

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 11750/2018

(Arising out of Special Leave Petition(C) No(s). 15715/2017)

ANIL KUMAR NEHRU THR HIS POWER OF ATTORNEY
ANKIT AGRAWAL

PETITIONER(S)

VERSUS

ASSISTANT COMMISSIONER OF INCOME
TAX CIRCLE 16(2), MUMBAI

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 11751/2018 @ SLP(C) No. 15793/2017, CIVIL APPEAL
NO. 11755/2018 @ SLP(C) No. 16921/2017 & CIVIL APPEAL NO.
11752-11754/2018 @ SLP(C) No. 16285-16287/2017

O R D E R

Leave granted.

It is a matter of record that on the identical issue raised by the appellant in respect of earlier assessment, the appeal is pending before the High Court. In these circumstances, the High Court should not have taken such a technical view of dismissing the appeal in the instant case on the ground of delay, when it has to decide the question of law between the parties in any case in respect of earlier assessment year. For this reason we set aside the order of the High Court; condone the delay for filing the appeal and direct to decide the appeal on merits.

The appeals are allowed accordingly.

.....J.
[A.K. SIKRI]

.....J.
[S. ABDUL NAZEER]

NEW DELHI;
DECEMBER 03, 2018.

ITEM NO.42

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 15715/2017

(Arising out of impugned final judgment and order dated 13-01-2017 in NOM No. 2910/2016 passed by the High Court Of Judicature At Bombay)

ANIL KUMAR NEHRU THR HIS POWER OF ATTORNEY
ANKIT AGRAWAL

Petitioner(s)

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 16(2) Respondent(s)

(IA No.42416/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

SLP(C) No. 15793/2017 (IX)

SLP(C) No. 16921/2017 (IX)
(IA No.50414/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 16285-16287/2017 (IX)
(IA No.46691/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 03-12-2018 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Abhijeet Sinha, Adv.
Mr. Siddharth Naidu, Adv.
Mr. V. Balachandran, Adv.
M/S. KSN & Co., AOR

For Respondent(s) Mr. Tushar Mehta, SG
Mr. H. Raghavendra Rao, Adv.
Ms. Nisha Bagchi, Adv.
Ms. Liz Mathew, Adv.
Mrs. Anil Katiyar, AOR

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

The appeals are allowed in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI THAKUR)
COURT MASTER (SH)

(RAJINDER KAUR)
BRANCH OFFICER

(Signed order is placed on the file)

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

NOTICE OF MOTION NO. 2910 OF 2016
IN
INCOME TAX APPEAL (L) NO. 1448 OF 2016

Anil Kumar Nehru .. Applicant

In the matter between
Anil Kumar Nehru .. Appellant

v/s.
Asstt. Commissioner of Income Tax,
Circle 16(2), Mumbai . Respondent

Mr. Madhur Agarwal a/w Mr. Balasaheb Yewale i/b Rajesh Shah & Co.
for the applicant / appellant
None for the respondent

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.**

DATED : 13th JANUARY, 2017.

PC.

1. This notice of motion has been taken out for condonation of 1662 days delay in filing the accompanying appeal from the order 21st October, 2011 of the Income Tax Appellate Tribunal (Tribunal). The above order of the Tribunal relates to Assessment Year 2004-05.

2. The only reason set out in the affidavit in support of the notice of motion is that as four appeals on identical issues for earlier years were pending before this Court, he was under a bona fide belief that

relief, if any, granted in the appeals pending before this Court would inure to his benefit for the subject assessment year. This belief resulted in no appeal being filed for the subject assessment year. The affidavit further states that no prejudice will be caused to the Revenue if the delay is condoned as the issue is pending consideration before this Court in four Income Tax Appeal Nos. 1159 of 2008, 1161 of 2008, 1162 of 2008 and 2481 of 2011.

3. The affidavit as filed does not carry credibility. This for the reason that if the applicant was genuinely under the impression that its four appeals (three Income Appeals being Nos. 1159 of 2008, 1161 of 2008 and 1162 of 2008 from the common order of the Tribunal dated 28th March, 2008, relating to Assessment Years 1999-2000, 2000-01 and 2001-02 and Income Tax Appeal No.2481 of 2011 arising from the order of the Tribunal dated 19th November, 2010 – relating to Assessment Year 2002-03) when disposed of by this Court, would work for his benefit in all subsequent years then there would have been no reason for him to have filed Income Tax Appeal No.2481 of 2011 from the order of the Tribunal dated 19th November, 2010 as in that case also the applicant would have been under the same belief that the orders in earlier appeals will apply even for order for Assessment Year 2002-

03. Therefore, this reason is not a *bona fide* reason for condonation of the undue delay.

4. In passing, we may mention that the applicant was represented at all time right from the Assessing Officer to the Tribunal by Professionals. Therefore, advice was available to the applicant.

5. In the above view, we find that the reasons set out in the affidavit in support of the notice of motion evidently are not *bona fide*. The reason as set out in the affidavit in support for not filing the appeal are not plausible. Thus, we see no reason to condone the delay.

6. Accordingly, the notice of motion is dismissed.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)