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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 20th September, 2012*

% *Date of Decision: 21st December, 2012*

\+ **ITA 773/2010**
\+ **ITA 775/2010**
\+ **ITA 1092/2010**
\+ **ITA 1101/2010**
\+ **ITA 1103/2010**
\+ **ITA 1104/2010**
\+ **ITA 1112/2010**
\+ **ITA 1124/2010**

DIRECTOR OF INCOME TAX (EXEMPTION) .. .Appellant

Through: Mr. Sanjeev Rajpal, Sr. Standing Counsel with Mr Karan Chauhan, Advocate.

Versus

VISHWA JAGRITI MISSION .....Respondent

Through: Mr. N. K Poddar, Sr. Adv. with Mr. Rajender Singhvi, Mr. Amit Aggarwal and Mr. Anurag Dubey, Advocate for applicant/ interveners.

**CORAM:**
**MR. JUSTICE S. RAVINDRA BHAT**
**MR. JUSTICE R.V. EASWAR**

**R.V. EASWAR, J.**

For detailed order see ITA 754/2010

**(R.V. EASWAR)**
**JUDGE**

**(S. RAVINDRA BHAT)**
**JUDGE**

**DECEMBER 21, 2012**/hs



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **ITA 754/2010 & C.M. APPL. No.15650/2012**
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**CORAM:**
**MR. JUSTICE S. RAVINDRA BHAT**
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**R.V. EASWAR, J.**

These are nine appeals, all filed by Commissioner of Income Tax (CIT) under section 260A of the Income Tax Act, 1961 ('Act', for short) Two substantial

questions of law were framed by this Court on 21 11 2011 in ITA Nos 754/2010, 773/2010 and 775/2010, which are as follows -

> "*(1) Whether the Income Tax Appellate Tribunal has erred in condoning delay in filing of the application for registration under Section 12A/ 12AA of the Income Tax Act, 1961?*
>
> *(2) Whether the order passed by the Tribunal is perverse?*"

2 In the other appeals, the following common substantial question of law was framed on the same day -

> "*Whether the Income Tax Appellate Tribunal was right in setting aside the order passed by the Director General of the Income Tax (Exemption) under Section 263 of the Income Tax Act, 1961?*"

3 Two separate orders were passed by the Income Tax Appellate Tribunal, Delhi Bench 'I' The first order is dated 06 05 2009 and was passed in ITA Nos 3052-3054/Del/2008 which order is challenged by the Revenue in ITA Nos 754, 773 and 775 of 2010 The second order of the Tribunal was passed on 10 07 2009 in ITA Nos 1653-1658/Del/2009 This order was passed by the Tribunal in the appeals filed by the assessee against the orders passed by the Director of Income Tax (Exemptions) under section 263 of the Act. The Tribunal followed its first order dated 06 05 2009 and allowed the appeals of the assessee In the first order, the Tribunal held that the assessee was entitled to registration under section 12A and section 80G of the Act and that the delay in making the application for such registration was condoned This was the order passed by the Tribunal in ITA No 3054/Del/2008, which was the main appeal by the assessee and consequently ITA Nos.3052-3053/Del/2008 were dismissed as infructuous.

4 It would be, therefore, appropriate to refer to the circumstances under which the assessee filed the appeal before the Tribunal in ITA No 3054/Del/2008, in order to appreciate the controversy in perspective

5. The assessee was incorporated as a society on 10 05 1993 under the Societies Registration Act, 1860 Under the memorandum of association executed, the assessee claimed itself to be charitable institution It filed an application in Form No 10A seeking registration under section 12A(a) of the Act from the date of its inception i e from 10 05 1993 This application was filed with the DIT (Exemption) on 19 12 2005 The application was accompanied by the audited balance sheet and accounts for the financial years ending on 31 03 2004 and 31 03 2005 The assessee also filed an application for grant of approval under section 80G(5)(vi) of the Act on the same day i e. 19 12 2005 in Form No 10G under Rule 11AA of the Income Tax Rules, 1962 An application for condonation of delay in seeking approval under sections 12A and 80G was filed on 14 03 2006 which was accompanied by the following documents -

(a) A note of the charitable activities carried on by the assessees

(b) Analysis of the financial accounts of the assessee for the financial years 2002-03, 2003-04 and 2004-05,

(c) Copies of the returns of income of the assessee in Form No 3A for the assessment years 2003-04, 2004-05 and 2005-06,

6 The applications were scrutinized by the DIT (Exemptions) and suffice to note that he found certain irregularities in the receipts issued by the assessee According to him, the receipts contained a reference to a certificate said to have been issued on 31 03.2003 under section 80G to the effect that donations to the assessee were entitled to the exemption for the period from 01 04.2003 to 31 03 2005 He had the receipts verified by the assessing officer having jurisdiction over the assessee The assessing

officer reported that the assessee had never filed any returns of income since inception. It would appear that thereafter an application for registration under section 80G was submitted by the assessee on 21 12 2005 and an application for condonation of the delay in submitting the application was also filed The returns of income would also appear to have been filed claiming exemption under section 11 of the Act in respect of the entire income of the assessee – society on the ground that it had applied for registration under section 12A

7 Subsequently, the DIT (Exemptions) seems to have found that the assessee had issued certificates under section 80G for collection of donations for the period 01 04 2001 to 31 03 2003, these certificates of approval were found not to have been issued by the income tax authorities Based on this serious irregularity the DIT (Exemptions) sought an explanation from the assessee Several other particulars were also called for such as the names, addresses and PAN numbers of the donors, the mode in which the donations were received, etc The assessee was also called upon to explain the reasons for not filing the returns of income on a regular basis even though no registration under section 12A was granted The assessee responded by a letter dated 17.03 2006 the gist of which was that the financial matters and tax related issues were being dealt with by its erstwhile treasurer A K Sikri, Chartered Accountant who had since ceased to work for the society and that the assessee had made inquiries from him, that he had informed the society that "*due to certain lapses by his subordinates the documentation is not adequate*" and that "*he has taken appropriate steps/remedies in this regard*" With regard to the failure to submit the returns of income, the assessee gave a similar explanation

8 The DIT (Exemptions) was not satisfied with the assessee's reply and he made further queries in relation to certain receipts issued by the assessee for donations In response to this query the assessee submitted a detailed reply dated 26 05 2006 This letter is reproduced in paragraph 12 of the first order of the Tribunal and is, therefore,

not reproduced here. It is sufficient to note that the assessee placed the responsibility for the irregularities in the receipts and the tax related matters upon A K Sikri The assessee explained that on coming to know of the role played by A K Sikri, an executive committee meeting was immediately convened and in that meeting Sikri had informed the assessee that he in turn relied upon his employee one Vishnu Prasad to assist him in the assessee's tax related matters and that on coming to know that his employee had not discharged the work entrusted to him properly, he had filed a police complaint seeking initiation of action against Vishnu Prasad These facts were confirmed by Sikri in writing and he also appended his signature to the minutes of the meeting in proof thereof. The assessee further pointed out that it had lodged a complaint with the police against Sikri in December, 2005 and in support of the fact, a copy of the complaint was enclosed with the assessee's letter It was further submitted that the executive committee normally entrusts different functions to different office bearers/ executive members and relies upon them for the proper discharge of those functions, as would happen in any organisation It was submitted further that all the donations were properly accounted for As regards the non-submission of the returns of income, it was pointed out that for the assessment years 2001-02 and 2002-03 the returns were sent through speed post while those relating to the assessment years 2003-04 to 2005-06 were filed on 21 02 2006 It was explained that as soon as the assessee came to know of the lapse it realised that the erstwhile treasurer (A K Sikri) had failed to discharge his functions properly and also did not apprise the executive committee members about the lapse and, therefore, his services were terminated and steps were taken to comply with the filing of the returns The assessee also explained that these developments constituted sufficient cause for the delayed filing of the applications for approval under sections 12A and 80G and that the DIT (Exemptions) ought to have condoned the delay and accorded registration.

9 The DIT (Exemptions) refused to grant registration to the assessee-society He gave several reasons for the refusal. The main reasons were that the activities of the assessee – society were not genuine, that the assessee had forged the 80G certificates, that the assessee had also faked the certificate granting extension of registration under section 12A for the period 01 04.2005 to 31 03 2008, that no such certificate has been issued to the assessee by the DIT (Exemptions), that the assessee did not submit any particulars relating to the donations received on the basis of alleged certificates issued under section 80G, that simply by taking the plea that the society was dependent on A K Sikri, its erstwhile treasurer, it cannot wash off its hands from the illegality committed by it, that the conduct of the society since inception had to be kept in mind, that it was inconceivable that the failure to apply for approval/ registration under section 12A and section 80G was not within the knowledge of the governing body of the society, that it was only after being cornered that the assessee came forward in February, 2006 to file the returns and in these circumstances the assessee's explanation for the inordinate delay cannot be accepted The DIT (Exemptions) further observed that it was part of the duty of the treasurer under the memorandum and articles of association to present the accounts in the monthly meetings of the managing committee for approval and this would clearly show that he was keeping the committee informed about the financial matters, that at any rate no personal benefit accrued to the treasurer by delaying or not performing his duties and that "*the totality of the circumstances as discussed above and in the earlier paragraphs shows that these activities could not have continued over a period of such a long time when the knowledge of the members of the managing committee/ governing body* " and "*having regard to overall conduct of the applicant and the totality of circumstances, the argument put forward regarding its bona fides cannot be accepted*" For these reasons the DIT (Exemptions) held as follows -

> "5. *In view of the detailed discussions in the foregoing paragraphs and in the totality of the circumstances, I am not satisfied about the*

*genuineness of the activities of the applicant society. Therefore, the applicant society's request for registration u/s 12A is rejected.*

*6. Since I have refused to grant registration to the applicant society within the meaning of 12AA(1)(b)(ii) of the Income-tax Act, 1961, I do not consider it appropriate to adjudicate on its request for condonation for delay in filing application in form No.10A for grant of registration u/s 12A of the Income-tax Act, 1961."*

10. Against the aforesaid order of the DIT (Exemptions), the assessee filed an appeal before the Tribunal and raised several contentions which were all considered by the Tribunal which upheld in principle the right of the DIT (Exemptions) to look into the activities of the trust including the forged certificates while granting registration It held that the trust and the trustees were independent and the acts of the trustee cannot be that of the trust unless they are enacted with the involvement of other trustees Eventually, the Tribunal by order dated 15 5 2007 held as under -

*"80. Thus it was necessary for the ld. DIT (E) to examine that whether other members of Governing Body were also involved in obtaining fake certificates or they were in the knowledge that the certificates are fake. Individual activity of a trustee or a member cannot be termed to be the activity of the trust. The language used in the provision of section 12AA refers to genuineness of the activities of the trust or institution and not to the activities of an individual trustee. If any misappropriation is made that will be only a breach of trust on the part of that particular trustee. Thus in our view it was necessary for the DIT (E) to examine that aspect as all the relevant materials were placed before him. Without examining he cannot draw a presumption that other members of the Governing Body were also involved. In the circumstances we consider it just and proper to restore this issue to the file of DIT (E) to examine this issue properly and after making verification in this regard pass an order u/s 12AA as per provisions of law. We direct accordingly.*

*81. So as it relates to condonation of delay, ld. DIT (E) has not decided this issue and his observation in this regard contained in para 17 of the impugned order which has already been reproduced in the above part of this order. We do not find any force in the contention of the ld. AR that condonation of delay should be considered*

*automatically granted as there is no speaking order in this regard by the ld. DIT (E). He has not considered this issue. After examining the issue of genuineness of activities as directed above, ld. DIT(E) will also consider the issue regarding condonation of delay on merits and pass a speaking order on this issue. We direct accordingly."*

11 Pursuant to the aforesaid directions of the Tribunal, the DIT (Exemptions) took up the proceedings afresh He called upon the surviving trustees and recorded their submissions and also examined one M P Mansinghka who was the donor who blew the whistle by intimating the income tax department that the receipts issued to him by the assessee contained false certificates under sections 12A and 80G After an examination of all the issues afresh as directed by the Tribunal the DIT (Exemptions) arrived at the following conclusions -

(a) It is not acceptable that A K Sikri, Treasurer was solely responsible for the forgery of the certificate under section 80G,

(b) The statement of Sikri recorded on 20 10 2005 does not match with the subsequent police complaint and confession of Sikri to the Chairman of the society

(c) There is no evidence to show the exclusive involvement of Sikri in the forgery or to show that the other members of the society were not involved There is circumstantial evidence to suggest that other members of the society were also involved

(d) Because of the involvement of several members of the society in the forgery of the certificates, the assessee cannot be considered to be carrying on a charitable activity, it was actually carrying on a criminal activity

(e) The delay in filing the application for registration under sections 12A and 80G cannot be condoned because it was only after being cornered that the

assessee came up with the defence that the responsibility for the alleged forgery of the certificates lay at the doors of A K Sikri, which was not an acceptable or reasonable explanation, the assessee was also involved in the forgery and, therefore, its plea for condonation of the delay cannot be accepted

12. In fine, the DIT (Exemptions) concluded that registration under section 12A cannot be granted and the delay in filing the application cannot be condoned Consequently the claim for certificate of exemption under section 80G was also rejected. This order was passed on 24 9 2008

13. It was against the aforesaid order of the DIT (Exemptions) that the assessee preferred an appeal to the Tribunal in ITA No 3054/Del/2008 The Tribunal examined the facts and the submissions in great detail from paragraphs 30 to 104 of the impugned order dated 06 05.2009 In these paragraphs the entire sequence of events was marshalled cogently and the rival submissions have been elaborately adverted to including the authorities cited by both the sides Ultimately the findings of the Tribunal are contained in pagaraphs 105 to 124 of the impugned order A perusal of these paragraphs shows that the Tribunal has recorded the following findings -

(a) In the earlier order of the Tribunal dated 25 05 2007, it was held that the DIT (Exemptions) should examine whether the other members of the governing body of the assessee – society were involved in the alleged forgery, etc. or not. This order became final, both parties having accepted the same

(b) The trust as an entity and the trustees or the members of the governing body, as individuals, have independent existence and they have a fiduciary relationship with each other based on the assumption of *bona fide* behaviour A criminal act of a trustee or member of the governing body cannot be attributed to the trust which is an independent entity However, the position may be different if it is found that the trustees or members of the governing

body had colluded or were conniving with each other and using the trust as a platform to advance their nefarious agenda In such a case the trust would equally be responsible

(c) The facts and the sequence of events right from the beginning disclosed that the trustees or the members of the governing body were not involved in the alleged acts of illegality committed by A K Sikri, who alone was responsible for them.

(d) The trust itself appeared to be a victim of the mishandling of the responsibility entrusted to A.K Sikri.

(e) All the monies were properly accounted for and duly applied for charitable purposes.

(f) There is no question of any collective responsibility under which the trust could be liable to answer for the irregularities or illegalities allegedly committed by A K Sikri since all these are attributable to him in his individual capacity

(g) The DIT (Exemptions) has failed to establish that the governing body members or other trustees were acting in collusion with A K Sikri It was an individual act of Sikri, not attributable to the assessee

For the above reasons the Tribunal held that the Society was entitled to get registration under sections 12A and 80G, however, it was held that the authorities would be free to examine the application of funds in conformity with the objects of the trust in the assessment to be made under the Act Since there were sufficient reasons for the delay in filing the applications for registration, it was held that the delay was condoned and the trust should be granted registration from inception

14 While narrating the sequence of the events leading to the arrest of A K Sikri, the Tribunal took note of the genesis of the entire affair which started from the complaint lodged by M P Mansinghka Charities Trust of Mumbai Immediately on receipt of the complaint, the assessee convened a meeting of its governing body in its head office at Delhi in which Sikri was present His explanation was that he had applied for exemption certificates in the normal course of his work, relying on his office accountant (Vishnu Prasad) The accountant was absconding and according to Sikri an FIR had been lodged with the police for taking action Sikri also signed the minutes of the meeting in which these facts were apparently recorded The general body appointed a committee consisting of Sikri and Dev Raj Kataria, the General Secretary to enquire into the matter On 15 01 2006, Sikri wrote a letter to the Chairman that as Treasurer he was responsible for all the accounting and tax matters, that he was following up the issue about the forged registration certificates with the income tax authorities and a private agency was appointed (by him) to ascertain the whereabouts of the erring employee. Sikri submitted a report on 28 02 2006 to the Chairman of the society that the fake certificates were procured by his employee which was submitted by him (Sikri) in turn to the society He accepted moral responsibility and promised to regularise the matters and tendered his apology to the trust He sought for some time to enable him to interact with the income tax department to prove his bonafide and correct the mistakes He undertook responsibility for getting the society into trouble, including criminal proceedings The trust found these replies of Sikri to be evasive and filed a police complaint with the SHO, Nangloi Police Station, New Delhi on 17 03.2006 In this complaint the society stated that apart from Sikri, one Radhey Lal Gupta could also be involved Both Radhey Lal Gupta and Sikri were removed on 04 04 2006 On this day a fresh committee consisting of five members was constituted to enquire into the matter Apprehending further proceedings, Sikri filed another complaint against his employee (Vishnu Prasad) with the SHO, Pitampura, Delhi narrating in detail as to how he

entrusted the work to him and how he later on came to know that even regular tax returns had not been filed, etc In this police complaint also, according to the Tribunal, Sikri accepted the forgery of the certificates and the non-filing of the tax returns, which were duly prepared by him and handed over to the employee for filing with the income tax department Pressure started to build on Sikri both from the trust and from the police and he was forced to file another complaint under section 156(3) of the Criminal Procedure Code on 29 04 2006 before the Chief Metropolitan Magistrate, Rohini District Court The complaint was accompanied by evidence in support thereof He pointed out that the police had not registered his complaints though they disclosed cognizable offenses and prayed for a direction that the police should register the FIRs and proceed with the investigation against his employee The police authorities then carried out an investigation and submitted a report on 28.05 2007 that the particulars of the employee, as given by Sikri were incomplete and that in the absence of any evidence regarding employment of the absconding person, Sikri himself was responsible for the alleged irregularities On 31 05 2007 Sikri himself was examined by the Kirti Nagar Police Station, Delhi in relation to FIR No 605/2006 filed by the income tax authorities on 31 12 2006 reporting forgery of the certificates of registration under sections 12A and 80G In the statement given to the police on 31 05.2007, Sikri gave the same explanation, namely, the entrustment of the work of filing the applications for approval under sections 12A and 80G and the filing of the income tax returns to his employee He also stated that it was his employee who had given the certificates to R L Gupta, the President of the assessee - society for further action Radhey Lal who was also examined by the Kirti Nagar Police confirmed the statement of Sikri On 29 02 2008 a report was submitted by the police in the Court of the Metropolitan Magistrate, Rohini to the effect that Sikri was making false statements and a prayer was made that action under section 181, Indian Penal Code may be taken against him. Prior thereto, on 21 11 2007, on the basis of the criminal complaint No 1870/2007 filed by the assessee on 28 06 2006 in the Court

of ACMM, Rohini Courts, Delhi an FIR was registered against Sikri and he was arrested by the police He remained in custody till 26.12 2007 In the meantime on 27 11.2007 he filed a bail application under section 437 of the Cr P C and even in this bail application, he reiterated his earlier stand that he alone was responsible for the controversy, through his employee. He also stated that no other trustee was involved in the controversy Eventually Sikri passed away in 2011

15 The above facts and the sequence or chronology of events have been discussed in paragraph 109 of the order of the Tribunal The Tribunal has opined in paragraph 110 that these facts cannot be brushed aside or called self-serving facts The evidence in the form of statement of A.K Sikri, minutes of the meetings, complaint to the police authorities (both by the assessee and also by the income tax department), investigation by the police and their reports, proceedings before the criminal courts, the bail application of Sikri on the basis of which bail was granted to him are all evidence, according to the Tribunal, to show the complicity or involvement of Sikri in the alleged forgery or irregularities in the issue of the certificates of registration/ approval under sections 12A and 80G. According to the Tribunal, the evidence contained Court proceedings and were complementary to each other They were contemporaneous and cannot be brushed aside as the DIT (Exemptions) has done, as having no evidentiary value The entire documentary evidence was presented before the DIT (Exemptions), the police authorities and the criminal courts and their credibility cannot be impeached, according to the Tribunal The Tribunal, therefore, held that the DIT (Exemptions) was not justified in refusing to take cognizance of those vital documents in coming to the conclusion that the assessee – society or its trustees/ governing body members connived or colluded with Sikri The retraction of A K. Sikri on which reliance was placed by the DIT (Exemptions) has been held by the Tribunal in paragraphs 111 and 112 of its order as having been "suddenly made that too when he was removed from the trust and the police had already implicated

him alleging that he was fabricating stories". The Tribunal has also held that Sikri did not succeed in demolishing his earlier statements given not only to the trust but also to the police and the Courts and also in his bail application on the basis of which he was released from police custody

16 Questioning the correctness of the view taken by the Tribunal it is contended by the learned standing counsel for the Revenue that the Tribunal went wrong in its appreciation of the evidence and in exonerating the assessee – society and the members of the governing body from any guilt or culpability It is contended that an overall appreciation of the sequence of events and the evidence would suggest that there was collusion between A K Sikri and the assessee – society in the whole affair It is pointed out that Sikri did not stand to gain or benefit by the alleged acts of illegality, forgery, etc and that the ultimate beneficiary of such acts was only the assessee – society and this crucial aspect has been missed by the Tribunal According to the learned standing counsel, Sikri could not have had any motive for indulging in such acts except on the prompting or directions of the members of the governing body of the assessee – society. Attention is also drawn to the fact that the whole affair came to light only because of the complaint of M P Mansinghka Trust of Mumbai It is vehemently contended that Sikri was only acting as an employee i e Treasurer of the society without any personal motive or benefit and it is wrong on the part of the Tribunal to have concluded that the society itself was a victim of the fraud allegedly committed by Sikri

17 On the other hand, it was submitted on behalf of the assessee – society that it took prompt action on receipt of the notice from the Advocate of M P Mansinghka Trust of Mumbai in December, 2005 until which time it was totally unaware of the lapses and irregularities committed by Sikri, that the application made for registration of the society under section 12A(a) on 19 12 2005 was signed only by Sikri and all this came to light in the course of the proceedings of the executive body meeting held

on 28.12.2005 on receipt of the notice from the Advocate of M P. Mansinghka Trust It is submitted that Sikri was present in the meeting and confessed to the irregularities and even signed the minutes of the meeting which recorded the confession of Sikri Strong reliance is placed on the findings and observations of the Tribunal on the basis of the chronology of events starting from the application made on 19 12 2005 under the signature of Sikri upto the date of his release on bail including the statements made by him to the police, to the criminal courts and in his bail application Our attention was also drawn to the fact that even in the complaint made by the income tax authorities on 31.12.2006 in FIR No 605/2006 with the Kirti Nagar Police Station, they had implicated only A K. Sikri and not any of the trustees or governing body members of the assessee – society by name From this it is submitted by the learned counsel for the assessee, that it was clear that the income tax authorities themselves looked upon the A.K Sikri only as the person responsible for the false/ forged certificate and all other irregularities/ illegalities Quite apart from the above, submitted the learned counsel for the assessee, the question of condonation of delay on the ground of sufficient cause for the delay was a discretion conferred upon the Court and it can be interfered with only if it was shown to have been exercised in a perverse manner and so long as the discretion is shown to have been exercised properly and having regard to the entire conspectus of the facts and circumstances of the case and on the application of the relevant principles of law, and so long as the relevant facts have not been ignored or irrelevant facts have not influenced the discretion, the appellate court acting under section 260A of the Act should not interfere with the decision of the lower court It is further pointed out that the question of perversity was not even raised by the Revenue in the memorandum of appeal and, therefore, there was no substance in the appeals In support of these submissions reliance was placed on several authorities compiled in the form of a paper-book

18 The main question that falls for our consideration is whether the Tribunal was justified in condoning the delay in the filing of the application for registration under section 12A of the Act and whether the view taken by the Tribunal is perverse The question whether there was sufficient cause for the delay is always a question of fact as has been held by two Division Bench judgments of this Court (i) *CIT v. Parma Nand*, (2004) 266 ITR 255 and (ii) *CIT v. ITOCHU Corporation*, (2004) 268 ITR 172 The Tribunal has, in an elaborate order in which all the facts and the rival submissions have been taken into consideration, held that there was sufficient cause for the delay on the part of the assessee – society in making the applications for registration under section 12A and 80G of the Act It is not necessary, nor is it proper, for us to decide the culpability or otherwise of A K Sikri who was the Treasurer of the assessee – society. All that we need to examine is whether the Tribunal had valid materials before it on the basis of which it could have reasonably come to the conclusion that the assessee – society was prevented by sufficient cause in applying for the registration in time It is manifest from a fair reading of the order of the Tribunal that it had weighed the circumstances in which the assessee – society was placed and the action it took immediately on receipt of the complaint from M P Mansinghka Trust of Mumbai, it has referred to the confession of Sikri in the meeting of the governing body owning up responsibility for having misled the assessee – society by representing that the necessary application for registration were made in time, it has also referred to the action taken by the assessee – society against Sikri when it found that Sikri was not taking adequate steps to remedy the situation, it has also referred to the police complaints filed not only by the assessee – society against Sikri, but also to the complaint filed by the income tax authorities against Sikri which indicated that they also viewed Sikri to be responsible for the mis-representation, fake certificates of registration, etc Moreover, the Tribunal has taken note of the fact that the Metropolitan Magistrate, acting on the police complaint, remanded Sikri to custody and also referred to the fact that in the bail application, Sikri had again owned up

responsibility for the fake certificates of registration Taking an overall view of the facts and going by the preponderance of probabilities, the Tribunal came to hold the view that it was because of the irregularities, illegalities and mis-representations of Sikri that the assessee – society was led to believe that appropriate applications under the Act were already filed with the income tax authorities for registration The assessee – society was thus under the belief, though mistaken but honest, that there was no delay and once it came to know on 06 12 2005 about the irregularities on a complaint from M. P. Mansinghka Trust of Mumbai and on further enquiry conducted on 14 12.2005 by the governing body, it hastened to take remedial action by filing applications for registration both under section 12A and 80G of the Act, which were followed up by another set of applications filed directly with the DIT (Exemptions) on 21 12.2005; these applications were obviously delayed and the condonation application was filed on 14 03 2006 narrating the events that led to the delay

19 In the above circumstances, it seems to us that the Tribunal has acted judicially, taking note of all the facts and circumstances including probabilities of the case In *Esthuri Aswathiah v. CIT*, (1967) 66 ITR 478 SC, the Supreme Court outlined the duties of the Tribunal in the following words -

> "*The function of the Tribunal in hearing an appeal is purely judicial. It is under a duty to decide all questions of fact and law raised in the appeal before it: for that purpose it must consider whether on the materials relied upon by the assessee his plea is made out. Conclusive proof of the claim is not predicated: the Tribunal may act upon probabilities, and presumptions may supply gaps in the evidence which may not, on account of delay or the nature of the transactions or for other reasons, be supplied from independent sources. But the Tribunal cannot make arbitrary decisions: it cannot found its judgment on conjectures, surmises or speculation. Between the claims of the public revenue and of the taxpayers, the Tribunal must maintain a judicial balance.*"

In *Udhavdas Kewalram v. CIT*, (1967) 66 ITR 462 SC, the very same Bench of three judges of the Supreme Court again observed as under -

> *"The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act: it is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law..... .....The Tribunal was undoubtedly competent to disagree with the view of the Appellate Assistant Commissioner But in proceeding to do so, the Tribunal had to act judicially, i e, to consider all the evidence in favour of and against the assessee. An order recorded on a review of only a part of the evidence and ignoring the remaining evidence cannot be regarded as conclusively determining the questions of fact raised before the Tribunal."*

20 We are satisfied that the Tribunal has, in making its decision, kept in mind the aforesaid principles adumbrated by the Supreme Court Its order cannot, therefore, be branded as perverse or unreasonable or irrational

21 That takes us to the question as to whether in condoning the delay the Tribunal committed any error of law or illegality. There is a wealth of judicial literature on the subject of condonation of delay and most of the cases have arisen under section 5 of the Limitation Act, 1963. The principles that are to be applied are, however, no different whenever the question of condonation of delay comes up for consideration under other statutes In the oft quoted judgment of the Supreme Court in *Collector, Land Acquisition v. MST. Katiji & Ors.*, (1987) 167 ITR 471 it was observed as follows -

> *"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de 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 of 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."*

22 The following general principles were laid down and it is these principles which guide the Court in approaching the question of condonation of delay -

*"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, the 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 the 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."*

23 In *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123 the Supreme Court again reiterated the approach In *Ram Nath Sao @ Ram Nath Sahu and Ors Vs Gobardhan Sao and Ors.*, (2002) 3 SCC 195 it was observed by the Supreme Court that acceptance of the explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of *bona fides* can be imputed to the defaulting party In the present case, the Tribunal has found that the assessee – society has taken prompt remedial action and put Sikri on the dock and he also admitted his fault, though he tried to shift the blame to his employee whose whereabouts were never known Even in his bail application he had confessed to his role in the alleged irregularities and illegalities There has been no want of *bona fides* on the part of the assessee, nor did it fail to take immediate action once it was apprised of the irregularities in its affairs by M P Mansinghka Trust of Mumbai In these circumstances, we are unable to say that the Tribunal committed an error in condoning the delay

24. On the question of perversity of the decision of the Tribunal we may also refer to the judgment of the Supreme Court in *Sree Meenakshi Mills Ltd. v. CIT*, (1957) 31 ITR 28. In that judgment, it was noted that only a question of law can be referred for decision of the Court and the decision of the Tribunal on a question of fact can be challenged only if it is not supported by any evidence, or is unreasonable or perverse The following pithy observations of T L Venkatarama Aiyar, J speaking for the Court are relevant. -

> " . . . . *The point for decision is whether there arises out of the order of the Tribunal any question which can be the subject of reference under section 66 (1) of the Act Under that section, it is only a question of law that can be referred for decision of the Court, and it is impossible to argue that the conclusion of the Tribunal is anything but one of fact. It has been held on the corresponding provisions in the English Income-tax statutes that a finding on a question of fact is open*

*to attack as erroneous in law only if it is not supported by any evidence, or if it is unreasonable and perverse, but that where there is evidence to consider, the decision of the Tribunal is final even though the Court might not, on the materials, have come to the same conclusion if it had the power to substitute its own judgment. In Great Western Railway Co. v. Bater (1), Lord Atkinson observed:*

> *"Their (Commissioners') determinations of questions of pure fact are not to be disturbed, any more than are the findings of a jury, unless it should appear that there was no evidence before them upon which they, as reasonable men, could come to the conclusion to which they have come: and this, even though the Court of Review would on the evidence have come to a conclusion entirely different from theirs."*

*There is no need to further elaborate this position, because the law as laid down in these observations is well settled, and has been adopted in the construction of section 66 of the Act."*

25 This view was reiterated by the Supreme Court in *CIT v Daulatram Rawatmull*, (1964) 53 ITR 574 where it was held that "*if there is some evidence to support the finding recorded by the Tribunal, even if it appears to the High Court that on re-appreciation of the evidence, it might arrive at a conclusion different from that of the Tribunal*" the High Court has no power to interfere with the findings of the Tribunal. These decisions were applied by a Division Bench of this Court in *CIT v Baba Avtar Singh*, (1972) 83 ITR 738 where it was observed as under -

> *"The submission made by Mr. Sharma does not appear to us to be correct. It is well-settled that the court cannot set aside the Tribunal's finding of fact if there is some evidence to support that finding even though the court itself might have come to a different conclusion upon the evidence."*

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26. The aforesaid principles govern the order of the Tribunal and the approach to be adopted by us in the present case. At best, what can be argued by the Revenue is only that another view was possible to be taken by the Tribunal and this Court should prefer the alternative view on the same facts and evidence and discard the Tribunal's view Obviously the argument cannot be upheld, having regard to the above judgments

27. For the above reasons we answer the substantial questions of law framed in ITA Nos 754, 773 and 775 of 2010 in the negative, against the Revenue and in favour of the assessee Consequently the sole substantial question of law framed by us in ITA Nos.1092, 1101, 1103, 1104, 1112 and 1124 of 2010 is answered in the affirmative, against the Revenue and in favour of the assessee The C M Application is disposed of. The appeals of the Revenue are accordingly dismissed with no order as to costs.

**(R.V. EASWAR)**
**JUDGE**

**(S. RAVINDRA BHAT)**
**JUDGE**

**DECEMBER 21, 2012**
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