

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.201 of 2018**

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Deputy Commissioner Of Income Tax, Circle - 2, Gaya.

... .. Appellant

Versus

M/s Kumar A. S. Construction, Ashok Nagar, Bhat Bigha, Gaya (PAN  
AAECA0928L.

... .. Respondent

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with

**Miscellaneous Appeal No. 202 of 2018**

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Deputy Commissioner Of Income Tax, Circle 3, Gaya

... .. Appellant

Versus

M/s Kumar A. S. Construction, Ashok Nagar, Bhat Bigha, Gaya (PAN  
AAGFK7513A.

... .. Respondent

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**Appearance :**

(In Miscellaneous Appeal No. 201 of 2018)

For the Appellant/s : Mrs.Archana Sinha, Sr. Advocate  
Mr.Alok Kumar, Advocate  
Ms.Richa Rajiv Singh, Advocate  
Ms. Komal, Advocate  
Ms.Nisha Kumari, Advocate  
Mr.Kamal Raj, Advocate

For the Respondent/s : Mr.Anuj Kumar, Advocate

(In Miscellaneous Appeal No. 202 of 2018)

For the Appellant/s : Mrs.Archana Sinha, Sr. Advocate  
Mr.Alok Kumar, Advocate  
Ms.Richa Rajiv Singh, Advocate  
Ms. Komal, Advocate  
Ms.Nisha Kumari, Advocate  
Mr.Kamal Raj, Advocate

For the Respondent/s : Mr.Narendra Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**and**

**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

11 16-03-2026

**Re:- I.A. No. 01 of 2025**

This is an application praying for condonation of  
delay in filing the Miscellaneous Appeal No. 201 of 2018 and  
Miscellaneous Appeal No. 202 of 2018 by eight (8) months and



twenty four (24) days.

2. Previously, the application was taken up for hearing, however, the Court found that no ground as to why the appellant failed to file the appeal within the period of limitation was extended, where it is pointed out that the learned Advocate for the appellant craved leave of this Court to file a supplementary affidavit. Prayer was allowed. By filing the supplementary affidavit on 27<sup>th</sup> of February, 2026, it is stated by the appellant that the appeal was filed against the impugned order passed in ITA No. 180/PAT/2012 & ITA No. 184/PAT/2012 on 14<sup>th</sup> March, 2018. However, the Memorandum of Appeal did not annex the certified copy of the impugned judgment, therefore, it was treated to be defective by the department.

3. Subsequently, on 16<sup>th</sup> November, 2018, the learned counsel for the appellant received the certified copy of the impugned judgment and it was filed. It is submitted on behalf of the appellant that in the meantime, the Standing Counsel on behalf of the appellant was suffering from illness. He had to undergo eye operation, thereafter, the department handed over the appeal to the present learned counsel and then only, she noticed the defect(s) and directed the department to file certified



copy of the impugned judgment, only then, the impugned judgment was filed.

4. Learned Advocate on behalf of the respondent, on the other hand, submits that the appellant did not mention any ground in the main application filed under section 260 A(2A) of the Income Tax Act, 1961. Only in the supplementary affidavit, the appellant has subsequently created a story of illness of the learned advocate, change of concerned officer of the IT Department etc. However, it is not stated even in the supplementary affidavit that when the appellant applied for certified copy of the impugned judgment and when it was received. On this ground, it is submitted by the learned advocate for the respondent that the Hon'ble Supreme Court refused to condone the delay in ***Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai*** reported in ***(2012) 5 SCC 157***. Paragraph '24' of the said judgment is relevant and is quoted hereunder:-

*“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.”*



5. Learned advocate on behalf of the appellant also files a judgment of the Hon'ble Supreme Court in the case of **The Principal Commissioner of Income Tax (Central) Vs. Suncity Projects Pvt. Ltd.** reported in **(2023) 290 TAXMAN 0374 (SC)**. In paragraph '2' of the judgment, the Hon'ble Supreme Court has observed as hereunder:

*"2. By the impugned judgment and order, the High Court has refused to condone the delay of 86 days in preferring the appeal. We are of the opinion that in the facts and circumstances the case, the High Court ought to have condoned the delay of 86 days in preferring the appeal and ought not to have been too technical in dismissing the appeal on the ground of delay. The impugned order passed by the High Court refusing to condone the delay of 86 days and dismissing the appeal on the ground of delay of 86 days is unsustainable."*

6. In **Suncity Private Ltd.** (supra), the Hon'ble Supreme Court condoned the delay of 86 days, however, in the instant appeal the delay is about eight (8) months and twenty four (24) days. Though, the appellant did not mention either in the petition for limitation or in the supplementary affidavit about the date of filing of the application and receipt of the certified copy of the impugned judgment.

7. We find from the copy of the impugned judgment that the application was filed on 12<sup>th</sup> March, 2018 and certified



copy was received on 16<sup>th</sup> March, 2018. The memorandum of appeal was filed on 14<sup>th</sup> March, 2018. The period of limitation expired on 16<sup>th</sup> March, 2018, when the department already received the certified copy of the impugned judgment. However, it may be a fact that the department did not hand-over the certified copy of the impugned judgment to the learned advocate.

8. It is true that the Court should take a lenient approach in condoning the delay in filing an application or appeal. But, unintentional delay cannot be equated with the laches and negligence of the departmental officers.

9. For the reasons stated above, we do not find any merit in the instant application under section 260A(2A) of the Income Tax Act and application for condonation of delay is rejected.

10. In view of rejection of the application, both appeals shall also be dismissed.

**(Bibek Chaudhuri, J)**

**(Chandra Shekhar Jha, J)**

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