the PCIT/Commissioner. Rule 49 further provides for scale of copying charges, and also makes it clear that the copies of the orders passed by the Tribunal are supplied free of costs, unless any party applies for another copy of the order or any other document, including a copy of evidence, in which case, the party must pay the copying charges as per the prescribed scale.

9. All these provisions clearly demonstrate that as per procedure, the ITAT, once an order is pronounced, dispatches a copy of the same to both the parties free of costs. Thus, the Act and the Rules themselves contemplates that the copy of the Judgment and Order pronounced by the Appellate Tribunal is sent by the Tribunal to the parties. There is no provision in the Act or in the Rules regarding applying

for or obtaining a certified copy. Thus, considering the relevant ITAT Rules, we are of the clear opinion that once the Rules contemplate dispatching the copy of the Judgment and Order by the Tribunal to the Assessee and the PCIT, the limitation shall naturally commence from the day on which the same is received by the respective party. Mere knowledge of the order, by way of pronouncement is not enough to hold that day to be the first day on which the limitation commences. The pronouncement of a Judgment and Order from the dais in open Court, ordinarily declares the fate of the proceeding. For the aggrieved party to deliberate and consider as to whether he wishes to assail the same and on what grounds to do so, it is necessary for the party have a complete copy of the Judgment and Order which will apprise him of the finding and reasons given by the Court/Tribunal, on the basis of which the order is passed. In these circumstances, we are of the view that the limitation shall commence from the day on which a copy of the Judgment and Order passed by the ITAT, is received by the aggrieved party. To hold otherwise would be depriving the aggrieved party of his right to prefer a substantive appeal based on cogent grounds. The first issue is thus answered accordingly.

10. Mr. Agrawal has brought to our attention a copy of the envelope which is annexed to the main Appeal at Page No.516. The stamps on the envelope clearly reveal that the order was dispatched by the ITAT on 25th February 2025 and was received by the Applicant/Appellant on 27th February 2025.

11. Considering that the copy of the order was received by the Applicant/Appellant on 27th February 2025, admittedly there is delay of 88 days in preferring the Appeal.

12. Mr. Agrawal has accordingly, explained the delay from the date on which the Applicant/Appellant has received the copy of the impugned Judgment and Order on 27th February 2025 till the date on which he has preferred the present Appeal.

13. Insofar as the second issue relating to ‘sufficient cause’ is concerned, in a series of decisions the Supreme Court as well as this Court has held that for the purpose of seeking condonation of delay under Section 5 of the Limitation Act, a party has to demonstrate the existence of sufficient cause within the prescribed period to the satisfaction of the Court. Thus, establishment of sufficient cause is the first ingredient for the purpose of condonation of delay. Insofar as what is meant by the phrase “sufficient cause”, as neither Section 5 of the Limitation Act itself provides any guidance of different constituent elements ought to be. Section 5 leaves a task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and in the circumstances of each case.

14. It is well settled that in matters of condonation of delay, a justice-oriented and liberal approach is ordinarily adopted, particularly where the delay is not of such magnitude as to indicate deliberate or *mala fide* conduct, and where refusal to condone the delay would result in a meritorious cause being shut out without adjudication on merits a consequence ordinarily graver than any prejudice that may

be occasioned to the opposite side, which can, in most cases, be compensated in costs. While the Respondent has disputed the correctness and sufficiency of the explanation offered, it is not shown that any irreversible or irreparable prejudice which would be caused to the Respondent if the delay is condoned.

15. In **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**¹, the learned Judges opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus:-

“18. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

16. Applying the above principle to the present case, we find that the Applicant has furnished a stage-wise explanation, which covers the entire period of delay and not merely a part of it. Limitation, reckoned from receipt of the certified copy on 27th February 2025, expired on 27th June 2025, and the Appeal was filed on 23rd September 2025, resulting in a delay of 88 days.

¹ Civil Appeal No. 2970-2971/2012 dated 9th April 2012

17. We have perused the averments made in the application. Considering the period of delay and the settled principles of law governing applications for condonation of delay, in our opinion, it is appropriate that the delay is condoned.
18. The Application is accordingly allowed in aforesaid terms.
19. Office objections, if any, be removed within a period of eight weeks from today.
20. List the Appeal for admission after the removal of office objections.
21. Interim Application stands disposed of. No costs.

(DR. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)