

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.787 OF 2009

IN

INCOME TAX APPEAL (L) NO.3592 OF 2008

The Commissioner of Income Tax, City – VI, Mumbai ..Appellant.

Versus

M/s.Grasim Industries Limited, Mumbai ..Respondent.

Mr.J.S. Saluja for the appellant.

Mr.J.D. Mistry with Mr.A.K. Jasani for the respondent.

CORAM : V.C. DAGA &  
J.P. DEVADHAR, JJ.

DATE : 8th JULY, 2009

**P.C. :**

1. This notice of motion is taken out by the revenue seeking condonation of delay of 575 days in filing the above Appeal under Section 260 A of the Income Tax Act, 1961 (*I.T. Act* for short).

2. Mr.Saluja, learned counsel for the revenue, relying upon a Full Bench decision of this Court in the case of *Commissioner of Income Tax V/s. Velingkar Brothers* reported in *289 ITR 382 (Bom)* submitted that this Court

has power to condone the delay in filing an appeal under Section 260 A of the I.T. Act and for the reasons set out in the affidavit in support of the Notice of Motion, the delay in filing the above appeal be condoned.

3. Mr.Mistry, learned counsel appearing on behalf of the assessee has brought to out notice two decisions of the Apex Court in the case of Commissioner of Customs & Central Excise V/s. Hongo India (P) Limited & Another reported in 2009 (236) E.L.T. 417 (S.C.) and Chaudharana Steels (P) Limited V/s. Commissioner of Central Excise reported in 2009 (238) E.L.T. 705 (S.C.), wherein it is held that the High Court has no power to condone the delay in seeking a reference / filing an appeal under section 35H & 35G of the Central Excise Act, 1944 ('Excise Act' for short) respectively. Since Section 35G of the Excise Act is pari materia with section 260 A of the I.T. Act, Mr.Mistry submits that this Court has no power to condone the delay in filing an Appeal under Section 260 A of the I.T. Act.

4. Counsel for the revenue, however, contends that Section 35 H of the Excise Act is not pari materia with Section 260 A of the I.T. Act and, therefore, the decision of the Apex Court in the case of Hongo India (P) Limited (supra) has no relevance in the present case.

5. With reference to the decision of the Apex Court in the case of Chaudharan Steels (P), it is contended by the counsel for the revenue that though Section 35G of the Excise Act is pari materia with Section 260 A of the I.T. Act, since the Apex Court without considering the material difference between section 35G & 35H of the Excise Act has held that the ratio laid

down in the context of section 35H would apply to the appeals filed under section 35G of the Excise Act, the said decision cannot be said to lay down the correct interpretation of law and in any event, the said decision rendered in the contest of Excise Act ought not to be applied while interpreting the provisions of the I.T. Act. Mr.Saluja further submitted that in view of applicability of Section 5 to the Courts by its own operation, the High Court has a power to condone delay and if this power is to be taken away, then there should be a specific exclusion under Section 29(2) of the Limitation Act, 1963. Since there is no specific exclusion, power to condone delay in filing the Appeal very much exists with this Court while considering Appeal u/s.260 A of the I.T. Act.

6. We have carefully considered the rival submissions. It is not in dispute that Section 35 G of the Excise Act is pari materia with Section 260 A of the I.T. Act. Section 260 A (7) of the I.T. Act as well as Section 35 G (9) of the Excise Act provide that the provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall as far as may be, apply to the appeals filed under the respective provisions. No such provision is to be found in Section 35 H of the Excise Act. Therefore, the argument advanced by the Counsel for the revenue that Section 35 G and Section 35 H of the Excise Act are materially different cannot be said to be wholly without substance. However, once the Apex Court has held that the High Court has no power to condone delay in filing Appeal under Section 35 G of the Excise Act, we have no option but to hold that this Court has no power to condone delay under Section 260 A of the I.T. Act because Section 260 A of the I.T. Act is pari materia with Section 35 G of the Excise Act.

7. In this view of the matter, the notice of motion seeking condonation of delay in filing the Appeal under Section 260 A of the I.T. Act is liable to be dismissed.

8. Accordingly, the Notice of Motion is dismissed with no order as to costs.

(J.P. Devadhar, J.)

(V.C. Daga, J.)