IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

RP.No. 602 of 2014 () IN ITA.43/2014

AGAINST THE JUDGMENT IN ITA 43/2014 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 09-04-2014

REVIEW PETITIONER(S)/APPELLANT:

K.AVARAHAJI AGED 65 YEARS
KATTUKANDAN HOUSE, KULIKKILIYAD P.O.,
KOTTAPURAM, PALAKKAD DISTRICT.

BY ADVS.SRI.C.K.RAMAKRISHNAN
SRI.A.L.GEORGE

RESPONDENT(S)/RESPONDENTS:
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1. THE INCOME TAX APPELLATE TRIBUNAL
   ERNAKULAM-682012.

2. THE OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS)
   KOCHI, PIN 682031.

3. THE INCOME TAX OFFICER,
   WARD-2, PALAKKAD-678001.

R1-R3 BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
R1-R3 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

sou.

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J.

R.P. No. 602 of 2014

IN

I.T.A. No.43 OF 2014

Dated this the 9th day of January, 2015

O R D E R

Ashok Bhushan, Ag.CJ

Heard learned counsel for the petitioner.

2. This review petition has been filed praying for review of judgment dated 9.4.2014 in ITA. No.43 of 2014. The Income Tax Appellate Tribunal vide its order dated 29.3.2012 in ITA.No.483/Coch/2010 dismissed the appeal as barred by time. The appeal was filed for the assessment year 1999-2000, which appeal was barred by 1270 days. The Tribunal after considering the explanation for delay including medical certificates, dismisised the appeal *in limine* holding that reasons cited by the assessee for the delay cannot be taken as sufficient cause.

3. Against the order of Tribunal, Income Tax Appeal No.43 of 2014 was filed. This Court refused to interfere with the order of the Tribunal and dismissed the appeal. In paragraph 7 of the judgment the Division Bench of this Court held as under :

> "As already stated above, when a demand notice was sent, WP(C). No.16414 of 2010 came to be filed before the High Court, and High Court dismissed the Writ Petition on 12.07.2010. Only after disposal of this Writ Petition, he filed the above appeal with delay of 1270 days. Tribunal, after referring to entire material on record and also contents of medical certificates produced, was justified in saying, the inordinate delay of 1270 days is not explained with sufficient and convincing material and even otherwise, the so called treatment at Ayurvedic Clinic was not as in-patient and there was enough time for petitioner to approach Tribunal. Want of funds to make litigation cannot be a sufficient case. He was aware of entire proceedings and he approached different authorities at different points of time. He also approached High Court on more than one occasion. It is not a case where the petitioner was ignorant of what was happening on account of his illness, but the entire situation now faced is only on account of negligence in taking the matter before the appellate authority at the relevant point of time."

4. Learned counsel for the applicant submitted that the applicant has given sufficient explanation. He has also filed medical certificate of Ayurvedic treatment and also referred to judgments of Apex Court in the memorandum of appeal, viz., Smt. Sumithra Devi Vs. Lt. Governer of Delhi and Others, N. Balakrishnan Vs. M. Krishnamurthy [1998 (7) SCC 123], and Ananth Nag Vs. Mst. Katju (AIR 1987 SC 1353) in paragraph 3 of the grounds. He submits that the Apex Court has laid down that the sufficient cause employed by the legislature in Limitation Act

is adequately elastic to courts to apply the laws in a meaningful manner which subscribes the ends of justice. He submits that there are sufficient cause for condonation of delay and delay was required to be heard on merits. This Court while dismissing the delay has considered the reasons for delay and confirmed the finding of the Tribunal refusing to accept the cause shown for condonation of delay.

5. By this review petition, the petitioner has contended that a different view pught to have been taken and the appeal should have been decided on the merits ofthe case. The scope of review by this Court is limited and the scope is not to re-hear the appeal and take a different view especially with regard to the condonation of delay. The Division Bench after considering the order of the Tribunal arrived at the finding as aforementioned and this court cannot take a different view on the grounds which are urged by learned counsel for the petitioner. The judgment cannot be reviewed relying on the judgments of Apex Court referred in paragraph 3 of grounds. There cannot be any dispute on the proposition as held by the Apex Court. The question whether there is sufficient cause to condone delay is to be considered in

the facts of each case and the Division Bench of this Court has affirmed that finding. Hence there cannot be any ground to review the judgment. The review petition is hence dismissed.

Sd/-

ASHOK BHUSHAN,
ACTING CHIEF JUSTICE

Sd/-
A.M.SHAFFIQUE,
JUDGE.

sou.

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