THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SMT JUSTICE ANIS

I.T.T.A.No. 346 of 2016

JUDGMENT: ***(Per VRS,J)***

Aggrieved by the dismissal of an application for condonation of the delay of 354 days in filing a statutory appeal before the Income Tax Appellate Tribunal, the assessee has come up with the above appeal under Section 260A of the Income Tax Act, 1961.

2. The only question of law raised in the appeal is as to whether the Tribunal's findings are perverse or not.

3. Heard Mr. A.V.A.Siva Kartikeya, learned counsel for the appellant, and Mr. J.V.Prasad, learned senior standing counsel for Income Tax Department appearing for the respondent.

4. The only ground, on which the Tribunal dismissed the condone delay petition, is that though the appellant claimed that the delay was due to a wrong advice tendered by their authorized representative, the affidavit of the authorized representative was not filed. But unfortunately, the Tribunal failed to see that in applications for condonation of delay, reliance cannot be placed upon the affidavit of

advocates for the parties. This is probably the reason why the assessee did not file the affidavit of the advocate. Therefore, we are of the considered view that the application for condonation of the delay was dismissed by the Tribunal, on a ground that it is not available. Hence, the order requires to be set aside.

5. Accordingly, the appeal is allowed, the order is set aside, the condone delay petition is allowed, and the Tribunal is directed to number the appeal and take up for disposal, in course of time.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

8th September, 2016
cbs

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