

## **Time-barred appeal should be allowed if it involves a substantial question of law: HC**

### **Facts of the case - PCIT v. Soorajmul Nagarmull - [2022] (Calcutta)**

The assessee filed its return of income for the relevant assessment year. The Assessing Officer (AO) issued notices and asked the assessee to explain why the interest payable on the loan should not be treated as cessation of liability.

After considering the assessee's reply, AO concluded that there was the cessation of trading liability and thus interest was deemed to be profit and gain of business or profession. The assessee filed an appeal against such an addition. CIT(A) granted relief to the assessee which was further affirmed by the Tribunal.

Aggrieved by the order of Tribunal, an appeal was filed by AO before the Calcutta High Court.

The appeal was filed after a delay of 627 days along with an application to condone the delay. The assessee filed an affidavit-in-opposition objecting to the prayer for condonation.

### **Decision of the case:**

- i. The Calcutta High Court held that the explanation offered by the AO for not preferring the appeal within the period of limitation wasn't satisfactory. Thus, it is open for the court to dismiss the appeal as time-barred.
- ii. However, it will not be appropriate to reject an appeal based on a technical ground when the statute stipulates the requirements to consider the existence of a substantial question of law.
- iii. The High Court has to consider whether any substantial question of law arises for consideration if an appeal has been filed under Section 260A of the Income Tax, Act, 1961. Thus, the request for condonation of delay was to be allowed.