

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.(Appeal).No.3 of 2017

M/s.Hosanna Ministries,
6-7, Vadakkanadu,
Chengody Post-629 177.
Kanyakumari District
PAN: AAATH8004R

... Appellant/Appellant

vs

The Income Tax Officer (Exemptions)
Tirunelveli

... Respondent/Respondent

Prayer : The appeal filed under Section 260A of the Income Tax Act, 1961, against the order, dated 12.04.2016, passed in I.T.A. No.2351/Mds/2015, on the file of the Income Tax Appellate Tribunal "A" Bench, Chennai, against the Order dated 16/08/2010 in C.No. 464/190/CIT-1/2009-10 by the Commissioner of Income Tax, Madurai.

For Appellant : Mr.S.Sridhar
For Respondent : Mr.J.Narayanasamy
Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This appeal has been preferred by the assessee against the order passed by the Income Tax Appellate Tribunal (in short Tribunal), Chennai by order dated 12.04.2016.

2. The assessee is a charitable trust duly registered under Indian Trust Act and has been engaging in charitable activities.

3. In order to fulfill one of the objects of the trust, the assessee had started and is running a children home in the name and style of Hosanna Children's Home (Girls) at No.13 - 1A, Chellampatti, Sangareddikottai (P.O), Athoor Taluk, Dindugal

Main Road, Batlagundu, Dindugal District.

4. The assessee in fact had made an application to the Revenue for Registration under section 12AA of the Income Tax Act (hereinafter referred to as Act) on 11.01.2010. Thereafter, the Revenue had sent a letter on 16.03.2010 to the assessee seeking some additional particulars which the assessee had responded. Finally, an order was passed by the Commissioner of Income Tax (in short CIT) by order dated 16.08.2010 whereby the application of the assessee seeking for registration was rejected. Though such order was passed by the CIT on 16.08.2010, no further action had been taken by the assessee.

5. After some years, during December 2015, the assessee had received recovery notice from the Revenue dated 14.12.2015 for the assessment year 2013-14. Only in that context, the assessee had discussion with professional person for getting professional advise where the issue that the rejection order passed by the CIT refusing to register the assessee's entity under section 12AA of the Act had been brought to the notice to the professional and on whose advise the assessee came to know that as against the order of rejection made by the CIT under section 12AA of the Act, an appeal to the Tribunal has been provided for by way of newly inserted section 253(1)(c) of the Act with effect from 01.06.1999.

6. Only on coming to know these factors, immediate instructions seems to have been given by the assessee to his professional advisor i.e., a Chartered Accountant and only thereafter, an appeal had been filed on 30.12.2015 before the Tribunal.

7. Because the appeal was filed long after the order of CIT obviously, there was a huge delay of 1902 days in preferring the said appeal before the tribunal. Therefore, a petition to condone the said delay was also filed in the said appeal i.e., ITA.No.2351 of 2015 before the Tribunal.

8. The said appeal filed by the assessee had been now rejected through the impugned Judgment of the Tribunal by order dated 12.04.2016. In the impugned Judgment, the Tribunal has stated that the reasons adduced by the assessee for such huge delay of 1902 days in preferring the appeal showed that the assessee was not vigilant in pursuing the appeal and also it appeared that the assessee was not serious in complying with the provisions of the Act. Mainly on these reasons, the Tribunal had rejected the appeal of the assessee.

9. Also in the said order which is impugned herein, the Tribunal further stated that it did not find that the assessee to be engaged in the activities in accordance with the objects

specified in the trust deed. That was one of the added reasons for coming to a conclusion that the assessee's appeal had to be rejected in limine mainly on the ground of huge delay.

10. Heard Mr.S.Sridhar, the learned counsel appearing for the appellant/assessee.

11. The learned counsel would submit that the appellant is a charitable institution under a registered trust and the children's home started and being run by the appellant is only meant for children, who are in the need of support and in this regard, the activities undertaken by the appellant assessee is purely charitable in nature. Since it is not a commercial venture and it is not running on profit motive, it is being run only out of the funds, the assessee is legally able to generate. The learned counsel submits that obviously, the assessee being a charitable entity could not get professional advise from best brain.

12. In this regard, the learned counsel would further submit that after the order passed by the CIT rejecting the application of the assessee for registering the assessee's institution under section 12AA of the Act, the matter was entrusted to its Chartered Accountant, one Mr.A.Johnson FCA, for further action. According to the assessee, since it is a complicated technical issue from the point of view of the assessee, as how to proceed further on receipt of the rejection order from the CIT, it had to necessarily depend for the advise and further action, only his Chartered Accountant. However, the said Chartered Accountant, as claimed by the assessee, had miserably failed to give proper advise for preferring any appeal against the order of the CIT.

13. Only at that time of discussion with other professional, pursuant to the recovery notice issued by the Revenue in the month of December 2015, this subject of rejection order passed by the CIT came up for discussion and ultimately, proper advise was received by the assessee to prefer an appeal. Therefore, only because of this genuine reason, the assessee could not make an appeal in time therefore, even though the delay was huge and inordinate one, the reason attributable to such delay is absolutely genuine and that is the reason why the actual reason for delayed approach on the part of the assessee to the Tribunal was alone given in the appeal.

14. However, the learned standing counsel appearing for the Revenue would vehemently oppose such argument advanced on behalf of the assessee and to state that the reason adduced by the assessee in not approaching the Tribunal within the time and approaching the Tribunal with such a long delay of years together is, absolutely unacceptable. In this regard, the

learned standing counsel for Revenue would submit that it is a fundamental and age old principle that ignorance of law cannot be a defence. Therefore, the Tribunal has rightly considered the said aspect in proper perspective and dismissed the appeal filed by the assessee which is impugned herein and therefore, there is no requirement for interference by this Court in the order impugned.

15. This court has considered the facts and circumstances of the case as well as the rival submissions made by both sides.

16. In so far as the genuinity and functioning of the assessee's institution as trust is concerned, the learned counsel appearing for the assessee has produced documents to show that the assessee's institute in the name and style of that Hosanna Children's home (Girls) had been functioning with proper registration in the Directorate of Social Defence, State of Tamil Nadu, especially after the coming into effect of Juvenile Justice (Care and Protection of Children) Act 2015 (for short Juvenile Act). Every such children home had necessarily to be registered under the said Act and without such registration, no institute or home dealing with children can function.

17. In this regard section 1(4) of the Juvenile Act can be usefully referred to herein:

"(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including -

- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;
- (ii) Procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection"

18. Like that section 41 of the Juvenile Act is the enabling provision under which registration has to be made and the said provision is also reproduced hereunder for ready reference.

"41. Registration of child care institutions. - (1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-

governmental organisations, which are meant, either wholly or partially, for housing children in need of care and protection or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, within a period of six months from the date of commencement of this Act, regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not:

Provided that the institutions having valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) on the date of commencement of this Act shall be deemed to have been registered under this Act."

19. In consonance with said provisions of the Juvenile Act, the appellant's children home, after having been registered by the authority concerned, was certified by proceedings dated 14.12.2016 in proceedings No.15566/D1/2016 of the Directorate of Social Defence, Government of Tamil Nadu. The relevant content of the said certification is reproduced hereunder:

"Proc.No.15566/D1/2016

Dt: 14.12.2016

This certificate of Registration is awarded to Hosanna Children's Home (Girls), 13-1A, Chellmapatti, Sangareddikkottai (P.O), Athoor (T.K). Dindigul Main Road, Batlagundu, Dindigul District - 624 211 an institution for children in need of care and protection vide S.No.316/DSD/2016 under section 41 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015. This certificate of registration is valid for five years from the date of issue and is subject to the following conditions:-"

20. Therefore, from the said proceedings, it becomes obvious that the assessee institution is run under the provisions of the Juvenile Act after having been duly registered under the said Act. Therefore, the additional reason given by the Tribunal in the order impugned to say that the assessee was not engaging in activities in accordance with the objects specified in the trust deed, may not be backed by any materials.

21. Now, we come to the main reason i.e., the reason of delay shown for the rejection of the appeal through the impugned order. No doubt, the delay of 1902 days is a huge and enormous delay. But, when we look at the reasons given by the assessee for such a delay, it shows that it is not attributable to any lame excuses on medical grounds or otherwise. But, it is only the reason of either non advise on the part of the professional,

who has been engaged by the assessee or the ignorance of law by the assessee itself. Assessee knew well that if a plea of ignorance of law is taken, that would be, on the face of it, rejected by the court/Tribunal, nevertheless, such a plea alone had been taken by the assessee and that itself would show the inherent genuineness attached with the reason cited by the assessee for such huge delay.

22. In this regard, we would emphasise that no doubt, the delay that too a long delay has to be explained with proper reasons. But, it does not mean that every day's delay must be explained. The court must take a pragmatic view in appreciating the reasons attributable to the delay caused to the party to approach the court of law. No pedantic view or approach to be adopted by the court in considering the reasons given by the parties for delay in approaching the court.

23. In this regard, we would like to quote a decision of the Hon'ble Apex court, in the matter of Collector, land acquisition -vs- M.S.T.Katiji and others reported in I.T.R.Vol.167(1987) Page 471. In the said Judgment, their Lordships have given certain principles based on which, the issue with regard to the delay can be approached and the said portion of the order of the Judgment cited supra is reproduced hereunder:

"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."

24. That apart, in a similar situation in a related appeal in T.C.A.No.886/2016 where also the very same facts have been given or adduced by the assessee for the huge delay of 1631 days in approaching the Tribunal. After having considered the very same reason cited in the said case as has been stated herein also, we have taken a view that in the given circumstances even such a huge delay can be condoned. The relevant portion of the order of us passed today in the said appeal is extracted hereunder:

"6.1. A perusal of the petition for condonation of delay would show, (as was contended before us by the learned counsel for the appellant), that the Chartered Accountant engaged in the matter, one, Mr.A.Johnson, FCA, was unaware of the fact that an appeal could be filed against the order of the CIT, post the amendment made in Section 253(1)(c) of the Act.

6.2. The reason, we have come to the conclusion that the counsel for the Assessee would have taken instructions from the Assessee in preparing the petition for condonation of delay, is, because, the name of the Chartered Accountant is mentioned in the petition. Learned counsel could not have conjured up the name of the Chartered Accountant. There is nothing on record to suggest that the Revenue refuted this averment made in the petition.

6.3. Therefore, the matter has to be appreciated from a different angle, which is, can a litigant be prejudiced on account of, virtually, ignorance of law displayed, by a professional engaged by him, to prosecute his case before the appropriate forum.

7. The answer to this poser lies in the felicitous observations of the Supreme Court in the case of : Motilal Padampat Sugar Mills V. State of U.P., AIR 1979 SC 621 - wherein,

it accepted the dicta of Maule, J. and Lord Atkin, that while ignorance of law is no excuse, (a maxim of different scope and application), there is not and never has been a presumption that everyone knows the law. (See observations made in this behalf at page 629) :

"..... 6. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated 25th June, 1970. In fact, in the petition as originally filed, the right to claim total exemption from sales tax was not based on the plea of promissory estoppel which was introduced only by way of amendment. Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that every one is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in *Martindale v. Faulkner*, (1846) 2 CB 706 "There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so". Scrutton, also once said: "It is impossible to know all the statutory law, and not very possible to know all the common law." But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in *Evans v. Bartlem*, 1937 AC 473 "..... the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application." It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing

the letter dated 25th June, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government." (emphasis is ours)"

25. In view of these reasons, the order impugned of the Tribunal rejecting the appeal of the assessee mainly on the ground of delay, is liable to be interfered with. In addition, we also feel that the further reason given by the Tribunal for arriving at such a conclusion that the assessee was not engaging in activities in accordance with the objects specified in the trust deed also is not supported by materials as we are satisfied that the assessee has been functioning after proper registration with the authorities concerned under the Juvenile Act and a recent certification issued dated 14.12.2016 of the authorities concerned as referred to above would be valid for next five years. Therefore, the genuineness or otherwise of the functioning of the assessee cannot be easily doubted, in view of the certification issued by the Directorate of Social Defence, Government of Tamil Nadu as stated supra.

26. Therefore, even that reason given by the Tribunal for its conclusion in the order impugned cannot stand in the legal scrutiny. Therefore in our view, both the reasons cited in the impugned order of the Tribunal are liable to be interfered with and accordingly, the impugned Judgment is set aside.

27. In the result, we allow the appeal remitting the matter to the Tribunal for taking decision on merits on the issue raised by the assessee. There shall be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

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To

1.the Income Tax Officer (Exemptions)
Tirunelveli

2.The Income Tax Appellate Tribunal
"A" Bench, Chennai.

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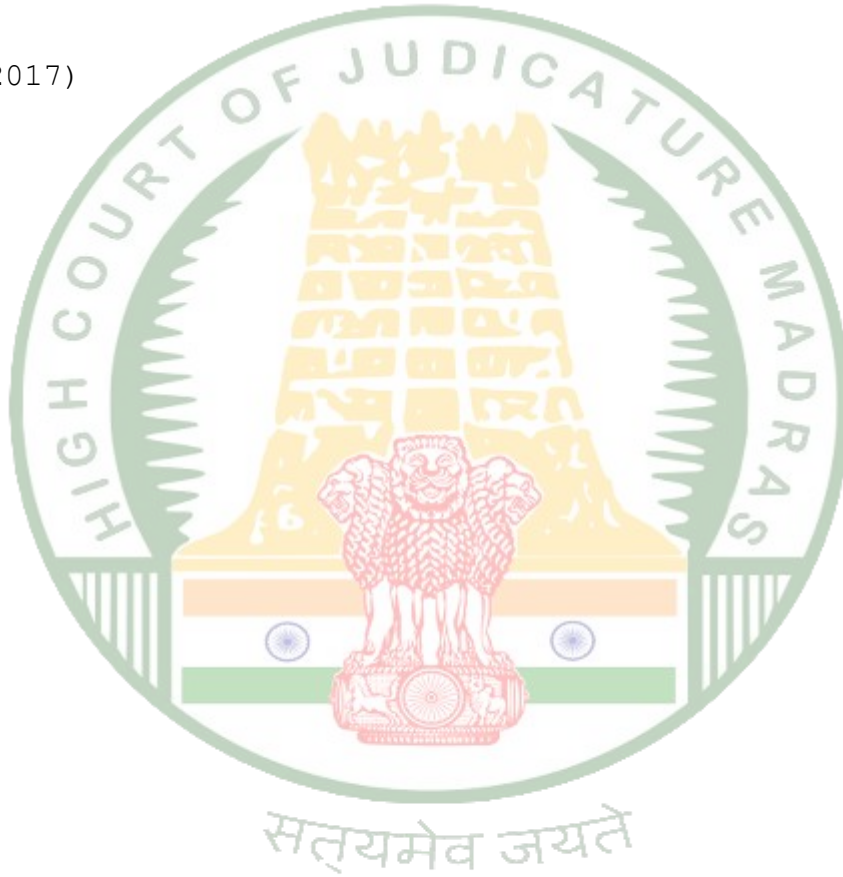
3.The Commissioner of Income Tax-I,
Madurai.

+1cc to Mr.S. Sridhar, Advocate Sr. 14763

+1cc to Mr.J. Narayanaswamy, Advocate Sr. 14971

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