tsad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.28591 OF 2026
IN
INCOME TAX APPEAL (L) NO.28435 OF 2026

Commissioner of Income Tax
(International Taxation)- 2 Mumbai
Room No.511, 5th Floor,
Kautilya Bhavan, Mumbai,
400051, Maharashtra ...Applicant

Versus

EBay Singapore Services Private Limited
1 Temasek Avenue, 14-01 Millenia Tower, Singapore
C/o Ernst & Young LLP,
Romit patel, Rohit Biyani and Khushboo Patel,
14th Floor, The Ruby 29
Senapati Bapat Marg,
Dadar (W), Mumbai-400028
PAN: AAECE0605P
AY 2019-20 ...Respondent

———

Mr Subir Kumar, with Ashita Aggarwal, for the Applicant.

Mr Poras F Kaka, Senior Advocate, with Manish Kanth, i/b Atul K Jasani, for the Respondent.

———

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

RESERVED ON: 18th SEPTEMBER 2026
PRONOUNCED ON: 27th NOVEMBER 2026

ORDER: (Per Dr Neela Gokhale J.)

1. The Applicant-Revenue, by the present Interim Application, has sought condonation of delay of 121 days in filing the accompanying Appeal challenging the Order dated 30th September 2025, passed by the Income Tax Appellate

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

Tribunal ('**ITAT**'), Mumbai, in ITA No. 2378/Mum/2025 for Assessment Year ('**AY**') 2019-2020, under the provisions of Section 260A of the Income Tax Act, 1961 ('**the IT Act**').

2. The facts giving rise to the Application can be summarised as under:

a) The Respondent is stated to be a non-resident Company incorporated in Singapore in the year 2003. During the AY under consideration, the Respondent sold its shares in Flipkart, Singapore, for a consideration of Rs.7440,79,50,063/-. It filed its returns, declaring NIL income. The case was selected for scrutiny, and assessment proceedings were initiated by the National e-Assessment Center ('**NeAC**'). After hearing the Respondent, the Assessing Officer ('**AO**') passed a Draft Assessment Order dated 30th September 2021, proposing to deny the exemption under Article 13(5) of the India-Singapore Double Tax Avoidance Agreement ('**DTAA**') as claimed by the Respondent. The AO noted that, in substance, the Respondent's management and control were situated in USA, not in Singapore, as the Respondent's head and brain was in the USA.

b) The Respondent filed its objections before the Dispute Resolution Panel ('**DRP**'), which issued directions on 21st June 2022, upholding the proposed additions in the Draft Assessment Order. The AO completed the assessment proceedings by passing the final Assessment Order dated 25th July 2022, whereby the AO added short-term capital gain, taxable in India, of Rs.2257,91,95,035/-.

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

c) The Respondent assailed the said assessment Order before the ITAT. While the Respondent claimed that the India-US DTAA is not applicable to the transaction, the Revenue claimed that the transaction, being a layered transaction, the ultimate beneficiaries of the sale proceeds of the shares are the Respondent's US-based company itself, namely, eBay Inc., as its management and control is located in the US. The Revenue relied on a Supreme Court decision in the case of ***AAR v. Tiger Global International II Holding***[1].

d) The ITAT, by the impugned order dated 30th September 2025, allowed the assessee's appeal, holding that the transferred shares are of Flipkart, Singapore, a Company incorporated and tax resident in Singapore, and that the gains therefrom, though arising from an entity with underlying Indian business assets, are alienation of foreign-situs shares. Thus, the ITAT held that the transaction does not fall within the ambit of Article 13(2) or 13(4B) of the India-Singapore Treaty and, by virtue of Section 90(2) of the IT Act, the provisions of Article 13(5) of the India-Singapore DTAA prevail. The ITAT held that the gains in question cannot be held chargeable to tax in India. The Respondent has thus been granted the benefit of the India-Singapore DTAA and its tax liability on the short-term capital gain of Rs.2257,91,95,035/- arising from the sale of shares of Flipkart Pvt. Ltd., Singapore has been deleted. This decision is assailed in the Appeal accompanying the present Application.

1 2026 SCC OnLine 86

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

3. The Revenue has raised several important questions of law, including whether the ITAT erred in allowing the benefits of the India-Singapore DTAA to the Respondent in light of the decision of the Supreme Court in ***Tiger Global International*** (supra). According to the Applicant-Revenue, the accompanying Appeal raises a significant question of law as to the manner in which the relevant investment and sale transaction was structured, whether it had a genuine commercial purpose and economic substance, independent of the tax benefit claimed under the India-Singapore DTAA, particularly given the substantial gains arising from investments connected with India. The Revenue claims that the ITAT failed to appreciate the principles laid down by the Supreme Court in ***Tiger Global International*** (supra).

4. The Revenue has, however, filed with a delay of 121 days, of which condonation has been sought in the present Interim Application.

5. In pursuance of a permission granted by the Court by its order dated 21st August 2026, Mr Subir Kumar, learned Counsel appearing for the Applicant-Revenue, has filed an additional Affidavit in support of the prayer for condonation of delay. Mr Poras Kaka, learned Senior Advocate, represented the Respondent. The Respondent has also filed its Reply Affidavit and an additional Reply Affidavit.

6. The Revenue has explained the 121 days' delay in its affidavit. It is contended that the impugned Order was pronounced in open court on 30th September 2025. The office of the CIT (IT)-2, Mumbai, officially received the certified copy on 16th December 2025. Thus, the statutory period of limitation

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

under Section 260A(2) of the IT Act expired on 15th April 2026. The accompanying Appeal is preferred on 14th August 2026. Accordingly, the Revenue has calculated the delay as 121 days. In support of his contention that the certified copy was received by the Department on 16th December 2025, Mr Subir Kumar brought to the notice of this Court a covering letter dated 12th December 2025 issued by the Assistant Registrar of the ITAT, informing the PCIT, Pr. CIT CITY (International Taxation) – II, that the departmental copies of the ITAT's order, pertaining to his jurisdiction, are forwarded as per the details given in the enclosed proforma for well-categorised transmission to the concerned AO. The acknowledgement card of the registered post of the certified copy is placed on record. It indicates the date of receipt of the packet received by the PCIT CITY (International Taxation) – II, at his office in Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-51, on 16th December 2025.

7. Considering the stakes involved in the matter along with the complexity of issues, the Revenue took a decision to assail the ITAT's order after the issue was subjected to multi-layered regulatory reviews by the officials concerned. The additional Affidavit of the Revenue has explained that the Additional Commissioner of Income Tax (IT) Range-2(2), Mumbai, at the first instance evaluated the case, added detailed comments and forwarded the file to the CIT (IT)-2 on 20th March 2026, who independently examined the proposal and forwarded the finalised Scrutiny Report along with his formal recommendation to the Chief Commissioner of Income Tax ('**CCIT**') on 25th March 2026. A meticulous higher-level evaluation followed, after which the Competent

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

Authorities received the final administrative approvals on 22nd April 2026. The team promptly took administrative steps to procure a government treasury challan to deposit the mandatory court fee of Rs.10,000/-. The advocate concerned drafted the Appeal memo, sought necessary approvals, and collated documents. During the interim, the High Court went on summer break. Pursuant to further discussions on the Appeal memo, the Appeal was preferred on the aforesaid date. The Revenue, thus, explained the steps it took to formalise and file the Appeal between 16th December 2025 and 14th August 2026.

8. Mr Poras Kaka strenuously objected to the delay being condoned. According to him, since the order was pronounced in open court on 30th September 2025, the limitation period commenced on that date. He says that the Respondent uploaded the impugned Order on the Income Tax portal on 22nd October 2025, 20th November 2025, and 03rd December 2025, requesting the department to give effect to the Order. He submitted that the officials concerned had knowledge of the order well before the day on which they may have received the certified copy of the same. Mr Kaka resisted the Application essentially on two grounds, firstly, on the basis that the Revenue failed to make out any 'sufficient reasons'/ 'sufficient cause' for the delay and secondly, the delay is *mala fide.* He thus prayed that the Application be rejected. Both counsels placed reliance on several decisions of the Supreme Court and other High Courts in support of their respective contentions.

9. Before delving into the merits of the matter, the relevant provision of the IT Act relating to the delay condoning power of the High Court is reproduced

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

hereunder:

> "**260A. Appeal to High Court.**
> (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 Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or 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 Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;**
> (b) [***]
> (c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.
> **(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.**
> (3) * * *
> (4) * * *.
> (5) * * *
> (6) * * *
> (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, apply in the case of appeals under this section."
>
> (emphasis supplied)

10. A plain reading of Sub-section (2)(a) read with (2A) of Section 260A of the IT Act (supra) reveals the discretion vested with the High Court to admit an appeal after the expiry of the original 120 days, referred to in Clause (a) of Sub-section (2), on its satisfaction that there was 'sufficient cause' for the delay. Sub-section (7) also provides for applicability of the provisions relating to appeals to the High Court, contained in the Code of Civil Procedure, 1908 ('**CPC**'). It will thus also be fruitful to reproduce Order XLI Rule 3A of the CPC, which provides for application for

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

condonation of delay.

> "**3A. Application for condonation of delay.** - (1) When a 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 hereof 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 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."

11. Thus, from a conjoint reading of Section 260A(2A) of the IT Act and Order XLI Rule 3A of the CPC, it is clear that the delay in preferring an appeal under Section 260A can be condoned on the applicant showing 'sufficient cause'. Furthermore, Section 5 of the Limitation Act, 1963 provides for extension of the prescribed period in certain cases, which is also reproduced hereunder:

> "**5. Extension of prescribed period in certain cases**.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court **that he had sufficient cause for not preferring the appeal or making the application within such period.**
> Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."
>
> (emphasis supplied)

12. In view of the aforesaid provisions, the limited issue that arises for our consideration in the present application is whether the Applicant has demonstrated 'sufficient cause' for the 121 days' delay in preferring the accompanying Appeal.

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

13. Condonation of delay is a subjective issue. Over the years, the courts have laid down certain principles which are being applied in considering an application for condonation of delay. In general, the Courts have held that the approach to condonation of delay must be pragmatic and liberal, not pedantic. 'Sufficiency of cause' is what matters and not the length of delay. In a series of decisions, the Supreme Court has held that courts should examine cases on the merits and should not dispose of them merely on the ground of delay, particularly when huge stakes are involved. Basically, the laws of limitation are founded on public policy. Public interest demands that litigation ends. The Limitation Act is founded on the most salutary principle of general and public policy and incorporates great benefit to the community. The statute discourages litigation by burying in one common receptacle all the accumulations of past times, which are unexplained and have not, from lapse of time, become inexplicable. Thus, there is no dispute that the object of limitation is to put a quietus on stale and dead disputes and that a person ought not to be allowed to agitate his claim after a long delay.

14. However, the length of the delay does not matter, as the acceptability of the explanation, whether it is a sufficient cause, is the criterion. Sometimes a short delay may be unconscionable for want of an acceptable explanation, whereas in other cases, a very long delay can be condoned if the explanation is satisfactory. This difference stems from the Court's primary function: to adjudicate between the parties and advance substantial justice. The time limit fixed for approaching the Court in different situations is not because, on expiry of such time, a bad cause would transform into a good cause. The Courts are not supposed to legalise

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

injustice on technical grounds, as it is the duty of the Court to remove injustices.

15. The Supreme Court in ***Collector, Land Acquisition, Anantnag & Anr. vs. Mst Katiji & Ors.***[2] observed as under:

> "**3.** The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. **The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts.** It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:
>
> 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
> 3. Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense and pragmatic manner.
> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
> 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
> 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."
>
> (emphasis supplied)

16. The rules of limitation are thus not meant to destroy the rights of parties. The Court has discretion to condone delay for this reason. A Court knows that refusing to condone delay would foreclose a suitor from putting forth his cause.

---

2 (1987) 2 SCC 107

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

There is no presumption that delay in approaching the Court is always deliberate. In ***N. Balakrishanan vs. M. Krishna Murthy***[3], the Supreme Court has observed just this, which reads as under:

> "**13.** It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation…."

17. The Supreme Court in ***Popat and Kotecha Property vs. State Bank of India Staff Association***[4] observed as under:

> **"9. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury.** The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time."
>
> (emphasis supplied)

18. The expression 'sufficient cause' used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serves the ends of justice. No hard and fast rule has been or can be laid down for deciding applications for condonation of delay, but

---

3 (1998) 7 SCC 123

4 (2005) 7 SCC 510

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

over the years, the Supreme Court has advocated a liberal approach in such matters so that the substantive rights of the parties are not defeated merely because of delay. In ***Maniben Devraj Shah vs. Municipal Corporation of Brihanmumbai***[5], the Supreme Court, while placing reliance on ***Ramlal, Motilal and Chhotelal vs. Rewa Coalfields Ltd.***[6], has observed as under:

> **"24. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.**
> **25.** In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."
>
> (emphasis supplied)

19. The three-Judge Bench of the Supreme Court in ***State of Haryana vs. Chandra Mani and Others***[7], in the context of the approach that the Court needs to take in condoning delay in cases where the Government is the applicant, held as under:

> "**11.** It is notorious and common knowledge that delay in more than 60 percent of the cases filed in this Court — be it by private party or the State — are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an

5 (2012) 5 SCC 157
6 AIR 1962 SC 361
7 (1996) 3 SCC 132

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

> even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

20. The Supreme Court has followed the aforesaid approach in its various subsequent decisions.

21. Mr Kaka, in opposing the Interim Application, has, however, arduously placed reliance on the recent decision of the Supreme Court in the matter of ***Shivamma (Dead) by Lrs. vs. Karnataka Housing Board and Ors.***[8] to contend

8 2025 SCC OnLine 1969

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

that there is no room for largesse and/or for State lethargy and leisure under Section 5 of the Limitation Act. In ***Shivamma*** (supra), the Supreme Court was dealing with an appeal arising against an order passed by the Karnataka High Court refusing to condone a delay of 3966 days in preferring a second appeal. In the present case the delay is only of 121 days. The Supreme Court in such context of a gross delay of 3966 days drew a distinction between a series of its own decisions on delay condonation prior to ***Postmaster General & Ors. vs. Living Media India Ltd. & Anr.***[9] and the decisions subsequent to ***Postmaster General*** (supra). The Supreme Court analysed the position in law as it originally stood and observed that there existed a marked difference in a case where the delay was attributable to a private litigant and the case where the delay was occasioned on the part of the State or its instrumentalities. This distinction, as observed by the Supreme Court in ***Shivamma*** (supra), is founded on the impersonal character of public authorities, where no public officer is vested with any individual interest in diligently espousing the State's cause. The Supreme Court discussed a series of its pre-***Postmaster General*** (supra) decisions, wherein the view of the Court was that the State or any of its instrumentalities cannot be put on the same footing as a private party for the purposes of condonation of delay under Section 5 of the Limitation Act, as an individual would always be quick in taking decisions whether he would pursue the remedy by way of an appeal since he is the person legally injured, while the State is an impersonal machinery working through its officers or servants, bound by bureaucratic methodology. Thus, the earlier consistent view, as observed

9 (2012) 3 SCC 563

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

in ***Shivamma*** (supra), was that although equality before law is sacrosanct, equality does not mandate a refusal to recognise institutional realities. As the decision in Postmaster General (supra) notes, when assessing an application for condonation of delay, it was held that condonation of delay is not an exception and should not be used as an anticipated benefit for government departments. Thereafter, the Supreme Court discussed the decisions that followed ***Postmaster General*** (supra), in which the pendulum shifted from a view of giving preferential indulgence to Government Departments/its instrumentalities, observing that an explanation of bureaucratic lethargy cannot be accepted. While discussing its decision in ***Sheo Raj Singh (D) Tr. Lrs & Ors. vs Union of India & Anr.***[10], the Supreme Court observed that although decisions subsequent to ***Postmaster General*** (supra) have not accepted governmental lethargy, tardiness and indolence in presenting appeals as sufficient cause for delay condonation, yet because the High Court had condoned the delay by accepting such explanation before the decision of ***Postmaster General*** (supra) was rendered, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice-oriented approach as expounded in the decisions which earlier occupied the field. In this context, the Supreme Court condoned the delay in ***Sheo Raj Singh*** (supra).

22. Having observed a significant shift in the regime that once accorded preferential indulgence to the State, premised on its bureaucratic complexities and institutional inertia, the Supreme Court in ***Shivamma*** (supra) noted that the law has now evolved to insist upon a parity between the government and private

10 (2023) 10 SCC 531

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

litigants. The rationale is that public interest is better served not by excusing governmental inefficiency, but by fostering accountability, diligence and responsibility in the conduct of public litigation.

23. There can be no two opinions, in regard to the principles laid down in ***Shivamma*** (supra) and the unambiguous and clear view recorded by the Supreme Court that condonation of delay is to remain an exception, not the rule, and that government litigants, no less than private parties, must demonstrate *bona fide*, sufficient and cogent cause for delay, is salutary. Absent such justification, delay cannot be condoned merely on the ground of the applicant's identity. While it was also held that there was a significant shift in the approach to delay, on a condonation request made by Government departments and an individual, the Supreme Court still maintained that the criterion for considering such requests remained unchanged. The Supreme Court maintained that while excuses premised solely on bureaucratic lethargy cannot, by themselves, constitute 'sufficient cause', circumstances may nonetheless exist where the explanation offered, though involving bureaucratic procedures, reflects a genuine and *bona fide* cause for the delay. In such instances, the Supreme Court observed that the true test is whether the explanation demonstrates that the State acted with reasonable diligence and whether the delay occurred despite efforts to act within time. Where such *bona fide*s are established, the Court retains the discretion to condone the delay. To this extent, ***Shivamma*** (supra) does not assist Mr Kaka. The issue for our determination, as stated hereinabove, is limited to whether the Applicant-Revenue has made out 'sufficient cause' and established its *bona fides*, without according any

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

preferential indulgence to the Applicant on the ground of its identity. We are required to apply the same criteria to the Applicant as we would apply to the Respondent, had the shoe been on the other foot.

24. The expression 'sufficient cause' would include a position that in the facts and circumstances of a case the party has not acted in a negligent manner or there was a want of *bona fides* on its part, or that the party has 'not acted diligently' or 'remained inactive'. The Court needs to examine whether the mistake is *bona fide* or merely a device to cover an ulterior purpose. If the delay is 'extraordinary', it cannot be condoned, but when the Court is satisfied that the applicant was alive to its rights to pursue the legal remedy and accordingly took steps demonstrating its intent to assail the impugned order, without any indication of lethargy or *mala fide*, then the delay would certainly be *bona fide,* falling within 'sufficient cause' being shown, and the delay can be condoned. It is not the case that IT Act does not provide that the principles in condonation of delay in filing an appeal are different and the delay under the statutory provisions, as noted hereinabove, can be condoned if sufficient cause is demonstrated. In Black's Law Dictionary, 'sufficient cause' has been defined to be a cause or reason adequate to hold a defendant to answer charges, functioning similarly to reasonable or probable cause. The expression 'sufficient cause' is not defined in the Act; it has been interpreted in a catena of decisions, including several situations depending on the facts and circumstances of the case. There cannot be a straitjacket formula to be applied in the exercise of the jurisdiction to condone the delay; suffice it to observe that the approach of the Court would be of a liberal construction so as to advance

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

substantial justice, when there are no reasons of gross lethargy, inaction or lack of *bona fides* are not imputable to the Applicant. Also, in deciphering 'sufficient cause', it is a test of a reasonable man in normal circumstances, which needs to be applied. The Supreme Court, in ***State of Nagaland vs. Lipok AO and Ors.***[11], held that the expression 'sufficient cause' should be interpreted pragmatically and in a justice-oriented approach, rather than through a technical approach that requires explaining every day's delay.

25. In ***Ram Nath Sao alias Ram Nath Sahu & Ors. vs. Govardhan Sao & Ors.***[12], the Supreme Court held that the Court should not proceed to find fault with a cause shown and reject a petition by a slipshod order. Where no negligence or inaction or want of *bona fide*s can be imputed, the acceptance of explanation furnished should be the rule and refusal an exception. By taking a pedantic or hyper-technical view, the explanation furnished by the applicant for condonation of delay should not be rejected when high stakes are involved, and there are arguable points of law on the merits. Refusal to condone delay in such cases will cause erroneous loss and irreparable injury to the aggrieved party by terminating the *lis* at the inception.

26. In ***Concord of India Insurance Company Ltd. vs. Nirmala Devi (smt) & Ors.***[13], the Supreme Court held that what is to be looked into is whether there is any taint of *mala fide* or element of recklessness or ruse and if neither is present, legal advice honestly sought and actually given, must be treated as 'sufficient cause'

11 (2005) 3 SCC 752
12 AIR 2002 SC 1201
13 (1979) 4 SCC 365

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

for condoning the delay.

27. Mr Kaka also placed reliance on the decision of the Delhi High Court in the matter of ***Commissioner of Income Tax-7 vs. Odeon Builders (P) Ltd. & Anr.***[14] The question that arose in ***Odeon*** (supra) was whether the words "Principal Chief Commissioner or Chief Commissioner or Principal Commissioner" in Section 260A (2)(a) of the Income Tax Act, 1961 mean only the 'jurisdictional' Principal or Chief Commissioner of Income Tax (CIT) or could it include any CIT, including the CIT (Judicial). The facts involved in said case were that the photocopy of the certified copy of the Order assailed by the Revenue in that matter was delivered to the officer of the CIT, Ghaziabad on 19th December 2014. There was an endorsement of the Tax Assistant dated 22nd/23rd December 2014. The explanation of the Revenue was that on the date of dispatch of the impugned order of the ITAT, the memo of parties in the appeal showed the address of the CIT at Ghaziabad, the certified copy being received by him was on 19th December 2014. Thereafter, pursuant to certain administrative orders issued by the Income Tax department, the jurisdiction relating to the Assessee in that matter was transferred to the CIT, Delhi-IV. Thus, the revenue contended that the limitation period commenced from the date on which the concerned CIT, Delhi-IV received the certified copy and not the date on which the CIT at Ghaziabad received the same. It was contended that the 'aggrieved' CIT was CIT, Delhi IV and the limitation period would run from the date on which the concerned and aggrieved CIT received the copy.

---

14 2017 SCC OnLine Del 7622

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

28. It is in this context and the facts and circumstances of the case that the Delhi High Court held that once a responsible officer or representative of the Department, such as its DR or the CIT (Judicial), had become aware of the order. It was observed that such transfer of jurisdiction was purely an internal administrative arrangement, as to how the said officer obtains and further communicates the order to the officer who has to take a decision in filing the appeal. The Court proceeded to hold that the 'aggrieved person' is not the concerned CIT but it is the IT department which is the aggrieved party as referred in Section 260A of the Act. However, even so observing the Delhi High Court did not hold that it was in any manner dispensed with the requirement of receiving the certified copy. In Paragraph No. 41 of the decision while holding that the first officer of the Department who receives the certified copy should be taken to have received it on behalf of the officers of the Department, the High Court proceeded to observe that how such officer who first received the copy ensures that it reached the particular officer who has to take a decision on filing an appeal is for the Department to figure out. Further, in Paragraph No. 48, the High Court proceeds to acknowledge that it is possible that immediately after pronouncement, the AR or the DR or both may apply for a certified copy of the order of the ITAT and in that case, the time taken for the certified copy to be made ready to be received by the applicant would be excluded while computing limitation. In this context, the Delhi High Court observed that if a party receives a certified copy from the ITAT earlier than that date, then that earlier date will be the starting point for limitation. In the concluding paragraphs of the decision, the Delhi High court has answered the

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

questions raised by it in the decision as under:

> "……
>
> Q: (vi) Whether the receipt of a certified copy of the order of the ITAT by the CIT (Judicial) is sufficient to trigger the commencement of the limitation period under Section 260A (2)(a) of the Act?
>
> Ans: The receipt of a certified copy of the order of the ITAT by the CIT (Judicial) would trigger the commencement of the limitation period under Section 260A (2) (a) of the Act.
>
> Q: (vii) In the context of a common order of the ITAT covering several appeals, whether limitation for all the appeals would begin to run when the certified copy is received first by wither the CIT (Judicial) of any one of the officers of the Department mentioned in Section 260A (2)(a) or only when the CIT "concerned' received it? Where the same CIT has jurisdiction over more than on Assessee in the batch, will limitation begin to run for all such appeals when such CIT received the order in either of the Assessee's cases?
>
> Ans: Where there is a common order of the ITAT covering the several appeals, limitation would begin to run when a certified copy is received first by either the CIT (Judicial) or one of the officers of the Department and not only when the CIT 'concerned' receives it. When the same CIT has jurisdiction for more than one Assessee, the limitation begins to run for all from the earliest of the dates when the DR or CIT (Judicial) or any CIT first received the order in any of the cases forming part of the batch disposed of the common order. If there are four separate orders passed, then the limitation begins to run when such separate orders are received first by any officer of the Department."

29. Thus, the Delhi High Court has not dispensed with the requirement of receiving the certified copy. Hence, ***Odeon*** (supra) was solely related to the question as to whether it was necessary for a CIT dealing with the case of that assessee to personally receive the impugned order and whether the dealing CIT was alone the 'aggrieved person' to challenge the impugned order. The issue in the present case is totally different and quite plain.

30. The facts in the present matter are quite clear. The decision of the ITAT, although pronounced on 30th September 2025, the certified copy of the ITAT's

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

order was received by the PCIT, Pr. CIT CITY (International Taxation) – II, for the very first time on 16th December 2025. The documents on record vouch for the said fact. The Revenue does not contend in the present matter that any other officer of the Department received the certified copy on an earlier date and then dispatched it to the PCIT concerned. Hence, we would accept the contention of the Revenue that the limitation shall run from 16th December 2025 i.e., on the date the certified copy was received by the Department for the very first time. In such context, we may usefully refer to some of the relevant provisions and the Rules which read thus:-

Section 254(3) of the Income Tax Act, 1961

"**254. Orders of Appellate Tribunal.**

(1) * * *

(1A) * * *

(2) * * *

(2A) * * *

(2B) * * *

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Principal Commissioner or Commissioner."

(4) * * *"

Rule 35 and 49 of the Income-Tax (Appellate Tribunal) Rules, 1963 ('ITAT Rules')

"**35. Orders to be communicated to parties.**

The Tribunal shall, after the order is signed, cause it to be communicated to the assessee and to the Commissioner."

"**49. Scale of copying fees**

(1) Copying fees for supply of certified copies shall be charged as under:

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

(i) For a full page or part thereof, [Rs.10] irrespective of whether the copy is typed or xeroxed.

(2) Except in cases where copies are supplied free under the rules or instructions for the time being in force and in cases covered by sub-rule (3), the scale of fees to be charged for the supply of copies urgently shall be twice those prescribed by sub-rule (1) where the copies are typed and in such cases, fifty per cent of the fees so charged shall be paid to the official who types such copies.

(3) Where a party applies for immediate delivery of a copy of evidence taken down by a stenographer, the fee charged shall be twice those prescribed by sub-rule (1), and in case a typed copy is supplied, fifty per cent of the fees so charged shall be paid to the official who types such copies.

(4) If a publisher applies for a copy of an order of the Tribunal for the purpose of publication, the fee for such copy shall be [Rs. 15] per page or part thereof.

(5) Copying fees for supply of certified copies, whether typed or xeroxed, shall be recovered in advance in cash.]]"

31. This Court, in an assessee's case, considered the aforesaid provisions, including on the sufficiency of cause, in a recent decision, in ***GS Strategic Investments Ltd. v. Assistant Commissioner of Income Tax.***[15], when the Court made the following observations:

"8. A plain reading of Section 254(3) of the Act contemplates that a copy of any order(s) passed by the Appellate Tribunal is sent to the assessee and to the Principal Commissioner ("PCIT") or Commissioner. Thus, this clearly denotes that once the Judgment and Order is pronounced by the Tribunal, a copy of the same is sent by the Tribunal to the Principal Commissioner or Commissioner of the Income Tax. Rule 35 also contemplates that once the orders is signed the Tribunal communicates the same to the Assessee and the PCIT/Commissioner. Rule 49 further provides for scale of copying charges, and also makes it clear that the copies of the orders passed by the Tribunal are supplied free of costs, unless any party applies for another copy of the order or any other document, including a copy of evidence, in which case, the party must pay the copying charges as per the prescribed scale.

9. All these provisions clearly demonstrate that as per procedure, the ITAT, once an order is pronounced, dispatches a copy of the same to both the parties free of costs. Thus, the Act and the Rules themselves contemplates that the copy of the Judgment and Order pronounced by the Appellate Tribunal is sent by the Tribunal to the parties. There is no provision in the Act or in the Rules regarding applying

15 Interim Application (L) No.30896 of 2026 decided *vide* order dated 27.10.2026

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

for or obtaining a certified copy. Thus, considering the relevant ITAT Rules, we are of the clear opinion that once the Rules contemplate dispatching the copy of the Judgment and Order by the Tribunal to the Assessee and the PCIT, the limitation shall naturally commence from the day on which the same is received by the respective party. Mere knowledge of the order, by way of pronouncement is not enough to hold that day to be the first day on which the limitation commences. The pronouncement of a Judgment and Order from the dais in open Court, ordinarily declares the fate of the proceeding. For the aggrieved party to deliberate and consider as to whether he wishes to assail the same and on what grounds to do so, it is necessary for the party have a complete copy of the Judgment and Order which will apprise him of the finding and reasons given by the Court/Tribunal, on the basis of which the order is passed. In these circumstances, we are of the view that the limitation shall commence from the day on which a copy of the Judgment and Order passed by the ITAT, is received by the aggrieved party. To hold otherwise would be depriving the aggrieved party of his right to prefer a substantive appeal based on cogent grounds. The first issue is thus answered accordingly.

10. …….

11. …….

12. …….

13. Insofar as the second issue relating to 'sufficient cause' is concerned, in a series of decisions the Supreme Court as well as this Court has held that for the purpose of seeking condonation of delay under Section 5 of the Limitation Act, a party has to demonstrate the existence of sufficient cause within the prescribed period to the satisfaction of the Court. Thus, establishment of sufficient cause is the first ingredient for the purpose of condonation of delay. Insofar as what is meant by the phrase "sufficient cause", as neither Section 5 of the Limitation Act itself provides any guidance of different constituent elements ought to be. Section 5 leaves a task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and in the circumstances of each case.

14. It is well settled that in matters of condonation of delay, a justice-oriented and liberal approach is ordinarily adopted, particularly where the delay is not of such magnitude as to indicate deliberate or *mala fide* conduct, and where refusal to condone the delay would result in a meritorious cause being shut out without adjudication on merits a consequence ordinarily graver than any prejudice that may be occasioned to the opposite side, which can, in most cases, be compensated in costs. While the Respondent has disputed the correctness and sufficiency of the explanation offered, it is not shown that any irreversible or irreparable prejudice which would be caused to the Respondent if the delay is condoned.

15. In **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**[16], the learned Judges opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-

16 Civil Appeal No. 2970-2971/2012 dated 9th April 2012

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

Judge Bench ruled thus:-

> "**18**. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

32. In this view of the matter, we are not persuaded to accept Mr Kaka's contention when he claims that the Respondent-Assessee uploaded a copy of the ITAT's order on the Income Tax portal earlier, with a request to give effect to the same. Moreover, the time taken in receiving the certified copy is not so lengthy that we are required to presume slackness or laxity on the part of the revenue in preferring the accompanying Appeal.

33. The Revenue has explained in detail the cause of the delay from the date on which it received the certified copy till the appeal was preferred. Given the nature of the legal issues involved and the significant tax effect, we have no doubt that the decision to challenge the ITAT's order required deliberation among the department's officials, including consultation with its law officers. Documents on record indicate that the department received the certified copy of the order on 16th December 2025. No doubt the department ought to have acted with more alacrity than it has displayed; however, the steps chronicled in the Revenue's Affidavit as placed on record rule out any *mala fide*s. The Revenue is not seen to dilly-dally or

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

drag its feet merely to delay filing the appeal.

34. It is trite that condonation alone provides the gateway for appeal. The delay is not extraordinarily gross. The period of limitation should not come as a hindrance to doing substantial justice to the parties. Rules of limitation are not meant to destroy the rights of the parties, but to ensure that the parties do not resort to dilatory tactics. This Court, in the matter of ***Uttar Bhartiya Education Society vs PCIT and Ors.***[17], relying upon ***Katiji*** (supra) as well as ***H. Guruswamy and Ors. vs A Krishnaiah since deceased by Lrs.***[18]**,** condoned delay of 1797 days (including the period of Covid-19 pandemic). In ***Krishnaiah*** (supra), the Supreme Court in Para 23 held as under:

> "**23.** We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation."

35. The Supreme Court, while holding that the State cannot be given any undue indulgence as compared to an ordinary litigant, especially in matters of limitation, condoned the delay of 1537 days in the case of ***Inder Singh vs State of Madhya Pradesh***[19] when it was observed that a major aspect which has to be kept in mind is that, if in a particular case the merits have to be examined, it should not be scuttled on the basis of limitation.

---

17 2026 SCC OnLine Bom 17158
18 (2025) 11 SCC 440
19 2025 SCC OnLine SC 600

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

36. In ***Aakash Lavlesh Leisure Pvt. Ltd. Vs Income Tax Officer***[20], the Supreme Court set aside the High Court's order refusing to condone a delay of 224 days in preferring an appeal under Section 260A of the IT Act, holding that the applicant showed sufficient cause, which the High Court ought to have considered.

37. In ***Commissioner of Income Tax (Exemptions), Pune vs Progressive Education Society***[21], the Supreme Court overturned the order of this Court and condoned the delay of 362 days in preferring an appeal, holding that the delay caused on account of difference of opinion between the two officers can be construed as 'sufficient cause'.

38. Considering the detailed explanation offered by the Revenue in its application as also in the additional Affidavit, we are satisfied that there is no *mala fide* on the part of the Revenue in the delay caused in preferring the accompanying Appeal. The Respondent's claim that the department had knowledge in September 2025 of the dismissal of its appeal by the ITAT does not, *per se*, negate the fact that the certified copy was received only on 16th December 2025 and the reasons thereunder which contributed to the delay are neither frivolous, *mala fide* and/or not amounting to a sufficient cause so as to reject the plea of the Applicant-Revenue. In our clear view, the Revenue has made out 'sufficient cause' in preferring the accompanying Appeal and, further, considering the complex issues involved in the matter, we deem it appropriate to condone the 121 days' delay in preferring the Appeal. Considering Mr Kaka's vehemence, in any event, merely for

20 (2020) 17 SCC 417
21 (2021) 20 SCC 742

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22

the reason that the Respondent is a foreign/non-resident company, the principles of law cannot be applied differently.

39. In view of the aforesaid discussion and on the facts and circumstances of the present case, we are of the opinion that it is a fit case for condoning the delay. The Appeal accordingly deserves to be heard and decided on merits. The Interim Application is accordingly allowed in terms of prayer clause (a).

40. The Registry is directed to register and number the Appeal, subject to removal of office objections, if any, which be removed within eight weeks from today.

41. No costs.

(DR. NEELA GOKHALE, J) **(G. S. KULKARNI, J.)**

PRASAD RAJENDRASING RAJPUT

Digitally signed by PRASAD RAJENDRASING RAJPUT
Date: 2026.11.27 13:25:03 +0530

Uploaded on - 27/11/2026 13:40:37 Downloaded on - 28/11/2026 13:42:22