

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 161 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection Nos. 1,7 & 26
2. For orders on CMA No.985/2025
3. For orders on CMA No.986/2025
4. For hearing of main case

12.02.2026

Mr. Ali Nawaz Khuhawar, advocate for the applicant

The impugned order dismissing the application seeking condonation of 968 days delay in filing appeal against order of DCIR. The relevant constituent reads as follows :

“We intend to dispose off the above captioned appeal along with miscellaneous application by this consolidated order. At first we take up the miscellaneous application for condonation which will decide the maintainability of appeal.

MA (Cond.) No.62/KB/2025

The taxpayer has filed this condonation application for delay of 968 days In filing appeal against impugned order of Deputy Commissioner Inland Revenue dated 11.04.2022 before this Tribunal with submission that the appeal could not be filed before this Tribunal within the prescribed time due to non-service of order whereas the appellants came to know about impugned order when the notice u/s. 140 was issued and after obtaining certified true copy of the said order in original the appeal was filed, therefore, it is prayed that the delay may be condoned, as it was neither willful nor intentional but beyond control of the applicant.

2. On the other hand, none represented the department.

3. We have carefully considered the submission of learned AR and are not convinced with his version as he failed to explain the delay in filing of appeal. In absence of any plausible explanation being rendered to justify the remarkable delay of 968 days in filing of appeal, the appeal is and shall remain barred by time and not maintainable as a consequence thereof. In such situation if the taxpayer had failed to file appeal within prescribed time, it was required to file appeal along with a condonation application explaining reasons of delay. Provision of Rule 17 of ATIR Rules, 2023 is attracted in this situation which provides the procedure for filing time barred appeal before this Tribunal. We deem it appropriate to reproduce the said rule for sake of brevity:

17. Appellant to explain delay. (1) Upon the presentation of a memorandum of appeal or application, the Registrar or the officer authorized under rule 8 shall examine the copy of the order appealed against and shall ascertain whether, after allowing the time given by the relevant law, the memorandum of appeal or application has been presented within time.

(2) If the memorandum of appeal or application appears to be presented after the time prescribed by relevant law, a note to this effect shall be recorded by the Registrar or by the officer so authorized, as the case may be.

(3) Where the appellant or the applicant has not tendered, with the memorandum of appeal or application, any explanation in writing setting out the reasons for the delay, the Tribunal may allow the appellant or applicant to submit an explanation in writing and upon sufficient cause having been shown, may admit the appeal or application for hearing.

Moreover, the reliance in this regard is placed on a reported judgment of Honorable Sindh High Court reported as PLD 2020 Sindh 136. The Honourable Sindh Court in the judgment has held as under: -

"It is a settled proposition of law that law helps the vigilant and not the indolent and after the expiry of the limitation period a vested right is always created in favour of the other side. Reference in this regard may be made to the decisions given by the Hon'ble Supreme Court of Pakistan in the cases of Muhammad Nawaz and 3 others v. Mst. Sakina Bibi and 3 others (1974 SCMR 223) and Central Board of Revenue, Islamabad through Collector of Customs. Sialkot Dry Port, Samberial District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307). Once limitation starts it could only be condoned after considering valid and cogent reasons for the same. Matter has been examined minutely by us, however, unfortunately the factors for condoning the delay are totally lacking in the instant matter. It is also a settled proposition of law that delays are condoned when reasonable and plausible reasons for the same are given but a perusal of the affidavit and the application clearly demonstrate that neither plausible reasons nor justification have been given for filing the HCA late, rather, there is, in fact, no ground either in the affidavit or in the application justifying the cause of delay. It is also a settled proposition of law that it is the bounden duty of the Court to dismiss a lis before it if the is barred by limitation and no plausible explanation has been INLANAsed with regard to such delay. We need not to cite decisions or on the above legal propositions since the same are quite settled

4. In addition to above, we are of the view that object of law of limitation was to help the vigilant and not the indolent. The party/applicant should explain each and every day of delay in filing appeal. Further, negligence to file appeal must have its reward to punish the indolent. In this regard, the apex courts have declined to condone the delay in filing of References/appeals in the following observations:-

2023 PTD 56 (H.C.Pesh)

5.86(2)-Limitation Act (IX of 1908), 5.5-Sales Tax on services-Reference to High Court-Limitation-Condonation of delay-Sales Tax Reference was filed beyond stipulated period of sixty days-Order in question was passed on 12-04-2022, certified copy was issued to authorities on 15-04-2022, whereas Reference application was filed on 07-07-2022-Effect-Sales Tax Reference was barred by 24 days Object of law of limitation was to help the vigilant and not the indolent-Law of limitation was required to be construed strictly-Each day of delay was to be explained by the party concerned-Government department could not be treated differently than private individual on the question of limitation-Authorities failed to offer any plausible explanation for condonation of delay in their application-Negligence to file Sales Tax Reference must have its reward to punish the indolent-High Court declined to condone the delay in filing of Sales Tax Reference-Reference was dismissed in circumstances.

2023 PTD 68 (H.C. Kar.)

S. 196-Limitation Act (IX of 1908), 5.5-Reference Limitation-Condonation of delay Government department, entitlement of-Force majeure Authorities sought condonation of delay in filing of Reference on the plea of force majeure and misplacement of order of Customs Appellate Tribunal-Validity-Each day's delay was to be satisfactorily explained in time barred matters. No sufficient cause existed which prevented authorities in filing Reference in time-Issue of limitation was always a mixed question of law and fact and was to be decided on the

ground of circumstances obtaining in the matter-Such reason for delay was not plausible. Government departments or autonomous bodies and their cases had to be dealt with in the same manner as that of an ordinary litigant citizen-High Court declined to condone the delay caused in filing of Reference by authorities-Reference was dismissed, in circumstances.

2022 PTD 1103 (H.C. Lah.)

S. 67-A---Limitation Act (IX of 1908), S. 5-Qanun-e-Shahadat (10 of 1984), Art. 129(e)-Reference to the High Court-Limitation-condonation of delay-Sufficient cause-Presumption as to judicial proceedings-scope-Applicant assailed order passed by Appellate Tribunal after 691 days and claimed that the impugned order was not communicated by the Appellate Tribunal-Held, that applicant had not contended that the order was reserved or was kept in waiting for orders nor had the applicant made any effort to ascertain as to whether the order was passed by the Appellate Tribunal-No document was produced by the applicant to show that the copy of impugned order was not sent to it--Presumption of correctness was attached to the judicial proceedings in terms of Art. 129(e) of the Qanun-e-Shahadat, 1984 and in order to displace the same, some evidence was required to be produced by the applicant along with application for condonation so as to make out a case for condonation of delay---Delay in filing proceedings could not be condoned lightly unless it was shown that there were sufficient reasons for causing delay-Law of Limitation reduced on effect of extinguishment of a right of party when significant lapses occurred and when no sufficient cause of such lapses, delay or time-barred action was shown by defaulting party, the opposite party was entitled to a right accrued by such lapses---Negligence did not constitute sufficient cause to condone delay---Party seeking advantage of S. 5 of Limitation Act, 1908 must satisfy the Court that it had not been negligent and had been pursuing the case with due diligence and care-Reference application was time barred and the application for condonation of delay had not disclosed any cogent, convincing and justified reason for condonation of delay-Reference application was **dismissed**.

2020 SCMR 246 (S.C)

S. 196-Limitation Act (IX of 1908), S. 5-Reference to High Court Barred by eleven months-Condonation of delay-Grounds-Illness of special attorney-Not plausible or convincing ground-After dismissal of his appeal before the Appellate Tribunal, the petitioner waited for eleven months to file the Customs Reference before the High Court, which was hopelessly barred by time-Application for condonation of delay stated that the entire process was followed up by a special attorney of the petitioner-Said special attorney was allegedly a chronic patient of some disease and was therefore unable to file the Reference within time-Petitioner was unable to explain plausibly why he did not pursue the matter himself and why was he not following up the same-Plea/explanation that petitioner was not available and his special attorney was unwell were neither convincing nor plausible and did not constitute sufficient grounds for condonation of delay for about eleven months-Petition for leave to appeal was dismissed and leave was refused.

On the basis of deliberation made supra, the condonation application is hereby rejected and the main appeal is held to be hit by limitation, therefore, dismissed in limine. The stay application is disposed off as infructuous”

The delay has not been denied by the learned counsel for the applicant, however, he states that it was improper for the learned Tribunal to construe the application on mere technicality of limitation and it is imperative that the merits of the case be decided.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose¹. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard². The Superior Courts have held that proceedings barred by even a day could be dismissed³; once time begins to run, it runs continuously⁴; a bar of limitation creates vested rights in favour of the other party⁵; if a matter was time barred then it is to be dismissed without touching upon merits⁶; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁷. It has been maintained by the honorable Supreme Court⁸ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the applicant.

While various questions had been proposed in the pleadings, they were prima facie argumentative and / or sought to agitate factual controversy. Not a single question was proposed to deal with the determinant factor in the impugned judgment, being limitation. In view hereof, it is observed that no question of law for determination has been articulated before us to entertain this reference, hence, the same is hereby dismissed in limine.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge

Judge

Amjad

¹ Mehmood Khan Mahar vs. Qamar Hussain Puri & Others reported as 2019 MLD 249

² Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others reported as 2004 CLD 732

³ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82

⁴ Shafaatullah Qureshi vs. Pakistan reported as PLD 2001 SC 142; Khizar Hayat vs. Pakistan Railways reported as 1993 PLC 106

⁵ Dr. Anwar Ali Sahito vs. Pakistan reported as 2002 PLC CS 526; DPO vs. Punjab Labour Tribunal reported as NLR 1987 Labour 212

⁶ Muhammad Tufail Danish vs. Deputy Director FIA reported as 1991 SCMR 1841; Mirza Muhammad Saeed vs. Shahabudin reported as PLD 1983 SC 385; Ch Muhammad Sharif vs. Muhammad Ali Khan reported as 1975 SCMR 259

⁷ WAPDA vs. Aurangzeb reported as 1988 SCMR 1354

⁸ Lt. Col. Nasir Malik vs. ADJ Lahore & Others reported as 2016 SCMR 1821; Qamar Jahan vs. United Liner Agencies reported as 2004 PLC 155.