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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM

The Hon'ble Mr. Justice SATISH K.AGNIHOTRI
and
The Hon'ble Mr. Justice M. VENUGOPAL

W.A.No.31 of 2015
and MP.No.1 of 2005

1. The Chief Commissioner of Income Tax - IV,
121, M.G. Road, Nungambakkam,
Chennai 600 034.
2. The Income Tax Officer Ward -I (4),
West Tambaram, Chennai.45.
3. Central Board of Direct Taxes,
North Block, New Delhi.

... Appellants

Vs.

Shri Anand Rishi Jain Society
rep. By its Secretary
Mr.M. Ganapathraj Surana,
At No.74, Kakkan Street,
Tambaram West,
Chennai.45.

... Respondent

Writ Appeal filed against order dated 07.11.2014 made in W.P. No. 33485 of 2012. The Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the first respondent C.No.4069 (1)/CCIT-IV 2010-11 dated 29.10.2010 and quash the same and for the direction to the first respondent to condone the delay of one day in filing the Form No.56D under section 10(23C)(vi) of the Income Tax Act, 1961 for the assessment year 2009-10.

For Appellants : Mr. T. Pramodkumar Chopda

For Respondent : Mr. J. Nareshkumar

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 7.11.2014 passed in W.P.No. 33485 of 2012.

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2. The respondent, who was the petitioner, questioned the legality and validity of the order dated 29.10.2010 passed under Section 10(23C)(vi) of the Income Tax Act, 1961 (for short "the Income



Tax Act"), rejecting his application for the purpose of grant of exemption and continuance thereof, on the ground that the application was barred by one day's delay and also, stating therein that the Commissioner has no power to condone the delay in filing an application for grant of exemption under Section 10(23C) of the Income Tax Act.

3. The contention of the writ petitioner/respondent herein before the Writ Court was that the Chief Commissioner of Income Tax, being quasi judicial authority, exercising power under Section 10(23C) (iv) of the Income Tax Act, was competent to condone the delay.

4. The Writ Court, accepting the contention of the learned counsel for the respondent/writ petitioner and also relying on a Division Bench judgment of the High Court of Orissa in PADMASHREE KRUTHARTH ACHARYA INSTITUTE OF ENGINEERING AND TECHNOLOGY Vs. CHIEF COMMISSIONER OF INCOME TAX¹, held that the Chief Commissioner of Income Tax has inherent power under Section 10(23C) (iv) of the Income Tax Act to condone the delay. The said Section is a special provision for filing under Chapter III of the Income Tax Act.

5. Shri. Promodkumar Chopda, learned Standing Counsel for the appellants, submits that the decision of the Orissa High Court in PADMASHREE KRUTHARTH ACHARYA INSTITUTE OF ENGINEERING AND TECHNOLOGY¹ (supra) was considered subsequently in ROLAND EDUCATIONAL AND CHARITABLE TRUST Vs. CHIEF COMMISSIONER, INCOME TAX² by a Division Bench of the High Court of Orissa, wherein, it was held that the provisions of the Income Tax Act, nowhere provide any provision for condonation of delay in presenting application under Section 10(23C) (vi) for grant of exemption. In the absence of such a provision, any application made under Section 10(23C) (vi) beyond the statutory period of limitation, cannot be entertained by the appropriate authority by condoning the delay in presenting such application.

6. Be that as it may, the finding recorded by the learned Writ Court about the competency of the Chief Commissioner of Income Tax for condonation of delay requires re-consideration.

7. On a perusal of the relevant provisions, it is evident that there is no power for the Chief Commissioner of Income Tax to condone the delay. Thus, the question is left open. However, having regard to the fact situation, as there is a delay of only one day in presenting the application under Section 10(23C) (vi), this Court, exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India, condones the delay of one day in filing the application and remits back the matter to the Chief Commissioner of Income Tax/the first appellant herein, for consideration of the respondent/writ petitioner's application, on its own merits and in accordance with law. We make it clear that this order shall not create any precedent as delay is being condoned by this Court, exercising extra-ordinary jurisdiction in respect of delay of one day.



8. Thus, the impugned order dated 7.11.2014 passed by the Writ Court is modified as above and the matter is remitted back to the Chief Commissioner of Income Tax-the first appellant, for consideration on its own merits and in accordance with law.

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9. This writ appeal stands disposed of accordingly. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

To

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+ 1 cc to M/s. J. Naresh Kumar, Advocate SR.5340
+ 1 cc to M/s. T. Pramodkumar, Advocate Sr.5372

W.A.No.31 of 2015

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Eu 23.02.15