

**AFR**

**Case :-** REVIEW PETITION DEFECTIVE No. - 10 of 2011  
(Income Tax Appeal No.127 of 2006)

**Petitioner :-** J.B. Roy (Jay Brata Roy) S/O Late S.C. Roy( Itxa 127/2006 )  
**Respondent :-** Deputy Commissioner of Income Tax, Central Circle-I, LKO.  
**Petitioner Counsel :-** Waseeq Uddin Ahmed

**Hon'ble Rajiv Sharma,J.**  
**Hon'ble Dr. Satish Chandra,J.**

By this review petition, the revisionist has made a request that the order dated 11.12.2009 passed in Income Tax Appeal No.127 of 2006 may kindly be recalled where the appeal was dismissed on the ground of limitation alone. The said order, on reproduction, reads as under:

*"This appeal has been filed by the assessee-appellant under Section 260-A of the Income Tax Act against the judgment and orders dated 31.8.2005 passed by the Income Tax Appellate Tribunal, Lucknow for the assessment year 1994-95.*

*The appeal is barred by limitation. The appellant has filed an application for condonation of delay.*

*In view of the Full Bench of the this Court in the case of CIT vs. Farooqui & others,317 ITR 305 Allahabad (Full Bench), the delay in filing the appeal cannot be condoned.*

*Accordingly, the application for condonation of delay is rejected. Since, the application for condonation of delay is rejected, the appeal is accordingly dismissed too."*

Learned counsel for the revisionist Sri Waseeq-uddin Ahmad submits that the aforesaid order was challenged before the Hon'ble Apex Court in Special Leave to Appeal (Civil) No. 33289 of 2010 and the Hon'ble Apex Court vide order dated 10.10.2011 has passed the following order:

*"We request the High Court to expeditiously hear and dispose of the review petition. The special leave petition shall stand over for eight weeks."*

Learned counsel further submits that in the Income Tax Act,

Section 260-A (2A) has been inserted by the Finance Act, 2010 w.e.f. 01.10.1998 (retrospectively), which on reproduction, reads as under:

**"Section 260A.**

1. ....

2. ....

**2A.** *The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period."*

Learned counsel for the revisionist submits that by virtue of the amendment, now the Hon'ble High Court has power to condone the delay beyond the statutory period, if there is sufficient reason. So, in the instant case, delay may kindly be condoned by recalling the order dated 11.12.2009, whereby the appeal was dismissed only on the ground of limitation.

On the other hand, learned counsel for the department opposed it.

After hearing both the parties, it appears that this Bench has merely followed the decision of the Full Bench of this Hon'ble Court passed in the case of ***CIT v. Farooqui & others, 317 ITR 305 Allahabad (Full Bench)*** where it was observed:

*"Sub-section (2) of section 29 of the Limitation Act, 1963, provides that wherein 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 1963 Act shall apply as if such period was the period prescribed by the Schedule to the 1963 Act. It also provides that for the purpose of determining any period of limitation prescribed, the provisions contained in sections 4 to 24 of the 1963 Act shall apply only in so far as and to the extent they are not expressly excluded by such special or local law. The special law providing for a period of limitation and that being different from the period prescribed by the Schedule to the 1963 Act itself, would not attract the*

*provisions of section 29(2) of the 1963 Act.*

*The Income-tax Act, 1961 has provided for a period of limitation for filing an appeal to the High Court and the period of limitation is different from the period prescribed by the Schedule to the 1963 Act. Section 260 A of the 1961 Act prescribes a period of limitation of 120 days whereas article 116 of the Schedule to the 1963 Act provides a period of limitation of 90 days for filing appeals to the High Court.*

*For express exclusion of Sections 4 to 24 of the 1963 Act, the special law need not provide for its exclusion in the provision providing for appeals itself and express exclusion can be inferred from the scheme of the Act. In a case where the special law does not exclude the provisions of sections 4 to 24 of the 1963 Act 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. When a special law does not provide for application of section 5 of the 1963 Act, it is expressly excluded.*

*In the absence of any provision in Section 260 A of the 1961 Act conferring jurisdiction to condone the delay in filing the appeal and in view of the scheme of the Act, 1961 the provisions of sections 4 to 24 of the Act 1963 would not be applicable in the case of an appeal preferred under Section 260 A of the 1961 Act. Therefore, the period of limitation prescribed for filing an appeal under section 260 A of the 1961 Act is not subject to the provisions contained in Section 4 to 24 of the Act as provided under section 29 (2) of the 1963 Act.*

*In view of the languages of Order XLI, rule 3A of the Code of Civil Procedure, 1908, it does not give any additional right to claim condonation under this provision."*

The Full Bench decision has followed the ratio laid down by the Hon'ble Apex Court in the case of **Commissioner of Customs and Central Excise vs. Hongo India Limited (2009) 315 ITR 449 SC**, where it was observed that the delay cannot be condoned beyond the statutory period, unless there is some specific provision.

Needless to mention that in the case of **Commissioner of Customs, Central Excise, Noida vs. Punjab Fibres Limited, Noida;**

**(2008) 3 SCC 73**, it was observed that Section 35-H (1) of the Central Excise Act, 1944 provides that the Commissioner of Central Excise or the other party may, within one hundred and eighty days may file an appeal. The appeal period was prescribed 180 days and there was no discretion given to the court to condone the delay beyond statutory period. So, the Hon'ble Apex Court observed that the question of condonation of delay must, therefore, be governed by the then law.

In the instant case, the amendment under Section 260A (2A) has been introduced retrospectively w.e.f. **01.10.1998** by the Finance Act, 2010. But fact remains that the cases already settled before the said amendment cannot be re-opened, as per the ratio laid down in the case of **Babu Ram v. C. C. Jacob and others; AIR (1999) SC 1845**, where it was observed that the prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. In matters, where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law.

The amendments is applicable to future cases to avoid uncertainty as per the ratio laid down in the case of **M. A. Murthy v. State of Karnatka; 264 ITR 1 SC**, where it was observed that prospective over-ruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding

law declared by it earlier. It is a device innovated to avoid the reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest.

It is not possible to anticipate the decision of the highest court or an amendment and pass a correct order in anticipation as per the ratio laid down in the case of ***CIT v. Schlumberger Sea Company; 264 ITR 331 Cal.*** Therefore, the amendment introduced in Section 260-A(2A) has the effect only on pending and future cases, as observed in the case of ***ACE Investment Limited v. Settlement Commission; 264 ITR 571 Madras.***

It may be mentioned that an 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.

In the instant case, the application for condonation of delay was rightly rejected as per the then law which on reproduction reads as under:

**Section 260-A**

(1). .....

(2). .....

*(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.*

Thus, on 11.12.2009 (when the instant appeal was dismissed on

the ground of limitation), there was no discretion with the court to condone the delay. A discretion has come to the court by virtue of the amendment by inserting the provision of Section 260-A (2A) of the Act.

In view of above, the appeal in question was dismissed as per the then law and the subsequent amendment is not applicable as the matter has already attained finality.

Thus, we find no merit in the review petition and the same is dismissed.

**Order Date :- 07.09.2012.**  
VNP/-