

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

OMP (M) No.501 of 2025
In ITA No _____ of 2025
Reserved on: 18.08.2026
Pronounced on: 01.09.2026

Principal Commissioner of Income Tax-1

....Applicant/Appellant

Versus

M/s SBS Biotech Unit-II

...Non-Applicant/Respondent

Coram:

Hon'ble Mr. Justice Vivek Singh Thakur, Judge

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes.*

For the Applicant/
Appellant:

M/s Neeraj Sharma and Ishaan
Kashyap, Advocates.

For the Non-Applicant
Respondent:

Mr. Deepak Vyas, Advocate
[Through Video-Conferencing]
& Ms. Soma Thakur, Advocate.

Ranjan Sharma, Judge

Applicant-Principal Commissioner of Income Tax-1, has come up before this Court, seeking condonation of 31 days of delay in filing the accompanying appeal [yet to be registered] against the orders dated 25.02.2025 passed by Learned Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh, in ITA No.413/Chd/2024 titled

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

as *SBS Biotech Unit-II v. The Pr. CIT-1 Chandigarh* with the prayer to register the accompanying appeal and hear the appeal on merits.

2. *In the instant application*, the Applicant-Principal Commissioner of Income Tax-1 has set up a case seeking condonation of 31 days of delay in filing the accompanying appeal with the plea that Learned Income Tax Appellate Tribunal [***referred to as ITAI herein***] passed an order on 25.02.2025 and copy of said order was received by the applicant on 06.06.2025. It is averred that the limitation period for 120 days for filing accompanying appeal expired on 04.10.2025. It is averred in Para-2 and Para-3 of the application that delay in filing the accompanying appeal was on account of the fact, that the case records was with Income Tax Officer, Parwanoo; and opinion for preferring the appeal was sought; and the said opinion was thereafter forwarded for approval to the competent authority -Applicant-Principal Commissioner of Income Tax-1, Chandigarh; and upon approval, instructions were issued to the Standing Counsel for the Department

to draft the accompanying appeal; and the Office of the authorized signatory who signs memorandum of appeal is at Chandigarh; and there were also festival breaks during this period. In this backdrop it was averred that delay is neither wilful nor intentional but due to the aforesaid reasons and therefore, it was prayed that delay in filing the accompanying appeal may be condoned and the appeal be registered, heard and decided on merits.

2(i). Pursuant to the issuance of notice, by this Court, on the application for condonation of delay on 31.12.2025, the Non-applicant/Respondent-M/s SBS Biotech Unit-II, had appeared through counsel on 18.05.2026 and as prayed, the Non-applicant/Respondent was granted four weeks' time to file reply. The matter was listed on 02.07.2026 when, no reply was filed and further time for filing the reply, as prayed, was enlarged by three days and the reply was accordingly filed on the affidavit dated 02.07.2026.

2(ii). In reply, the Non-applicant/Respondent-M/s SBS Biotech Unit-II, Nahan, opposed the claim

for condonation of delay on the ground that the applicant has failed to show any sufficient cause and delay was intentional and wilful. It was further averred that no day-to-day explanation has been given for the delay for the entire period in the application. It was averred that as per judgment of the Hon'ble Supreme Court in case of ***Shivamma [dead] by LRs v. Karnataka Housing Hoard & Ors. [2025 INSC 1104]***, delay is required to be explained for the entire period from the date the limitation began till filing of the application/appeal and the application does not indicate the said delay. It was further averred that procedural delays taken by the Applicant-Revenue Authorities cannot be a ground for condoning the delay. Reliance was placed on the judgment in the case of ***State of Odisha vs Managing Committee of Namrata Girls High School [2026 INSC 148]*** to assert that utterly lethargy, laxity and indolence cannot be a ground for condoning the delay. Reliance was also placed on the judgment passed by the Hon'ble Supreme Court in the case of ***Pathapati Subba Reddy***

(died) vs The Special Duty Collector [2024 INSC 286] to assert that though cause of substantial justice has to be advanced but the same cannot be used to defeat the substantial law of limitation and that too when no sufficient cause was made out and delay was inordinate and was a result of negligence and due diligence was absent in the instant case. In Para-5 of Reply-Affidavit, the Non-applicant/Respondent has made an attempt to refer to the merits of the case, with the plea that after going through the merits of the case and order which is sought to be assailed in the appeal, the appeal leaves an academic issue only on merits and therefore, prayer was made to dismiss the appeal seeking condonation of delay.

2(iii). In the rejoinder, the Applicant-Principal Commissioner of Income Tax-1, has denied the averments made by the Non-applicant/ Respondent in the Reply-Affidavit and has reiterated the contents of application with the prayer to condone the delay. It is further reiterated that the explanation offered reveals sufficient cause and earnest bonafide efforts

were made *inter se* the Departmental Authorities to file the Reply within time but on account of the reasons spelt out in Para-2 of the application and reiterated in Para-2 of the Rejoinder, the accompanying appeal could not be filed within the limitation period and the delay is neither wilful nor intentional nor due to negligence or want of due diligence by the Applicant-Authorities. It is averred in the Rejoinder that the reliance placed on judgment of ***Shivamma [supra]*** is distinguishable on facts, *for the reason*, that the subject matter in the said case related to massive delay of 3966 days which was marred by an administrative lapse without any explanation and sufficient cause for the said delay. Applicant-Authorities have further relied upon the judgment by the Hon'ble Supreme Court in case of ***Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy [(2013) 12 SCC 649]*** to assert that once the delay was explained and sufficient cause was shown and delay was of short duration and was free from negligence or tardy attitude then, the same

deserves to be condoned. Reliance was also placed on the judgment in the case of **Collector, Land Acquisition, Anantnag vs Mst. Katiji [(1987) 2 SCC 107]** and the judgment in the case of **N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123]** to assert that the substantive rights of Applicant cannot be destroyed when the Authorities had exercised diligence and had made all earnest efforts but the sincerest efforts also resulted in delay. So far as the reliance placed by the Non-Applicant/Respondent in **Managing Committee of Namrata Girls High School [supra]**, it was stated in the Rejoinder that the aforesaid judgment was distinguishable on facts, *for the reason*, that in the said case order of Tribunal was assailed before the High Court after a lapse of 8 years and even the Applicant seeking re-call of order of the Tribunal was also filed belatedly after a delay of 291 days and thus the cumulative period of delay in the said case was in excess of about 11 years and in this backdrop, it was averred in the Rejoinder that the reliance on the judgments was misplaced. In

Para-6 of the Rejoinder, the Applicant-Authorities have specifically stated that the Non-applicant /Respondent has no right to enter into the merits of case while adjudicating an application for condonation of delay, on the ground that “merit hunting at the stage of seeking condonation of delay” was impermissible. It was averred that once the impugned order dated 25.02.2025 passed by the Income Tax Appellate Tribunal [ITAT] which was sought to be assailed in accompanying appeal was reversed/set aside then, the same shall lead to revival of the earlier orders against the Non-applicant/Respondent. It was averred that mixed questions of facts and law were involved in the accompanying appeal, and therefore, the application for condonation of delay was genuine, so as to avoid multiplicity of litigation in the instant case and to secure the revenue of Applicant-Authorities. Other contents of Reply-Affidavit were denied with the prayer to condone the delay by accepting the application filed by the Applicant-Authorities.

3. Heard, M/s Neeraj Sharma and Ishaan

Kashyap, Learned Counsel, for the applicant and Mr. Deepak Vyas [through Video-Conferencing] and Ms. Soma Thakur, Learned Counsel, for the non-applicant/respondent.

ANALYSIS:

4. Taking into account the entirety of facts and circumstances, this Court is of the considered view that the claim of the Applicant-Authorities for seeking condonation of 31 days of delay in filing the accompanying appeal, assailing the order dated 25.02.2025 passed by Learned Income Tax Appellate Tribunal, Chandigarh, deserves to be allowed, *for the following reasons:-*

4(i). Perusal of the application and the rejoinder filed by the Applicant-Authorities establish that the Income Tax Appellate Tribunal passed the order dated 25.02.2025 and copy of order was received by the Applicant-Authorities on 06.06.2025. Though a period of 120 days of limitation for filing the appeal expired on 04.10.2025, but the appeal could not be filed within the said period. The Applicant-Authorities have given an explanation by showing

sufficient cause for not filing the accompanying appeal within the limitation period. Perusal of the contents of application reveals that non-filing of appeal was cumulatively, *for the reason*, that the delay in filing the accompanying appeal was on account of the fact that the case records was with Income Tax Officer, Parwanoo; and opinion for preferring the appeal was sought; and the said opinion was thereafter forwarded for approval to competent authority i.e. the Applicant-Principal Commissioner of Income Tax-1, Chandigarh; and upon approval, instructions were issued to the Standing Counsel for the Department to draft the accompanying appeal; and the Office of authorized signatory who signs the memorandum of appeal is at Chandigarh; and there were also festival breaks during this period; and therefore, the delay is neither willful nor intentional but is due to the aforesaid reasons.

Cumulative reasons, as spelt out in the application and the rejoinder establish reasonable explanation, sufficient cause, revealing bonafide and

earnest which led to the delay. The aforesaid reasons, as spelt out cannot in any manner be treated to be an excuse for condoning the delay. The application and rejoinder indicate that the Applicant-Authorities were sensitive towards their civil rights and remedies and they have asserted their right, diligently, bonafide and with promptitude. It is not a case where the Applicant-Authorities have failed to show diligence but the material on record including explanation and sufficient cause reveal that the Applicant-Authorities had been diligent in pursuing the matter for filing the accompanying appeal but for the delay. Explanation and the cause outlined in the application and rejoinder spell out diligence on the part of Applicant-Authorities, which inspires confidence of this Court.

4(ii). It is not a case of an inordinate delay but is a case where nominal and small days of 31 days had occurred in filing the accompanying appeal and the delay is diligently on account of the reasons spelt out in the application and is reiterated in the rejoinder, as referred to above.

Rules of limitation cannot destroy the substantial rights of the Applicant-Authorities and liberal and purposely approach has to be adopted to advance a cause of justice. If the remedy is reduced to a husk by procedural excess, the right becomes a casualty and therefore, plea of the non-applicant-respondent cannot sustain. Even Section 260 A (2A) of the Income Tax Act neither expressly provides that appellate authority (High Court) shall become functus officio after the expiry of 120 days nor does Section 260A (2A) expressly provides for the “restrictive expressions” [“but not thereafter” or “not exceeding”] then, in such an eventuality, appellate court retains the power to exercise discretion to condone delay, subject to the legal compliance of “sufficient cause” in the light of the broad principles mandated by the Honble Supreme Court in the case of **Jittu Yadav vs State of Chahatisgarh and Others, Criminal Appeal No 2911 of 2026**, decided on 27.05.2026 ; and that too, in a case, where the explanation offered establishes sufficient cause and the delay, if any, was bonafide and

had crept in despite the due diligence, sensitiveness of the Applicant-Authorities in pursuing their rights promptly.

4(iii). Plea and attempt of the Non-applicant/Respondent in touching the merits of controversy by contending that the Applicant-Authorities have no case on merits cannot be of any assistance to the Non-Applicant/Respondent *for the reason*, that as per the mandate of Hon'ble Supreme Court in the case of ***Shivamma [supra]*** entering the merits of the matter, while deciding the application for condonation of delay, shall certainly prematurely infringe and violate the principle of fairness in adjudication of the controversy and merit hunting cannot be permitted at the stage of deciding an application for condonation of delay. Once the Applicant-Authorities have established promptitude, bonafide efforts and have rendered the explanation revealing sufficient cause and once it is not a case of inaction or negligence and casualness then, the plea for condonation of a nominal delay of 31 days and that too when, the explanation for

entire delay has been diligently spelt out in the application and rejoinder, then, the plea for condonation of delay has merit.

4(iv). Reliance placed by the Non-applicant/ Respondent in the reply on the judgment in the case of ***Shivamma [supra]*** is misconceived, *for the reason*, that the same is distinguishable wherein massive delay of 3966 days which was due to sheer negligence at the administrative levels and same cannot be invoked in the instant case, where delay is nominal relating to 31 days only. Further, reliance placed by the Non-Applicant/Respondent in the Reply in the case of ***Managing Committee of Namrata Girls High School [supra]*** is misplaced, as the factual matrix in the aforesaid case related to a cumulative delay of about 11 years, whereas, the delay in present application is 31 days only. Nothing has been placed on record by way of Sur-rejoinder by the Non-Applicant/ Respondent to assert and establish that the plea of the Applicant-Authorities and the stand taken in rejoinder goes un-rebutted, which reveals that

delay in filing accompanying appeal was bonafide as is borne out from the explanation establishing sequence.

CONCLUSION:

5. Considering the application and rejoinder once the explanation and the reasons for the entire period from the starting point the limitation began till filing of application on 04.11.2025, [alongwith accompanying appeal] reveal bonafide, diligence, promptitude and sensitiveness of the applicant-authorities in pursuing its right and remedy and coupled with the fact that the delay of 31 days is nominal and the fact that the remedy cannot be reduced to as husk so as to result in casualty due to procedural excess ; and the right of appeal cannot be ordinarily defeated on technical grounds when, the statute does not expressly provides for strict exclusion of Limitation Act ; coupled with the fact that even Section 260 A (2A) of the Income Tax Act neither expressly provides that the appellate authority (High Court) shall become functus officio after the expiry of 120 days nor does this Section

[Section 260A (2A)] expressly provides for “restrictive expressions” [“but not thereafter” or “not exceeding”] in terms of the broad principles mandated by the Honble Supreme Court in the case of **Jittu Yadav** (supra) and therefore, the objection(s) set out by the Non-applicant/Respondent herein are turned down/negated. Consequently, the prayer of Applicant -Authorities seeking condonation of delay of a short and nominal duration of 31 days in filing accompanying appeal, merits acceptance, in facts of instant case.

6. No other point was raised/argued.

DIRECTIONS:

7. In view of above discussion and for reasons recorded hereinabove, the instant application is ***allowed***, in the following terms:

- (i) Instant application i.e. OMP (M) No. 501 of 2025, titled as Principal Commissioner of Income Tax-1 vs M/s SBS Biotech Unit-II, ***is allowed***;
- (ii) Delay of 31 days in filing accompanying appeal is condoned;
- (iii) As a sequel to the directions (i) and (ii) above, the accompanying appeal

be registered and listed for admission
hereinafter; and

- (iv) Parties are left to bear respective costs.

In aforesaid terms, the instant application
stands disposed of, accordingly.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

September 01, 2026
(Bhardwaj)