

Analysis

CONDONATION OF DELAY BY HIGH COURT U/S 260A OF INCOME TAX ACT, 1961 IS NOT POSSIBLE

M/s. Grasim Industries Limited, Mumbai

DATE: 8th JULY 2009

In this case Revenue applied for Condonation of delay of 575 days in filing this Appeal before BHC under Section 260 A.

Revenue relying upon decision of BHC in the case of *Commissioner of Income Tax V/s. Velingkar Brothers* reported submitted that this Court has power to condone the delay in filing an appeal under Section 260 A of the I.T. Act.

Assessee relying upon two decisions of the Apex Court in the case of *Commissioner of Customs & Central Excise V/s. Hongo India (P) Limited & Another* and *Chaudharana Steels (P) Limited V/s. Commissioner of Central Excise* wherein it is held that the High Court has no power to condone the delay.

BHC after considering the submissions of both the parties held that 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.

Therefore, appeal of revenue for Condonation of delay dismissed.