

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**Income Tax Appeal No. (78) of 2002****Commissioner of Income Tax – I, Kanpur****Vs.****Shri Mohd. Farooq, Kanpur****With****Income Tax Appeal No. 11 of 2001****Commissioner of Income Tax (Central), Kanpur****Vs.****M/s. New Cawnpore Floor Mills Pvt. Ltd., Kanpur****With****Income Tax Appeal No. (5) of 2003****Janpad Thok Kendriya Upbhokta Sahkari Bhandar Limited, Deoria****Vs.****Commissioner of Income Tax, Gorakhpur****With****Income Tax Appeal No. (6) of 2003****Janpad Thok Kendriya Upbhokta Sahakari Bhandar Limited,****Deoria****Vs.****Commissioner of Income Tax, Gorakhpur****Appearance:**

For the Appellants : Shri Shambhu Chopra, Advocate.  
Shri Ashok Kumar, Advocate,  
Shri Ashok Trivedi, Advocate, and  
Shri Ashok Trivedi, Advocate  
(in all the appeals excepting I.T.A. No.  
(5) of 2003 and (6) of 2003).

: Shri Krishna Agrawal for Mr. R.P. Agrawal & Mr. R. R. Kapoor, Advocates (in I.T.A. No. (5) of 2003 and (6) of 2003).

For the respondents : Shri V.B. Upadhyay, Sr. Adv., with Shri Hanuman Upadhyay, Adv. (in all the appeals excepting I.T.A. No. (5) of 2003 and (6) of 2003)

**Hon'ble C.K. Prasad, C.J.**  
**Hon'ble R.K. Agrawal, J.**  
**Hon'ble Prakash Krishna, J.**

**(Delivered by Hon'ble C.K. Prasad, C.J.)**

As identical question of law is involved in all these appeals, they have been heard together and are being disposed off by this common judgment.

All these appeals have been preferred under Section 260A (2) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act 1961') by the Revenue as well as by the Assessee. It provides for filing of an appeal in the form of a memorandum of appeal within 120 days from the date on which the order appealed against is received by the Assessee or the Chief Commissioner or the Commissioner. It is an admitted position that all these appeals have been preferred beyond the period of limitation as provided under the aforesaid Section and the appellants have filed applications for extension of prescribed period of limitation and for admission of appeals after condoning the delay. When said applications for condonation of delay were placed for consideration before a Division Bench of this Court, the Division Bench by order dated 20.08.2007 referred the following question for determination by a larger Bench:-

“As to whether the period of limitation prescribed for filing an appeal under Section 260-A (2) of the Income Tax Act, 1961 is subject to the provisions contained in Sections 4 to 24 of the Limitation Act, 1963 as provided under Section 29 (2) of the Limitation Act, 1963?”

Hon'ble the Chief Justice on reference so made, directed the matter to be heard by three Judges' Bench and that is how, these appeals have come up before us for determination of the aforesaid question.

The question so formulated necessitates examination of the provisions of the Limitation Act, 1963 (hereinafter referred to as the 'Act 1963') as also the Act 1961. Section 29 of the Act 1963, which is relevant for the purpose, reads as follows:-

**“29. Savings.-** (1) Nothing in this Act shall affect Section 25 of the Indian Contract, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and

divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of “easement” in Section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.”

From a plain reading of Section 29 (2) of the Act 1963, it is evident that where in any special or local law, a period of limitation different from the period prescribed by its Schedule is provided, the provisions of Section 3 of the Act 1963 shall apply as if such period was the period prescribed by the Schedule to the Act 1963. It also provides that for the purpose of determining any period of limitation prescribed, the provisions contained in Sections 4 to 24 of the Act 1963 shall apply only insofar as and to the extent they are not expressly excluded by such special or local law.

In view of aforesaid, the question which, at the first instance, falls for consideration is as to whether an appeal preferred under Section 260A (2) of the Act 1961 comes within the ambit of Section 29 (2) of the Act 1963 so as to include the application of Sections 4 to 24 of the Act 1963. To come within the ambit of Section 29 (2) of the Act 1963, three main ingredients are required to be satisfied, namely:-

- (1) The special or local law must provide for a period of limitation for any suit or appeal.

- (2) The said period of limitation must be different from the period prescribed by the Schedule to the Act 1963.
- (3) The application of Sections 3 and 4 to 24 of the Act 1963 has not been expressly excluded by the special law.

It is common ground that the Act 1961 has provided for a period of limitation for filing an appeal and the said period of limitation is different from the period prescribed by the Schedule to the Act 1963. It is relevant here to state that Section 260A of the Act 1961 prescribes limitation of 120 days whereas Article 116 of the Schedule appended to the Act 1963 provides limitation of 90 days for filing appeal to the High Court.

In view of the above, unhesitatingly, the first two requirements are satisfied.

It is contended on behalf of the appellants that once conditions nos. 1 and 2, referred to above, have been satisfied, Section 29 (2) of the Act 1963 would apply. Reliance has been placed on a decision of the Supreme Court in the case of Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, AIR 1995 SC 2272, in which it has been held as follows:-

“22. As a result of the aforesaid discussion it must be held that appellate authority constituted under Section 18 of the Kerala Rent Act, 1965 functions as court and the period of limitation prescribed therein under Section 18 governing appeals by aggrieved

parties will be computed keeping in view the provisions of Sections 4 to 24 of the Limitation Act, 1963 such proceedings will attract Section 29 (2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate Authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the concerned applicant for the delay in filing such appeals. ... ”

We do not find any substance in the aforesaid submission of the counsel for the appellants and we are of the opinion that the special law providing for a period of limitation and that being different from the period prescribed by the Schedule to the Act 1963 itself, would not attract the provisions of Section 29 (2) of the Act 1963. The judgment of the Supreme Court in the case of Mukri Gopalan (supra), relied on by the appellants, in no way, suggests that if there is period of limitation under any special or local law and that prescription of period of limitation under such special law is different from the period prescribed by the Schedule to the Act 1963, Section 29 (2) of the Act 1963 on its own force will get attracted. It has further been held in the said case that one has to see that there is no express exclusion taking out the applicability of Section 5 of the Act 1963. In fact, this would be evident from the following passage of paragraph 11 of the judgment:-

“11. It is also obvious that once the aforesaid two conditions are satisfied S. 29 (2) on its own force will get attracted to appeals filed before appellate authority

under S. 18 of the Rent Act. When Section 29 (2) applies to appeals u/S. 18 of the Rent Act, for computing the period of limitation prescribed for appeals under that Section, all the provisions of Ss. 4 to 24 of the Limitation Act would apply. Section 5 being one of them would therefore get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of S. 5 of the Limitation Act to appeals filed before appellate authority under S. 18 of the Act. Consequently, all the legal requirements for applicability of S. 5 of the Limitation Act to such appeals in the light of S. 29 (2) of Limitation Act can be said to have been satisfied. ...” (Underlining ours)

Submission of the counsel for the appellants is that neither Section 260A of the Act 1961 nor any other provision thereof expressly excludes the applicability of Sections 4 to 24 of the Act 1963 and, therefore, Section 29 of the Act 1963 will apply and once it is held so, Section 5 of the Act 1963 would be available for extending the time for filing appeals and condoning the delay in filing appeals under Section 260A of the Act 1961. It is further contended that when the legislature has used the expression “expressly excluded”, one has to bank upon the provisions of the Act 1961 to come to that conclusion and the said conclusion cannot be arrived at by process of a detailed reasoning. Reference in this connection has been made to a decision of this Court in the case of Harbir Singh Vs. Ali Hasan & Ors., AIR 1966 All. 161, and our attention has been drawn to the following paragraph of the judgment:-

(9) The expression “expressly excluded” is clear enough. It signifies exclusion by words. It will not mean exclusion by a process of construction or reasoning. In Vidyacharan’s case, AIR 1964 SC 1099, Subba Rao, J. observed in paragraph 27 that S. 29 speaks of express exclusion and that though S. 116-A of the Representation of the People Act 1951 provides a period of limitation for an appeal and also the circumstance under which the delay can be excused, yet it does not amount to an express exclusion within the meaning of S. 29 of the Limitation Act.”

Reliance has also been placed on a Full Bench decision of the Bombay High Court in the case of Commissioner of Income-Tax Vs. Velingkar Brothers, (2007) 289 ITR 382 (Bom). In the said case, on review of a large number of authorities, the Bombay High Court has finally concluded as follows:-

“25. We shall finally conclude thus :

Section 5 of the Limitation Act shall apply in case of the appeals filed under Section 260A of the Income-tax Act, 1961.”

While coming to the aforesaid conclusion, the Full Bench has observed as follows:-

“21. Thus, there is an overwhelming line of cases holding Section 5 of the Limitation Act applicable to the matters in appeal and reference applications to the High Court under the Indian Income-tax Act, the Customs Act and the Bombay Sales Tax Act. Our conclusion in this regard is in line with these cases.”

Counsel for the respondents, excepting those in which Revenue is the respondent, however, contend that the expression “expressly excluded” does not mean that the provision providing for appeal itself should say so and that can be inferred from the scheme of the Act 1961 itself. Accordingly, it has been contended that the scheme of the Act 1961 clearly excludes application of Section 5 of the Act 1963 and, therefore, an appeal preferred under Section 260A of the Act 1961 cannot be admitted by extending the period of limitation.

In our opinion, for express exclusion of Sections 4 to 24 of the Act 1963, the special law need not provide for its exclusion in the provision providing for appeal itself and the express exclusion can be inferred from the scheme of the Act. We are further of the opinion that in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Act 1963 by an express provision, 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 the scheme of the special law excludes their operation. One can come to the conclusion that when a special law does not provide for application of Section 5 of the Act 1963, it is expressly excluded. A reference in this connection can be made to a decision of the Supreme Court in the case of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, (1974) 2 SCC 133, in which it has been held as follows:-

“... Even assuming that where a period of limitation has not been fixed for election petitions in

the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29 (2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and 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 view, 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. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which

does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petitioner under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial.”

Yet another decision of the Supreme Court in the case of The Commissioner of Sales Tax, Uttar Pradesh, Lucknow Vs. M/s. Parson Tools and Plants, Kanpur, AIR 1975 SC 1039, lends support to aforesaid view, which would be evident from paragraphs 12 and 13 of the judgment, which read as follows:-

“12. If the legislature willfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and

unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity. “To do so”—(at p. 65 in Prem Nath L. Ganesh v. Prem Nath L. Ram Nath, AIR 1963 Punj. 62. per Tek Chand, J.) “would be entrenching upon the preserves of Legislature”, the primary function of a court of law being *jus dicere* and not *jus dare*.

**13.** In the light of what has been said above, we are of the opinion that the High Court was in error in importing whole hog the principle of Section 14(2) of the Limitation Act into Section 10 (3-B) of the Sales-tax Act.”

The Supreme Court had the occasion to consider this question in the case of *L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. & Anr.*, (2004) 11 SCC 456, in which it has been held as follows:-

“**38.** A Special Court having regard to its nature and functions may be a court within the meaning of Section 3 of the Indian Evidence Act, 1872 or Section 3 of the Limitation Act, 1963 but having regard to its scope and object and in particular the fact that it is a complete code in itself, in our opinion, the period of limitation provided in the Schedule appended to the Limitation Act, 1963, will have no application. For the applicability of Section 29 (2) of the Limitation Act, the following requirements must be satisfied by the court invoking the said provision:

- (1) There must be a provision for period of limitation under any special or local law in

connection with any suit, appeal or application.

- (2) Such prescription of the period of limitation under such special or local law should be different from the period of limitation prescribed by the Schedule to the Limitation Act, 1963.”

In view of the authoritative pronouncement of the Supreme Court in the case of Commissioner of Customs & Central Excise Vs. M/s. Hongo India (P) Ltd. & Anr., (2009) 5 SCC 791, this question does not need further elaboration. Paragraph 20 of the judgment, which is relevant in this regard, reads as follows:-

“**20.** Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29 (2) would be attracted what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to High Court. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. 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.”

Bearing in mind the principle aforesaid, we proceed to consider the scheme of the Act. It hardly needs any discussion to hold that the Act 1961 is a complete Code in itself. Chapter XX of the Act 1961 deals with appeals and revision. Section 249 of the Act 1961 provides for appeal to the Commissioner and the limitation thereto, and sub-section (3) thereof specifically provides that the Commissioner (Appeals) may admit an appeal after the expiration of the period of limitation if he is satisfied that the appellant had sufficient cause for not presenting the appeal within

time. Section 253 of the Act 1961 provides for appeal to the Appellate Tribunal and the limitation for filing the appeal, but again sub-section (5) thereof confers power on the Appellate Tribunal to admit an appeal after expiry of the period of limitation. The power of the Commissioner (Appeals) and the Appellate Tribunal to condone the delay is not hedged and they can condone the delay of any period. However, Section 256 of the Act 1961, before its omission by the National Tax Tribunal Act, 2005, though provided for the Appellate Tribunal to make reference to the High Court and the limitation for filing such an application for reference was 120 days, but the proviso thereof had given power to entertain an application within a further period not exceeding 30 days. The proviso to sub-section (3) of Section 264 of the Act 1961 providing for filing revision also contemplates admission of an application beyond the period of limitation on showing sufficient cause.

It is relevant here to state that proviso to sub-section (1) of Section 269G of the Act, 1961 provides for extension of period of limitation for filing an appeal before the Appellate Tribunal against an order of the competent authority under Section 269F of the Act, 1961. Not only this, in relation to an appeal to the High Court against the order of the Appellate Tribunal under Section 269G of the Act, 1961, jurisdiction has been conferred to the High Court to admit the appeal after the expiry of the period of limitation on an application made before the expiry of the period. In the background aforesaid, when one considers the provision of Section 260A of the Act 1961 providing for appeal to the High Court, it

is evident that no such power has been given to the Court. Absence of any provision in Section 260A of the Act, 1961 conferring jurisdiction to condone the delay in filing the appeal and in view of the scheme of the Act, referred to above, in our opinion, provisions of Sections 4 to 24 of the Act, 1963 would not be applicable in the case of an appeal preferred under Section 260A of the Act, 1961.

Now referring to the decision of this Court in the case of Harbir Singh (supra), same in no way supports the plea of the appellants. Various provisions of the Act 1961, which we have referred to above, signify exclusion of the Act 1963.

True it is that the Full Bench of the Bombay High Court in the case of Velingkar Brothers (supra) has held that Section 5 of the Act 24 of 1963 shall apply in case of appeals filed under Section 260A of the Act 1961, but in view of the decision of the Supreme Court in the case of Hongo India (Pvt.) Ltd. (supra), it is difficult to follow its reasoning. The decision of the Bombay High Court is based on its earlier decisions in the cases relating to Customs Act and other Acts. However, the Supreme Court in the case of Hongo India (Pvt.) Ltd. (supra) considered the provisions of the Central Excise Act vis-à-vis Section 29 (2) of the Act 1963 and in face of enunciation of law in this case, it is difficult to follow the reasoning and conclusion of the Bombay High Court in the aforesaid case relied on by the appellants.

Accordingly, answer to the question formulated is in the negative and it is held that the period of limitation prescribed for filing an appeal

under Section 260A (2) of the Act, 1961 is not subject to the provisions contained in Sections 4 to 24 of the Act, 1963, as provided under Section 29 (2) of the Act, 1963.

Aforesaid answer, in our opinion, would have concluded the reference, but in deference to the plea taken by the appellants that Order XLI Rule 3-A of the Code of Civil Procedure (hereinafter referred to as the 'Code'), being applicable to an appeal under Section 260A of the Act, 1961, the delay in filing the appeal can be condoned under the aforesaid provision. It has been pointed out that sub-section (7) of Section 260A of the Act, 1961 provides for application of the provisions of the Code in the case of an appeal preferred under Section 260A of the Act, 1961. It has further been pointed out that Order XLI Rule 3-A of the Code, which has been inserted by the Code of Civil Procedure Amendment Act, 1976 (Act No.104 of 1976), provides for condonation of delay. Accordingly, it has been submitted that even if the provisions of the Act, 1963 may not be fit to be invoked, but delay can be condoned by resorting to the power under Order XLI Rule 3-A of the Code. Reliance has been placed on a Single Judge decision of the Delhi High Court in the case of Miss. Nirmala Chaudhary Vs. Bisheshar Lal, AIR 1979 Delhi 26, in which it has been held as follows:-

“34. ...The newly added provision of R. 3A of O. 41 in the Civil P.C. gives an additional right to a litigant to claim condonation at the time of presenting the appeal....”

We do not have the slightest hesitation in rejecting this submission.

Order XLI Rule 3-A of the Code of Civil Procedure reads as follows:

**“3-A. Application for condonation of delay.—**

(1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under Rule 11 or Rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.”

Sub-rule (1) of Rule 3-A of Order XLI of the Code provides for procedure for presenting an appeal after the expiry of period of limitation and it contemplates filing of an application supported by an affidavit setting forth the facts to satisfy the Court about the sufficient cause for not preferring the appeal within time. Sub-rule (2) thereof provides for notice to the respondent in case such an application is not rejected at the threshold and sub-rule (3) mandates that an order for stay of execution of a decree against which appeal is proposed to be filed shall not be granted

so long the decision is not taken to hear the appeal. Therefore, in our opinion, Order XLI Rule 3-A of the Code is not an independent provision conferring jurisdiction on the Appellate Court to condone the delay, but provides for the procedure to be followed for filing and considering the application for condonation of delay.

In our opinion, in view of the language of Order XLI Rule 3-A of C.P.C., it is difficult to hold that it gives any additional right to claim condonation under this provision. A Division Bench of the Madras High Court had the occasion to consider this question in the case of Managing Director, Thanthal Periyar Transport Corpn. Villupuram Vs. K.C. Karthiyayini, AIR 1995 Mad. 102, wherein it has been held as follows:-

“7. Counsel for one of the petitioners also contends that Order 41, Rule 3-A (1) gives a further right to claim condonation of the delay, in addition to such right under Section 5 of the Limitation Act and that O. 41, Rule 3-A will have application only if the said Section 5 is invoked. According to him these petitions to condone delay are filed under Section 173 of the Motor Vehicles Act and not under Section 5 of the Limitation Act. In this connection, he relied on *Nirmala Chaudhary Vs. Bisheshar Lal* (AIR 1979 Delhi 26) and *State of Assam V. Gobinda Chandra Paul* (AIR 1991 Gauhati 104). The observation in AIR 1979 Delhi 26 is no doubt as follows (at p. 31):-

“The newly added provision of R.3 of O.41 in the Civil P.C. gives an additional right to a litigant to claim condonation at the time of presenting the appeal.”

In State of Assam V. Gobinda Chandra Paul (AIR 1991 Gauhati 104) also similar view appears to have been expressed in the following words (at p.110):-

“Besides, this rule is not in derogation of S.5 of the Limitation Act, in fact, it is in addition to that”.

But, we are unable to subscribe to this view, since O.41, R.3-A, C.P.C. has only been inserted by the Amending Act, 1976 in order to prescribe the procedure for securing the final determination of the question as to limitation even at the stage of admission of the appeal. The rule does not prescribe the period of limitation for an appeal. The period of limitation is provided only under Art. 116 of the Limitation Act, 1963 in respect of appeals and it cannot be said that O.41, Rule 3-A gives any additional right to litigants to claim condonation. Moreover, condonation of delay is not a matter of right. The litigant who comes to court after the prescribed period of limitation is bound to satisfy the Court that he has sufficient cause for the delay.”

We respectfully agree with the aforesaid observation.

To put the record straight, it is relevant here to state that it has also been contended on behalf of the appellants that principles of natural justice demand that in case of the appellants showing sufficient cause, the appeal deserves to be heard, though presented beyond the period of limitation.

We are of the opinion that appeal has to be presented according to the procedure prescribed. The remedy of appeal is a statutory right and hence it has to be presented in accordance with the procedure, the manner and within the time prescribed by the Statute, and the principles of natural justice are not remotely attracted so far as the question of limitation is concerned.

Having held that the delay in filing the appeals cannot be condoned, we have no option than to dismiss all the appeals as barred by limitation and they are dismissed accordingly.

September 3, 2009  
AHA

(C.K. Prasad, C.J.)

(R.K. Agrawal, J.)

(Prakash Krishna, J.)

**Income Tax Appeal No. (78) of 2002**

**Commissioner of Income Tax – I, Kanpur**

**Vs.**

**Shri Mohd. Farooq, Kanpur**

**Hon'ble C.K. Prasad, C.J.**

**Hon'ble R.K. Agrawal, J.**

**Hon'ble Prakash Krishna, J.**

Dismissed.

For orders, see order of date passed on  
separate sheets.

03.09.2009

AHA

(C.K. Prasad, C.J.)

(R.K. Agrawal, J.)

(Prakash Krishna, J.)

**Application No. 154052 of 2002**  
In  
**Income Tax Appeal No. (78) of 2002**

**Hon'ble C.K. Prasad, C.J.**  
**Hon'ble R.K. Agrawal, J.**  
**Hon'ble Prakash Krishna, J.**

Rejected.

For orders, see order of date passed on  
the appeal.

03.09.2009  
AHA

(C.K. Prasad, C.J.)

(R.K. Agrawal, J.)

(Prakash Krishna, J.)