IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1762 OF 2017

Nandkishor Education Society ... Appellant.

V/s.

Commissioner of Income Tax Officer-1,
Nashik & Anr. ... Respondents.

Mr. Mihir C. Naniwadekar, Advocate a/w. Mr. Ruturaj Gurjar, Advocate for the Appellant.
Mr. Sham Walve, Advocate a/w. Mr. Pritesh Chatterjee, Advocate for the Respondents.

CORAM : UJJAL BHUYAN AND
MILIND N. JADHAV,JJ.

DATE : JANUARY 22, 2020.

PC :

1 Heard Mr. M. C. Naniwadekar, learned counsel for the Appellant; and Mr. Sham Walve, learned standing counsel Revenue for the Respondents.

2 Appellant is aggrieved by the order dated 21.03.2017 passed by Income Tax Appellate Tribunal, Pune Bench “A”, Pune (Tribunal) in Income Tax Appeal No. 942/PUN/2010 for the assessment year 2009-10.

3 From the materials on record, it is seen that the assessee had preferred the said appeal against the order of Commissioner of Income Tax-I, Nashik dated 13.08.2009, cancelling the registration of the assessee as a Charitable Trust under section 12AA(3) of the Income Tax Act, 1961 (briefly, “the Act” hereinafter).

4 There was delay in filing the said appeal and the delay was of 253 days for which a delay condonation application was filed. To explain the delay, assessee had filed a number of affidavits. Tribunal vide the impugned order dated 21.03.2017 held that there was inconsistency in the stand taken by the assessee in the different affidavits and therefore, it was further held that the assessee had failed to show sufficient cause in filing the related appeal late. Consequently, the delay condonation application was dismissed and resultantly, the related appeal of the assessee was dismissed as being time barred.

5 Aggrieved, present appeal has been preferred.

5.1. All the question proposed as substantial questions of law relate to non-condoning of delay in filing the related appeal, by the Tribunal.

6 Learned counsel for the Appellant has taken us through the averments made in the Memo of Appeal including the proposed substantial questions of law as well as the affidavits filed by and on behalf of the assessee before the Tribunal to contend that the assessee had explained the delay in filing the appeal late and that the approach of the Tribunal was too technical. Tribunal was not justified in declining to condone the delay.

7 On the other hand, Mr. Sham Walve, learned standing counsel Revenue for the Respondents supports the order of the Tribunal and submitted that since the appellant has failed to show sufficient cause, Tribunal had no other alternative but to reject the appeal as being time barred.

8 We have heard the submissions advanced by both the sides. We have perused the order passed the Tribunal as well as the affidavits filed by the assessee dated 07.05.2016, 23.12.2016 and 24.11.2016. We have also examined the affidavit filed by the counsel of the assessee on 21.11.2016.

9 On thorough consideration of the matter and taking an overall view, we are of the opinion that Tribunal was not justified in refusing to condone the delay of 253 days in filing the appeal by the assessee. We are of the further view that it would be in the interest of justice if the appeal of the assessee is heard and decided on its own merit; after all, the issue relates to cancellation of the registration of the assessee as a Charitable Trust under section 12AA(3) of the Act.

10 Consequently we set aside the order of the Tribunal dated 21.03.2017 and condone the delay in filing Income Tax Appeal No. 942/PUN/2010 by the appellant. However, the appellant shall deposit a sum of Rs. 10,000/- with the Maharashtra State Legal Services Authority and submit receipt of the same before the office of the Tribunal. Tribunal shall hear and decide the aforesaid appeal on its own merit. Needless to say we have not expressed any opinion on merit and all contentions are kept open.

11 Accordingly, appeal is disposed of in the above terms. No cost.

Shalikram P. Borey Digitally signed by Shalikram P. Borey Date: 2020.01.28 13:00:48 +0530

(MILIND N. JADHAV, J.) (UJJAL BHUYAN, J.)

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