

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

Tax Case Appeal No.886 of 2016

M/s. United Christmas Celebration
Committee Charitable Trust,
3/245, Durai Building,
Near Railway Station, Nallloor,
Marthandam - 629 165. ... Appellant

Vs.

The Income Tax Officer,
Ward-I(1),
Nagercoil. ... Respondent

Prayer : The appeal filed under Section 260A of the Income Tax Act, 1961, against the order, dated 16.03.2016, passed in I.T.A. No.60/Mds/2016, on the file of the Income Tax Appellate Tribunal "C" Bench, Chennai. Preferred against the order of the Office of the Commissioner of Income Tax-I, Madurai-625 002 dated 27/05/2011 made in C.No.464/03/2011-12/CIT-I preferred against the order in rejection the plea for registration under section 12 AA of the Act and is filed to challenge the action of the Income Tax Appellant tribunal in not condoning the delay of 1631 days in filing the appeal before them while recording reverse findings and taking technical stand.

For Appellant : Mr.S.Sridhar

For Respondent : Mr.J.Narayanasamy
Standing Counsel

JUDGEMENT

(Judgement of the Court was delivered by Rajiv Shakdher, J.)

1. This is an appeal directed against the judgement of the Income Tax Appellate Tribunal (in short 'the Tribunal') dated 16.03.2016.

2. By virtue of the impugned judgement, the Tribunal has

dismissed the appeal of the Assessee against the order of the Commissioner of Income Tax (in short 'the CIT'), dated 27.05.2011.

2.1. The Tribunal refused to entertain the appeal of the assessee, only on the ground that, it was woefully delayed. The period of delay involved being 1631 days, which, according to the Tribunal, was solely attributable to the Assessee's negligence and inaction, and, therefore, could not be condoned.

2.2. The Tribunal, consequently, did not go into the merits of the matter.

3. Learned counsel for the Assessee says that the Assessee is a charitable institution, and therefore, did not have the best legal assistance available to it, on account of, paucity of funds.

3.1. Learned counsel submits that the Assessee had taken the assistance of a Chartered Accountant, who obviously, was unaware of the provisions of law, which provided for an appeal, against the order of the CIT, whereby, the petitioner's application for grant of registration under Section 12AA of the Income Tax Act, 1961 (in short 'the Act'), was rejected.

4. Mr.Narayanasamy, learned counsel for the Revenue, vigorously, opposes the appeal, mainly, on the ground that the condonation of delay petition, which had been filed with the Tribunal, was not supported by an affidavit of the Assessee. Learned counsel submits that there is, therefore, no reason for this Court to intervene in the matter.

5. We have heard the learned counsel for the parties and perused the record.

6. There is no doubt that there has been an enormous delay in moving the appeal before the Tribunal. It also cannot be disputed that the Assessee had not filed a petition for condonation of delay, which was supported by an affidavit of the Assessee. The petition for condonation of delay, though, bears the signature of the counsel for the Assessee. Therefore, we would have to assume, at this juncture, that what is stated in the petition was based on instructions received from the Assessee.

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)

8. Besides this, there is another aspect of the matter, which is that, in dealing with issues, such as the one, we are faced with, not only the period of delay has to be taken in account, but also the quality of explanation, the legal assistance, if any, sought and rendered to the litigant, and the detriment that condonation of delay would cause to the opposing party. These are aspects, if, looked at, closely, will enable the Court to come to a conclusion as to whether the delay was intentional and/or deliberate.

8.1. We find from the record that the Assessee, perhaps, did not receive the best legal assistance in the matter.

8.2. Therefore, notwithstanding the fact that the period of delay is large, we are inclined to condone the delay, especially in the circumstances obtaining in the case, which is, that, if the Assessee were to succeed on merits, it could, hardly, be said that it would cause detriment to the Revenue, in a matter involving grant of registration.

8.3. The Assessee has, ostensibly, been carrying on charitable activities. This, of-course, would have to be decided on merits, once, the Tribunal examines the claim made by the assessee in that behalf.

8.4. The CIT, as noted above, has rejected this claim, which has not been tested before the Tribunal on merits.

9. Therefore, for the foregoing reasons, we allow the appeal, and set aside the judgement of the Tribunal. The matter is remitted to the Tribunal for a decision on merits.

10. Needless to say, the observations made hereinabove will not impact the decision of the Tribunal on merits.

11. There shall, however, be no order as to costs.

s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

gg

To

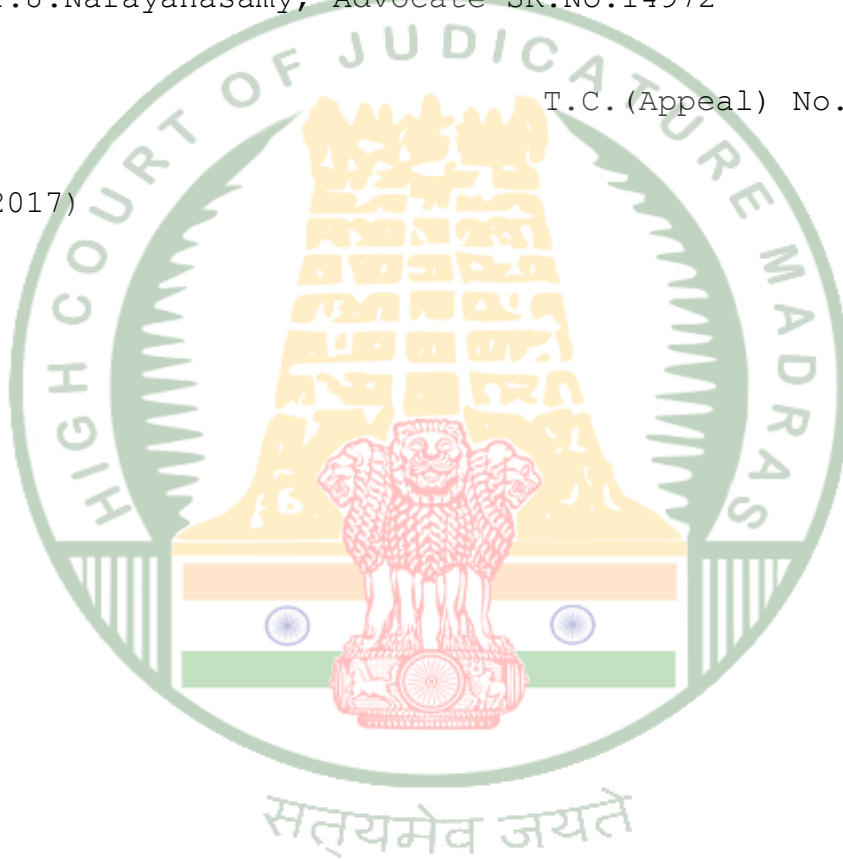
1. The Income Tax Officer,
Ward-I(1), Nagercoil.
2. The Income Tax Appellate Tribunal
"C" Bench, Chennai.

+1cc to Mr.S.Sridhar, advocate SR.No.1476

+1cc to Mr.J.Narayanasamy, Advocate SR.No.14972

T.C.(Appeal) No.886 of 2016

MSM(CO)
GN(04/04/2017)



WEB COPY