## HIGH COURT OF CHHATTISGARH AT BILASPUR

Tax Case (Income Tax Appeal) No.21 of 2007

APPELLANT: Assistant Commissioner of Income – Tax, Circle 1, Bhilai

Versus

RESPONDENT: Shri Mahavir Prasad Verma, Prop Durga Jwellers, Jawahar Market, Camp-2, Bhilai

I.T.A.No.49 of 2003

APPELLANT: Chandra Shekhar Kastwar, S/o Late Shri Kapoorchand Kastwar, Aged about 43 years, r/o Sadar Bazar, Dhamtari, District Dhamtari (CG)

Versus

RESPONDENTS:
1. Income Tax Officer, Ward Dhamtari, District Dhamtari (CG)
2. The Commissioner, Income Tax, Raipur (CG)
3. Income Tax Appellate Tribunal, Nagpur Bench, Nagpur.

Tax Case (Income Tax Appeal) No.08 of 2006

APPELLANT: Assistant Commissioner of Income Tax, Circle 2 (1), Raipur

Versus

RESPONDENT: M/s Geedam Cold Storage Pvt. Ltd., Opposite Forest Depot, Geedam Road, Jagdalpur (CG)

Tax Case (Income Tax Appeal) No.07 of 2006

APPELLANT: Assistant Commissioner of Income Tax, 1(2) Raipur.

Versus

RESPONDENT: M/s Badger Green Field & Finance Pvt. Ltd., Samta Colony, Raipur

Tax Case (Income Tax Appeal) No.7 of 2008

APPELLANT: Assistant Commissioner of Income, Circle 2-1, Raipur

Versus

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RESPONDENT: Shri Vinod Goyal Nayapara Raipur

I.T.A. No.13 of 2005

APPELLANT: Income Tax Officer-2, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

Versus

RESPONDENT: Shri Mukul Deshlehara, Proprietor of M/s Deshlehara, Udyog, Village Dewada, Tehsil and District Rajnandgaon, Chhattisgarh

Tax Case (Income Tax Appeal) No.20 of 2006

APPELLANT: Income Tax Officer, Jagdalpur

Versus

RESPONDENT: Surendra Kumar Kataria, Proprietor, M/s Gaurav Traders, Main Road, Keshkal, District Baster (CG)

Tax Case (Income Tax Appeal) No.18 of 2006

APPELLANT: Income Tax Officer, Jagdalpur

Versus

RESPONDENT: Surendra Kumar Kataria, Proprietor, M/s Gaurav Traders, Main Road, Keshkal, District Bastar (CG)

AND

Tax Case (Income Tax Appeal) No.19 of 2006

APPELLANT: Income Tax Officer Jagdalpur

Versus

RESPONDENT: Surendra Kumar Kataria, Proprietor, M/s Gaurav Traders, Main Road, Keshkal, District Bastar (CG)

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Present:

Shri S. Rajeshwar Rao, counsel for the appellants in all the appeals and the respondent in I.T.A. No.49/2003.

Ashish Surana, counsel for the appellant in I.T.A. No.49/2003.

Rajendra Tripathi, counsel for the respondent in Tax Case (Income I) No.21/2007.

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Shri Neelabh Dubey, counsel for the respondent in Tax Case (Income Tax Appeal) No.7/2006 and 8/2006.

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**Division Bench: Hon'ble Shri Dhirendra Mishra & Hon'ble Shri R.N. Chandrakar, JJ.**

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**ORDER**
(Passed on 16th June, 2009)

The following order of the Court was passed by **Dhirendra Mishra, J.**

1. The appellants herein have preferred these appeals under Section 260-A of the Income Tax Act, 1961 (in short 'the Act') along with separate applications under Section 5 of the Indian Limitation Act for condonation of delay, as these appeals have been preferred after the prescribed period of limitation of 120 days from the date on which the order appealed against was received by the appellants as provided under Section 260-A sub-section 2 of the Act.

2. Shri Rajeshwara Rao, learned counsel for the Revenue submitted that the Income Tax Act, 1961 and the provisions of Section 260-A are not complete Code in itself. By virtue of sub-section (7) of section 260-A, provisions of the Code of Civil Procedure relating to appeal are applicable to appeal under Section 260-A. Under Order 41 Rule 3-A of the CPC, application for condonation of delay, for condoning the delay in appeal is maintainable and that procedure is applicable to appeal under section 260-A and, therefore, it cannot be said that Section 5 of the Limitation Act does not apply to appeals under Section 260-A. Specific provisions have been made for condonation of delay under Section 249 and 253 and application under Section 256(1) of the IT Act for condoning the delay authorizing such Authorities/Tribunals to condone the delay only because these Authorities/Tribunals are not courts, however, no such provision has been made under section 256 (2) and 260 for condoning the delay in filing applications/appeals to the High Court, as Section 29(2) of the Limitation Act is attracted and, therefore, the Legislature did not

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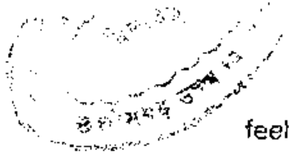

feel it necessary to expressly provide for condonation of delay by the High Court.

3. Reliance is placed on Full Bench Judgment of the High Court of Bombay at Goa in the matter of **Commissioner of Income Tax Versus Velingkar Brothers**[1] and in the case of **CIT Versus Anandilal Poddar & Sons Ltd.**,[2].

4. On the other hand, Shri Neelabh Dubey Advocate appearing on behalf of the respondents submitted that the Income Tax Act, 1961 is a complete Code in itself. It provides for all aspects relating to levy and recovery of Income Tax, procedure therefor, remedies including appeals and revisions and penalties and prosecution. Section 260-A provides for an appeal to the High Court on substantial question of law. Sub-section 2(a) of Section 260-A provides in mandatory form that the appeal shall be filed before the Tribunal within 120 days and a longer period of limitation, already provided by the Legislature, impliedly excluded the applicability of Section 5 of the Limitation Act. Learned counsel would submit that collection of revenue cannot brook delay and, therefore, the Legislature by providing the different period of limitation, which is longer than the period of limitation provided in Article 116 of the Limitation Act clearly indicates its intention in excluding application of Section 5 of the Limitation Act by necessary implication. He further submitted that the legislature consciously omitted the provision relating to condonation of delay in appeal in the High Court as appeals are preferred in the High Court after the question in issue has already been considered by three forums.

5. Reliance is placed on the judgment of the Hon'ble Supreme Court dated 27th March, 2009 delivered in the matter of **Commissioner of Customs and Central Excise Versus M/s Hongo India (P) Ltd., and another** in SLP(C) No.14467/2007.

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[1] (2007) 209 CTR (Bom) (FB) 8; (2007) 289 ITR 382 (Bom) (FB); (2007) 161 TAXMAN 264 (Bom) (FB)

[2] (2005) 199 CTR (Cal) 539; (2005) 279 ITR 104 (Cal)

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6. We have heard learned counsel for the parties.

7. Chapter-XX of the Act deals with appeals and revisions. Section 249(1) provides for form of appeal. Sub-section (2) of Section 249 provides for limitation of 30 days in filing the appeal before the Commissioner (Appeals). Sub-section (3) empowers the Commissioner (Appeals) to admit the appeal after expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within the period. Section 253 deals with appeals to the Appellate Tribunal. Sub-section (3) of Section 253 provides for limitation of 60 days from the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be, for filing appeal before the Appellate Tribunal. Under sub-section (5), the Appellate Tribunal may admit the appeal or permit the filing of memorandum of cross objection after expiry of the relevant period if he is satisfied that there was sufficient cause for not presenting it within the period. Section 255 (1) lays down the procedure to be followed by the Appellate Tribunal whereas, Section 260-A deals with appeals to the High Court, which reads as under:-

> "**260A**.(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, [before the date of establishment of the National Tax Tribunal] if the High Court is satisfied that the case involves a substantial question of law.
>
> (2) The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be-
>
> (a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner;
>
> (b) Omitted by the Finance Act, 1999, w.e.f.1-6-1999.

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(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Whether the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

**Provided** that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law formulated and delivered such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which –

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, applying the case of appeals under this section.

8. Sub-section (1) provides for appeal against the order of the Appellate Tribunal to the High Court provided that the High Court is satisfied that the case involves substantial question of law. Sub-section (2) provides that the appeal is to be filed within 120 days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner, as the case may be. Sub-section (3) stipulates that the High Court, if satisfied, may formulate substantial question of law involved in any case and the appeal

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is to be heard and decided only on question so formulated. Sub-section (7) makes the provisions of CPC, 1908, relating to appeals to the High Court, applicable in case of appeal under this section only where it is not otherwise provided in the Act.

9. In view of the specific provisions of the Act, as detailed hereinabove, question for our consideration is –whether Section 5 of the Limitation Act is applicable in respect of appeal filed under Section 260-A of the Act?

10 Shri Rajeshwara Rao, learned counsel for the appellants, contended that in the absence of any specific prohibition in the Act for condoning the delay, particularly, in Section 260-A of the Act, Section 29(2) of the Limitation Act is applicable. He further argued that sub-section (7) of Section 260-A specifically makes the provisions of CPC in relation to appeal before the High Court applicable and, therefore, as per the provisions of Order 41 Rule 3-A of the CPC the High Court is empowered to entertain and decide any application for condonation of delay in filing the appeal.

11. In the matter of **Velingkar Brothers** (Supra), the question 'whether Section 5 of the Limitation Act, 1963 shall apply in case of an appeal filed under Section 260-A of the IT Act, 1961' was referred by the Division Bench to a Larger Bench for adjudication. Answering the reference in affirmative, the full Bench of the Bombay High Court held thus:-

> "Sec.260A itself provides that the provisions of the CPC relating to appeals, as far as possible, are applicable to the appeals under s.260A. It would mean that s.260A is not exhaustive of all the facets, aspects and matters with regard to the appeals under s.260A. It seems that the legislature did not intend to make the provision of s.260A watertight. The exclusion of the provisions of ss.4 to 24 of the Limitation Act as provided in s.29(2) cannot be lightly inferred. Implied exclusion is not readily inferred. That the legislature has used the words 'shall be filed' in

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sub-s.(2) means that the limitation for filing the appeal is as provided therein but that does not make s.29(2) of the Limitation Act, 1963 inapplicable. The High Court being the superior Court, the power to condone the delay in filing the appeal must be read to be existent, more so by virtue of s.29(2) of the Limitation Act, unless there is clear indication of its exclusion by implication. The use of the word 'shall' and the longer period of limitation (120 days) are not indicators of such exclusion. Nor from the position that s.260A is silent about applicability of s.29(2), any justifiable inference can be drawn for inapplicability of that provision. What is obvious need not be stated and, therefore, legislature may have thought fit that it was not necessary to express specifically about the power of the High Court to condone the delay in view of existence of s.29(2). When the statute is silent, the presumption is not drawn automatically about the exclusion of s.29(2) or for that matter s.5 of the Limitation Act. There is nothing to indicate that the application of s.29(2) is excluded except providing a special limitation. Sec.260A does not necessarily imply the exclusion of ss.4 to 24 of the Limitation Act. Therefore, s.5 of the Limitation Act is applicable in case of the appeals filed under s.260A."

12. In the matter of **Anandilal Poddar & Sons Ltd.** (Supra) also, the Calcutta High Court, while considering applicability of Limitation Act in appeal before the High Court under Section 260A of the IT Act, held that though Section 260A of the IT Act expressly provides for a period of limitation for preferring an appeal to the High Court, the same does not imply that the application of ss.4 to 24 of the Limitation Act is excluded. In order to exclude the application of ss.4 to 24 within the meaning of s.29 of the Limitation Act, the necessary exclusion must be express and such express exclusion is to be inferred by necessary implication from the statute itself. The Court is not supposed to presume exclusion on account of the statute being silent in that aspect. It cannot be

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held that Section 5 of the Limitation Act has no application in respect of appeal preferred under Section 260A.

13. The Supreme Court in the matter of **M/s Hongo India (P) Ltd., and another** (Supra), while dealing with question 'whether the High Court in the reference application under Section 35H(1) of the unamended Act, has power under Section 5 of the Limitation Act, 1963 to condone the delay beyond the period prescribed under the main statute i.e. Central Excise Act', held that the High Court has no power to condone the delay in filing the "reference application" filed by the Commissioner under unamended Section 35H(1) of the Central Excise Act, 1944 beyond the period of 180 days.

14. Shri Neelabh Dubey, learned counsel appearing for the respondents submitted that though the judgment in the matter of **M/s Hongo India (P) Ltd., and another** (Supra) is in relation to reference under Section 35H(1) of the Central Excise Act, but the relevant provisions under Chapter XX of the Act is *pari materia* to the provisions of appeal under Chapter VI-A of the Central Excise Act, 1944, therefore, ratio of law laid down in **M/s Hongo India (P) Ltd., and another** shall apply to any appeal under Section 260A of the Act also.

15. Before appreciating the above argument of learned counsel for the respondents, we propose to examine the provisions relating to appeals under Chapter VI-A of the Central Excise Act. As per Section 35, against any order passed by the Central Excise Officer, appeal lies to the Commissioner of Central Excise (Appeals). The appeal is to be preferred within 60 days from the date of communication of such decision to the aggrieved party. Proviso to sub-section (1) enables the Commissioner (Appeals) to allow it to be represented within a further period of 30 days if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days. Any person aggrieved by the decisions/orders

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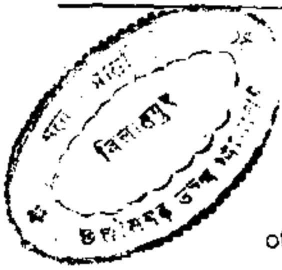



of the Commissioner of Central Excise or the Commissioner (Appeals) may prefer an appeal to the Appellate Tribunal within 3 months from the date on which the order appealed is communicated to the aggrieved party. Sub-section (5) enables the Tribunal to condone the delay even beyond the prescribed period provided there was sufficient cause for not presenting it within that period. Under Section 35EE, revision lies to the Central Government. Under sub-section (2), application under sub-section (1) is to be made within 3 months from the date of communication. Proviso to sub-section (2) enables the revisional authority to condone the delay for a further period of 90 days. Unamended Section 35-G provides for appeal to the High Court. Sub-section 2(a) enables the aggrieved person to file an appeal to the High Court within 180 days from the date on which the order appealed against is received by the aggrieved party. There is no provision to condone the delay in filing the appeal beyond prescribed period of 180 days. Unamended Section 35H provides for reference application to the High Court. Under sub-section (1), the Commissioner of Central Excise or other party within a period of 180 days of the date on which he is served with notice of an order under Section 35C direct the Tribunal to refer to the High Court any question of law arising from such order of the Tribunal. Application for reference is to be made to the High Court within 180 days and there is no provision to extend the period of limitation for filing application to the High Court beyond the said period and condone the delay.

16. After close scrutiny of the provisions contained in Chapter VI-A of the Central Excise Act, 1944, we find substance in submission of learned counsel for the appellants that the provisions contained in Chapter VI-A of the Central Excise Act, 1944, which deals with appeal, is *pari materia* to the provisions contained in Chapter XX of the Act, which also deals with appeals and revisions under the IT Act.

17. In the matter of **Ahmedabad Pvt. Primary Teachers' Assn. Versus Administrative Officer and others**[3], the question before the Hon'ble Supreme Court was interpretation of definition of "Employee" as contained in Section 2(e) of the Payment of Gratuity Act, 1972. Interpreting the definition of 'Employee' with the external aid of statutes in *pari materia*, the Hon'ble Supreme Court observed thus:-

> "12. We have critically examined the definition clause in the light of the arguments advanced on either side and have compared it with the definitions given in other labour enactments. On the doctrine of *"pari materia"*, reference to other statutes dealing with the same subject or forming part of the same system is a permissible aid to the construction of provisions in a statute. See the following observations contained in *Principles of Statutory Interpretation* by G.P. Singh (8th Edn.), Syn.4, at pp.235 to 239:
>
> "*Statutes in pari materia*
>
> It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including 'other statutes in pari materia'. As stated by Lord Mansfield 'where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other'.
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> * * *

[3] (2004) 1 Supreme Court Cases 755

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The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute.""

18. In the matter of **Sirsilk Ltd. Versus Textiles Committee and others**[4], the Hon'ble Supreme Court while considering as to what statutes are considered to be in *pari materia*, referred to "Statutes and Statutory Construction" by Sutherland thus:-

> "Statutes are considered to be in pari materia to pertain to the same subject-matter when they relate to the same person or things, or to the same class of persons or thing, or have the same purpose or object. (*Statutes and Statutory Construction*, Vol.2, p.535, 3rd edn.)"

19. In the matter of **J.K. Steel Ltd., Versus Union of India and others**[5], the Hon'ble Supreme Court, while considering *pari materia* provisions of Central Excises and Salt Act (1944), Sch.I, Item 26AA – Tariff Act (1934), Sch.I entry 63 (36), held in paragraph-29 of the judgment that Acts being in *pari materia* must be taken together as forming one code and as interpreting and enforcing each other. In para-26 of the above judgment, referring to its earlier judgment in the matter of **C.A. Abraham V. I.T.O., Kottayam** (AIR 1961 SC 609), it was observed that 'In interpreting a fiscal statute the Court cannot proceed to make

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[4] 1989 Supp (1) Supreme Court Cases 168
[5] AIR 1970 SUPREME COURT 1173

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good deficiencies if there may be any; the Court must interpret the statute as it stands and in case of doubt in a manner favourable to the tax payer."

20. The Hon'ble Supreme Court after elaborately dealing with the above provisions of the Central Excise Act in detail has negated the argument based on Section 29(2) of the Limitation Act that in absence of any express exclusion of the provisions of Limitation Act in any special law ss.4 to 24 of the Limitation Act would be applicable. It has been observed thus:

> "In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court. The scheme of the Central Excise Act, 1944 support the conclusion that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by court under Section 5 of the Limitation Act. It is well settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act."

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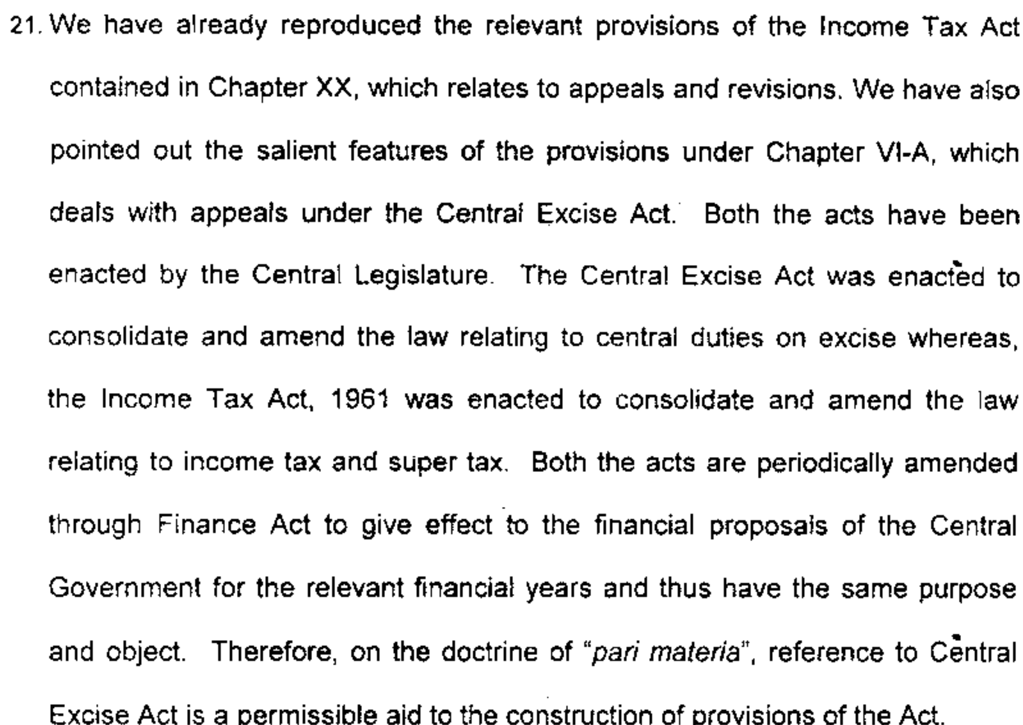

21. We have already reproduced the relevant provisions of the Income Tax Act contained in Chapter XX, which relates to appeals and revisions. We have also pointed out the salient features of the provisions under Chapter VI-A, which deals with appeals under the Central Excise Act. Both the acts have been enacted by the Central Legislature. The Central Excise Act was enacted to consolidate and amend the law relating to central duties on excise whereas, the Income Tax Act, 1961 was enacted to consolidate and amend the law relating to income tax and super tax. Both the acts are periodically amended through Finance Act to give effect to the financial proposals of the Central Government for the relevant financial years and thus have the same purpose and object. Therefore, on the doctrine of "*pari materia*", reference to Central Excise Act is a permissible aid to the construction of provisions of the Act.

22. As far as the arguments advanced by Shri Rajeshwara Rao, learned counsel for the appellants herein based on judgment of Full Bench of the Bombay High Court that sub-section (7) of Section 260A of the Act makes the provisions of CPC applicable in relation to appeal to the High Court and, therefore, the Income Tax Act is not a complete Code is concerned, from perusal of sub-section (9) of Section 35-G of the Central Excise Act, we find that the same is exactly identical as sub-section (7) of Section 260A of the Act.

23. In the matter of **Ravulu Subba Rao and others Versus Commissioner of Income Tax, Madras**[6], in paragraph-10 it has been held that the Courts must therefore construe the provisions of the Indian Income Tax Act as forming a code complete in itself and exhaustive of the matters dealt with therein, and ascertain what their true scope is. In paragraph-16, it has been further held thus:

> "To sum up, the Indian Income Tax Act is a self contained code exhaustive of the matters dealt with

[6] AIR 1956 SC 604

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therein and its provisions show an intention to depart from the common rule, *qui facit per alium facit per se*. Its intention again is that a firm should be given benefit of S.23(5)(a), only if it is registered under S.26-A in accordance with the conditions laid down in that section and the rules framed thereunder. And as those rules require the application to be signed by the partner in person, the signature by an agent on his behalf is invalid."

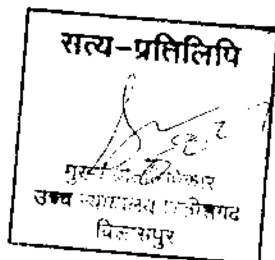
24. Thus, relying upon principles of law laid down by the Hon'ble Supreme Court in the matter of **M/s Hongo India (P) Ltd., and another** (Supra), we hold that the Income Tax Act, 1961 is a special law. The nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. The scheme of the Income Tax Act, 1961, support the conclusion that time limit prescribed under Section 260A to file an appeal before the High Court is absolute and unextendable by court under Section 5 of the Limitation Act and the limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act.

25. Since all the appeals herein have been preferred beyond the prescribed period of 120 days under Section 260A of the Act, the same are dismissed on the ground of limitation.

No orders as to costs.

Sd/-
Dhirendra Mishra
Judge

Sd/-
R.N. Chandrakar
Judge

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