BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P.(MD)(PD)No.350 of 2009

1.David Pitchumani (Died)
2.Jeya Rose Annthai (Died)
3.Navamani Arputharaj :Petitioner

(P2 was brought on record as legal heir of deceased sole petitioner, vide order of this Court in M.P.(MD)Nos.2 to 4 of 2010, dated 01.11.2010)

(P3 was brought on record as legal heirs of deceased second respondent vide order of this Court in C.M.P.(MD)Nos.5487 to 5489 of 2019, dated 03.07.2019)

vs.

The Commissioner,
Tirunelveli City Municipal Corporation,
S.N.High Road, Tirunelveli - 627 001. :Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the order of dismissal, dated 22.01.2009 passed in the application for condonation of delay of 335 days in I.A.No.239 of 2008 in T.A.No. of 2008 by the Taxation Appeal Tribunal, Tirunelveli.

For Petitioners :Mr.J.Bharathan
For Respondent :Mr.Aayiram K.Selvakumar

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ORDER

This Civil Revision Petition is directed against the order of Taxation Appellate Tribunal in A.No.239 of 2008 in an unnumbered Tax Appeal of the year 2008.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The revision petitioner is an assesee. Challenging the quantum of property tax that was assessed in respect of building owned by the revision petitioner, he filed an appeal before the Taxation Appellate Tribunal. However, the said appeal is stated to have been filed with a delay of 335 days. Hence, the revision petitioner filed a petition in I.A.No.239 of 2008 to condone the delay of 335 days in filing the tax appeal. Considering the issue that the tax arrears was for a period from 01.10.1998 and that the revision petitioner has not paid tax for a long time, the lower Court refused to accept the case of the revision petitioner only on the ground that the reasons stated are not sustainable. From the reading of the order, it is seen that the Court was of the opinion that the assessment is challenged only after 10 years and that no relief can be given in favour of the revision petitioner. Aggrieved by the same, the above revision petition has been filed.

3.The learned Counsel for the revision petitioner would submit that the impugned order suffered from serious error and the discretionary power vested with the Court had not been exercised with due diligence. Since the application filed by the revision petitioner is to condone the delay of only 335 days, the learned Counsel for the petitioner contended that the Tax Appellate Tribunal ought to have considered the matter on merits. The learned Counsel for the petitioner further submitted that the lower Court was on the wrong premises that there was a delay of 10 years, ignoring the fact that the delay in filing the petition is only 335 days. The learned Counsel further submitted that the lower Court failed to consider the issue on merits.

4.This Court has seen that the petitioner has given sufficient reason for explaining the delay. The delay is only 335 days. However, the lower Court came to the conclusion that the delay is 10 years. The revision petitioner has categorically stated that he has challenged the assessment, that was made in 2007 and that the prior assessment was not an issue. Assuming that the appeal is for questioning the assessment for more than 10 years, the delay in filing the appeal cannot be dismissed by citing that revision petitioner is in huge arrear of property tax or that the revision petitioner has filed the suit causing hindrance to the recovery of property tax.

5.The reasoning of the lower Court would clearly shows that the Court has not applied its mind by properly exercising its power vested in it. However, the fact remains that there is some delay and the petitioner has not explained the delay with full particulars. Having regard to the scope of litigation and the reasons stated by the revision petitioner, this Court is inclined to show some lenience. In such circumstances, this Civil Revision Petition is allowed and the order in I.A.No.239 of 2008 in T.A.No. of 2008 passed by the Taxation Appellate Tribunal, Tirunelveli, dated 22.01.2009, is set aside and the petition in I.A.No.239 of 2008 in

T.A.No. of 2008 stands allowed on condition that the petitioner pay a sum of Rs.5,000/- to the respondent within a period of three weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

To

The Taxation Appellate Tribunal, Tirunelveli.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-79566[F] dated 02/08/2019)

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