IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 29-04-2016

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

T.C.A.Nos.231 & 232 OF 2016

Institute Management Committee (IMC),
I.T.I. (Women),
Madurai a Registered Society with Reg.
No.112/2008, rep. by its Vice Chairman
S. Duraisamy, Madurai 625 014. ..Appellant in both appeals

-vs-

The Commissioner of Income Tax-I (i/c),
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002. ..Respondent in both appeals

Appeals against the common order of the Income Tax Appellate Tribunal "B" Bench, Chennai, dated 16.12.2015, passed in ITA Nos.612/Mds/2015 and 613/Mds/2015, respectively against the order of the Commissioner of Income - Tax-I, Madurai 625 002, made in C.NO.464/182/2010-II/CIT-I, dated 13.6.2011 against the order of the Commissioner of Income - Tax - I, Madurai, made in C.NO.464/222/CIT-I/ 2009-10 dated 27.09.2010.

For appellant : Mr.S.Subbiah
For respondent : Mr.J.Narayanaswamy

JUDGMENT
(Judgment of the Court was delivered by Nooty.Ramamohana Rao, J.)

These appeals under Section 260-A of the Income Tax Act are directed against the orders passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai, in I.T.A.Nos.612/Mds/2015 and 613/Mds/2015, dated 16.12.2015. Those appeals were, in fact, directed against the orders of rejection of registration under Section 12AA of the Income Tax Act, in short, "the Act".

2. It would be appropriate to notice right at this stage that while dealing with an application filed on 25th February,2010, by the very same appellant for registration under Section 12AA of the Act, an order had been passed on 13th June,2011, by the Commissioner of Income Tax, Madurai, granting registration, which was rendered effective from 01.04.2010, i.e., for the Assessment Year 2011-2012 onwards, and, thus, it is registered as a Public Charitable Trust. The claim of the appellant is that when an application was made earlier thereto, the same Commissioner of Income Tax, Madurai, passed orders on 01st February,2011, declining

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to reconsider/review the order passed earlier, but, however, a rider was added therein that in case the party is aggrieved, it may prefer an appeal to the Income Tax Appellate Tribunal, Chennai.

3. It is urged before us that instead of preferring appeal immediately on receipt of the order, dated 01st February 2011, of the Commissioner of Income Tax, Madurai, the appellant processed an application afresh, which was filed on 25th February,2011. After the appellant was registered as a Public Charitable Trust by the order, dated 13th June,2011, by the Commissioner of Income Tax, Madurai, appeals against earlier rejection of such registration were preferred. There was a considerable amount of delay of more than 1300 and 1400 days in preferring those two appeals. The Tribunal, by the impugned order, has declined to condone the delay, as the delay was considered to be inordinate, in filing the appeals.

4. Learned counsel for the appellant has placed reliance upon a judgment rendered by the Supreme Court in N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123, wherein the principle has been spelt out in paragraph 9, in the following words :

> "9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

5. The essential principle, while exercising the jurisdiction vested in any judicial/quasi-judicial authority, is not the length of delay that matters, but it is acceptability of the explanation offered for occasioning the delay that should matter. Applying this ratio to the present fact situation, though there was enormous delay in preferring the appeals, but, nontheless, there appears to be some justification for not pursuing the appellate remedy promptly by the appellant. Even

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otherwise, the appellant, with a view to demonstrate its seriousness to pursue its right, has deposited a sum of Rs.5,000/- in each case with the State Legal Service Authority, as a sort of contribution.

6. Taking overall view of all these facts and circumstances, we consider that ends of justice would have been better served, if the Tribunal had condoned the delay. In that view of the matter, we set aside the order impugned in these appeals, passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai, in I.T.A.Nos.612/Mds/2015 and 613/Mds/2015, and remit the matters back for consideration afresh, on merits by the said Tribunal. We are sure, that the Tribunal will pay appropriate attention to any request for hearing the matter on out-of-turn basis.

7. These appeals stands disposed of, after hearing the learned Standing Counsel for Income Tax Department, who has very seriously opposed the attempt of condonation of delay before the Tribunal, nonetheless. No costs. Consequently, the connected C.M.P.Nos.4646 and 4647 of 2016 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dixit
To

1. The Commissioner of Income Tax-I (i/c),
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002.

2. The Income Tax Appellate Tribunal, B Bench, Chennai.

+ 2 ccs to Mr.S. Subbiah, Advocate SR.27498
+ 1 cc to Mr.J. Narayanasamy, Advocate sr.27728

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