

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4045 OF 2019
(Arising out of SLP (C) No.5508 of 2019)

PR. COMMISSIONER OF INCOME TAX,
CENTRAL-3, MUMBAI

Appellant

VERSUS

JOGIA PROPERTIES LTD.

Respondent

WITH

CIVIL APPEAL NOS.4046-4052 OF 2019
(Arising out of SLP(C) Nos.5512-5515, 5517,5520 and 7696 of 2019)

O R D E R

Leave granted.

In the present cases, as a result of the self-operating order dated 12.01.2017 passed by the Prothonotary & Senior Master of the High Court of Judicature at Bombay, all the concerned Income Tax Appeals stood dismissed for non-prosecution.

Notices of motion filed on behalf of the appellant seeking condonation of delay in curing the defects were rejected by the High Court, which orders are presently under challenge.

On 13.11.2018, this Court had directed the appellant to file an affidavit indicating, *prima facie*, as to which officials were responsible for delay and for not curing the defects pointed out by the Registry of the High Court. Thereafter, an affidavit was filed by Deputy Director, Income Tax, Directorate of Legal and Research, New Delhi, stating *inter alia* as under:

"It is respectfully submitted that petitioner has already filed an affidavit in terms of order dated 18.11.2018 passed by this Hon'ble Court explaining the reasons for the delay in curing the defect and the persons responsible for such delay. It is submitted that pursuant to the directions of this Hon'ble Court, explanations were called from all the Assessing Officers concerned and also from the Standing Counsel. It was found from the explanations that none of the Assessing Officers were informed of the objections raised by the Prothonotary and Senior Master. The Assessing Officers, when informed about the objections had removed the said objections without further delay. It is further submitted that the Standing Counsel had explained that the non-communication of the defects was due to the failure of her clerk. She also submitted the affidavit of the clerk, which vaguely explained that the objections were intimated to the officers orally. Thus, the cause for the dismissal of appeals due to delay in curing defects was on account of non-communication by the Standing Counsel. In view of this, the Department had stopped assigning any further work to the said Standing Counsel and that now the services of the said Standing Counsel have been terminated with immediate effect and also to take steps to ensure recovery of professional fees paid, if any, in respect of the dismissed appeals."

Notices were issued in all these matters on 18.02.2019 whereafter we have heard learned ASG on behalf of the appellant and learned counsel for the respondents.

In our considered view, the fault in all these matters was neither with the department nor with any of the officials but was squarely as a result of certain acts of omission or commission on behalf of the learned counsel who was engaged to appear on behalf of the department.

Considering the facts and circumstances of the case, we condone the delay in curing the defects. We set aside the orders passed by the High Court and restore all the Income Tax Appeals on

the file of the High Court. We also request the High Court to dispose of the pending Income Tax Appeals as early as possible and preferably within six months from the date of receipt of this order.

The appeals are allowed accordingly. No costs.

.....J.
[UDAY UMESH LALIT]

.....J.
[INDU MALHOTRA]

NEW DELHI;
APRIL 22, 2019

ITEM NO.48

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.5508/2019

(Arising out of impugned final judgment and order dated 22-03-2018 in ITA No.1480/2016 passed by the High Court Of Judicature At Bombay)

PR. COMMISSIONER OF INCOME TAX,
CENTRAL-3, MUMBAI

Petitioner(s)

VERSUS

JOGIA PROPERTIES LTD.

Respondent(s)

WITH

SLP(C) No.5512/2019 (IX)
(FOR ADMISSION and I.R.; IA No.156506/2018-CONDONATION OF DELAY IN FILING; and, IA No.156508/2018-CONDONATION OF DELAY IN REFILING)

SLP(C) No.5513/2019 (IX)
(FOR ADMISSION and I.R. and IA No.159440/2018-CONDONATION OF DELAY IN FILING)

SLP(C) No.5514/2019 (IX)
(FOR ADMISSION and I.R.; IA No.164127/2018-CONDONATION OF DELAY IN FILING; and, IA No.164128/2018-CONDONATION OF DELAY IN REFILING)

SLP(C) No.5515/2019 (IX)
(FOR ADMISSION and I.R.; and, IA No.153124/2018-CONDONATION OF DELAY IN FILING)

SLP(C) No.5517/2019 (IX)
(FOR ADMISSION and I.R.; and, IA No.171243/2018-CONDONATION OF DELAY IN FILING)

SLP(C) No.5520/2019 (IX)
(IA No.181547/2018-CONDONATION OF DELAY IN FILING)

SLP(C) No.7697/2019 (IX)
(FOR ADMISSION and I.R.; and, IA No.14699/2019-CONDONATION OF DELAY IN FILING)

Date : 22-04-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Mr. Vikramjit Banerjee, ASG
Mr. Arijit Prasad, Adv.
Mr. DL. Chidananda, Adv.
Mr. H.R. Rao, Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s) Mr. Kaustubh Shukla, Adv.
Mr. Abhay Singh, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

Delay condoned.

Leave granted.

The appeals are allowed, in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

**(MUKESH NASA)
COURT MASTER**

**(RAJINDER KAUR)
BRANCH OFFICER**

(Signed Order is placed on the File)