CMP.No.11768 of 2020 in TCA.SR.No.69025 of 2020

T.S.SIVAGNANAM,J
AND
R.N.MANJULA,J

Order of the Court was made by T.S.SIVAGNANAM,J

We have heard Mr.G.Baskar, learned counsel for the petitioner and Mr.J.Narayanaswamy, learned Senior Standing Counsel accepting notice for the respondent.

2. This is a petition filed by the petitioner seeking to condone the delay of 1637 days in filing the appeal.

3. The appeal ought to have been filed on 30.10.2015. But, it has been filed with the delay of 1637 days, which, according to the Revenue, is inordinate, unexplained and should not be condoned.

4. Along with the petition to condone the delay, the Honorary Secretary of the petitioner society filed an affidavit stating that the delay had occasioned on account of some internal management hassles and that after taking over charge as treasurer of the assessee society in September 2016, he took efforts to set right various issues, which were encountered by the society. It was further stated that the deponent of the affidavit namely the present Honorary Secretary developed an acute medical complication and was hospitalized and also had to undergo a surgery, that he was completely inactive for close to two years, that thereafter he contacted the auditors of the society as well as the learned counsel for the petitioner society in March 2020 and that while they were taking steps to file the appeal, due to break

out of the Covid-19 pandemic, lock down was imposed, which prevented the petitioner from proceeding further in the matter and more particularly because the Secretary of the society was suffering from morbidities.

5. The learned counsel for the petitioner would place reliance on the decision of the Hon'ble Supreme Court in the case of ***Collector, LA Vs. Mst.Katiji & Others [reported in AIR 1987 SC 1353]*** and submit that on account of technical reasons, substantial justice should not suffer and more particularly when the substantial questions of law raised in this appeal are to be decided in favour of the assessee in the light of the decision of the Hon'ble Supreme Court in the case of ***CIT Vs. Rajasthan & Gujarati Charitable Foundation Poona [reported in (2018) 402 ITR 441]*** and the decision of the Hon'ble Division Bench of this Court in the case of ***CIT Vs. Matriseva Trust [reported in (2000) 242 ITR 20].***

6. Per contra, Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the Revenue, by referring to the counter affidavit filed by the respondent namely the Assistant Director of Income Tax, Exemptions IV, Chennai, has vehemently opposed the prayer for condonation of delay and submits that the Secretary of the society alone is not the person in-charge of the affairs of the society. According to him, the facts clearly show that no steps were taken for over five years. Further, he has also referred to paragraph 5 of the counter touching upon the merits of the decision rendered by the Tribunal, which is impugned in this appeal.

7. After elaborately hearing the learned counsel for the parties and carefully considering the submissions of the learned counsel on either side, we are of the view that the delay can be condoned in the instant case for more than one reason. Firstly, the Secretary of any organization is solely responsible for the conduct of the activities of the organization and the Secretary has sworn to an affidavit explaining his serious health condition, which obviously has not been denied by the Revenue in their counter. Furthermore, the society does not stand to benefit by lodging the appeal belatedly. The Revenue does not allege any mala fides against the society for lodging the appeal belatedly. It is true that length of appeal is not always an issue, as, at times, even a meager delay will be refused to be condoned if it is established that the person approaching the Court belatedly has done so for certain mala fide reasons or with an ulterior intention. In the absence of any such allegation against the petitioner – assessee, we are inclined to exercise our discretion.

8. Accordingly, the delay is condoned and this petition is ordered.

07.1.2021

RS

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AND
R.N.MANJULA,J

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