

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4969 of 2014

All Angels Educational Society,
(Old No.3) New No.7,
Neduchezhian Street,
MGR Nagar,
Chennai – 78.
Rep. By its President
Mrs.Jeyaleela Sundar

... Petitioner

Vs.

The Chief Commissioner of Income Tax,
Chennai – III,
124, M.G.Road,
Chennai – 34.

... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the respondent and quash the impugned order in C.N.No.CCIT III/10(23C)(vi)/13-14, dated 13.11.2013 and direct the respondent to grant registration under Section 10(23C)(vi) of the Act.

For Petitioner : Mr.R.Venkata Narayanan
for M/s.Subbaraya Aiyar, Padmanabhan
and Ramamani

For Respondent : Mr.J.Narayanasamy
& Mr.S.Rajesh, Standing Counsel
for Income Tax Department

ORDER

Heard Mr.R.Venkata Narayanan, learned counsel for the petitioner and Mr.J.Narayanasamy, learned counsel for the respondent and with their consent, the writ petition itself is taken up for disposal.

2. The petitioner is a Society registered under the Societies Registration Act, which has established and administering an Educational Institution under the name and style of "All Angels Matriculation Higher Secondary School". The petitioner is registered under Section 12A(a) of the Income Tax Act (hereinafter "the Act"), vide proceedings dated 30.07.1990.

3. In the assessment year 2012-2013, the petitioner filed an application in Form No.56D on 22.11.2012 seeking exemption under Section 10(23C)(vi) of the Act. The respondent issued a show cause notice dated

21.10.2013 calling upon the petitioner to show cause as to why their application should not be rejected on two grounds; (a) it is not filed within the time period specified in the 14th Proviso to Section 10(23C)(vi), i.e. on or before 30th September of the relevant assessment year, from which the exemption is sought for; (b) the petitioner Society cannot be said to be existing solely for educational purpose, since the objects of the Society include other charitable object clauses. The petitioner Society submitted their objections on 29.10.2013, 07.11.2013 and 11.11.2013. The respondent, by the impugned order, rejected the petitioner's application on the ground that it is filed beyond the time prescribed under the 14th Proviso to Section 10(23C)(vi) of the Act and also on the ground that the petitioner Society does not fulfill the requirements of Section 10(23C)(vi). This order was challenged by the petitioner on the ground that if the respondent had chosen to reject the petitioner's application on the ground of delay, then the respondent could not have proceeded to consider the merits of the matter. On the merits of the matter, it is submitted that the petitioner has now amended the objects of the Trust by an amendment dated 10.03.2014 and the petitioner would be entitled to resubmit their application with the amended objects.

4. Learned counsel for the petitioner placed reliance on the decision of this Court in the case of *Shri Anand Rishi Jain Society v. The Chief Commissioner of Income Tax-IV, Chennai and others* (W.P.No.33485 of 2012, dated 07.11.2014) and the judgment of the Hon'ble Division Bench in an appeal filed against the said order in *W.A.No.31 of 2015, dated 03.02.2015 (CCI and others v. Shri Anand Rishi Jain Society)*

5. Learned counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of *Centre for Individual and Corporate Action (CICA) v. Assistant Commissioner of Income Tax* (T.C.A.No.283 to 288 of 2014, dated 23.09.2014) to buttress the submission that when the respondent chose to reject the application as time barred should not have ventured to adjudicate the matter on merits.

6. Learned standing counsel for the respondent submitted that under the provisions of the Act, there is no power to condone the delay and this issue was considered by the Orissa High Court in *2009 309 ITR 50 (Roland Educational and Charitable Trust v. Chief Commissioner, Income Tax)*, in which the Court distinguished the decision of the Orissa High Court in *Padmashree*

Krutharth Acharya Institute of Engineering and Technology v. Chief Commissioner of Income Tax ([2009] 309 ITR 0013 (Orissa)). It is further submitted that these decisions were taken note of in *Shri Anand Rish Jain Society's case (cited supra)* and considering the peculiar facts of the said case, the delay therein was condoned as the delay was only one day. However, in the instant case, it is submitted that the order passed by the respondent is perfectly valid both on the ground of refusing to condone the delay and on the ground that the object of the petitioner Society does not fulfill the requirements under Section 10(23C)(vi). Learned counsel further submitted that on the merits of the case, the matter is covered by a decision of this Court in the case of *B.S.Abdur Rahman Institute of Science and Technology v. The Chief Commissioner of Income Tax – 3, Chennai* (W.P.No.34102 of 2015, dated 11.03.2016).

7. After hearing the learned counsel for the parties and perusing the materials placed on record, including the counter affidavit, the issue to be considered is whether the respondent could have proceeded to decide the merits of the matter when he chose to reject the application on the ground of delay.

8. Identical issue was considered by the Hon'ble Division Bench of this Court in the case of *Centre for Individual and Corporate Action (CICA) v. Assistant Commissioner of Income Tax (T.C.A.No.283 to 288 of 2014, dated 23.09.2014)* and it was held that the appellate Tribunal (in that case) adopted a procedure which is highly prejudicial to the assessee inasmuch as it having decided not to proceed with the matter on the ground of delay, cannot unilaterally decide the appeal on merits, moreso when the assessee was not given proper opportunity to contest the matter in the main appeal on merits.

9. It may be true that the show cause notice issued by the respondent dated 21.10.2013 pointed out two grounds; (i) the application was filed beyond the time limit specified under the 14th Proviso to Section 10(23C)(vi) of the Act and (ii) the petitioner Society did not exist solely for educational purpose. In my view, when the authority takes a decision to reject the application on the ground of limitation, it is but proper for the authority to refrain from rendering finding on the merits of the matter. However, in the impugned order, the respondent has proceeded on both grounds, which cannot be approved by this Court.

10. On the question of delay, the contention of the revenue is that there is no power conferred on the respondent to condone the delay. Nevertheless, this Court, while exercising jurisdiction under Article 226 of the Constitution of India, had examined the facts and circumstances of each case and when it is convinced that the peculiar facts called for exercise of discretion, the delay was condoned. At this stage, it is beneficial to refer to the decision in *Roland Educational and Charitable Trust (supra)*, the relevant paragraphs of the judgment are extracted below:

“14. Hence, the provisions of Section 10(23C)(vi) override the provisions of the Limitation Act. Therefore, it will not be appropriate/permisible to rely on the provisions of any other statute including the Limitation Act for the purpose of considering the matter relating to condonation of delay.

15. The Chief Commissioner of Income-tax being a creature of the statute cannot travel beyond the statutory provisions. Law is well settled that court cannot derive jurisdiction apart from the statute (vide United Commercial Bank v. Their Workmen, AIR 1951 SC 230; Smt. Nai Bahu v. Lala Ramarayan, AIR 1978 SC 22; Natraj Studios P.Ltd. v. Navrang Studio, AIR 1981 SC 537, UOI v. Deoki Nandan Aggarwal, AIR 1992 SC 96, Karnal Improvement Trust v. Prakash Wanti [1995] 5 SCC 159

and Collector of Central Excise v. Flock (India)(Pvt.) Ltd., AIR 2000 SC 2484.

16..... in *Padmashree Krutarth Acharya Institute of Engineering and Technology v. Chief CIT [2009] 309 ITR 13* wherein this Court held that though the application for grant of approval for exemption had been filed by an educational institution belatedly, it should have been considered on the merits. This Court further held that in deciding such questions the Commissioner decides the rights of the parties and, therefore, has to act in a quasi-judicial capacity. He has to decide rights of the parties after a hearing. Any authority exercising such quasi-judicial function should also have the incidental power of condoning delay if there is justifiable ground for such condonation. There is no clear statutory bar preventing such condonation.

However, law as has been laid down by the Hon'ble Supreme Court, the court has no competence to issue a direction contrary to law. Nor the court can direct an authority to act in contravention of the statutory provisions. (*vide State of U.P. v. Harish Chandra, AIR 1996 SC 2173, UOI v. Kirloskar Pneumatic Co. Ltd., AIR 1996 SC 3285 and Vic-Chancellor, University of Allahabad v. Dr.Anand Prakash Mishra [1997] 10 SCC 264*)

While passing the order dated May 15, 2008, in W.P.(C) No.4514 of 2008 (*Padmashree Krutarth Acharya*

Institute of Engineering and Technology v. Chief CIT [2009] 309 ITR 13) the ratio of the decisions of the Hon'ble Supreme Court which are applied in this judgment were not brought to the notice of this Court. Hence, the order of this Court dated May 15, 2008, in W.P.(C) No.4514 of 2008 has no application to the present case.

It is settled legal proposition that function of the Court is only to expound the law and not to legislate. (See District Mining Officer v. Tata Iron and Steel Co. [2001] 7 SCC 358)

27. Be that as it may, we are here concerned whether in the absence of any statutory provision to condone the delay in presenting the application under Section 10(23C)(vi), the Chief Commissioner of Income-tax can exercise any such power.

28. For the reasons stated above, the answer is certainly in the negative."

11. The petitioner had placed reliance on the decision of ***Padmashree Krutharth Acharya Institute of Engineering and Technology (supra)*** which has been distinguished by the Division Bench in the subsequent decision in ***Roland Educational and Charitable Trust (supra)***. I am in respectful agreement with the decision in ***Roland (supra)*** and the petitioner cannot rest their case on the decision in ***Padmashree (supra)***.

12. Coming back to the facts, on receipt of show cause notice dated 21.10.2013, the petitioner submitted their first reply on 29.10.2013, wherein they have pointed out that they could not finalise the accounts for the year 2012-2013 earlier and could do it only by the end of September, 2012, as they were entrusted with huge responsibility of organizing and conducting a sports event by the Education Department of the Government of Tamil Nadu in July, 2012, and it was the first time, the institution was entrusted with such a task. After enclosing the relevant Government Orders in that regard, the petitioner pointed out that the event comprised of conducting team sport events and field events for both boys and girls of 28 schools in South Chennai District and the entire staff of the school and the society members had worked hard from July'2012 and completed the sports meet on 04.09.2012. To support such contentions, documents were also enclosed. Therefore, the petitioner stated that due to the maiden responsibility entrusted to their institution by the Education Department, it had taken some time for them to finalise the accounts. Therefore, the delay, they pleaded, neither willful nor wanton and assured that henceforth they would file returns on time without fail.

13. Subsequently, by another representation dated 07.11.2013, the petitioner stated that in event the respondent does not condone the delay in filing the application, they requested the respondent to consider the application for approval under Section 10(23C)(vi) of the Act for the subsequent assessment year, namely, 2013-2014.

14. After receipt of the reply and written submission and after affording an opportunity of personal hearing, the respondent pointed out that there is no power for condoning the delay in filing the application in Form No.56D and with regard to alternative prayer, the same was also rejected stating that the assessment year is defined under Section 2(9) to mean the period of 12 months commencing on the 1st April of every year and therefore, the application cannot be treated as application for the assessment year 2013-2014. Ultimately, in paragraph 4.4 of the impugned order, the application was rejected as out of time. However, without stopping there, the respondent thereafter, proceeded to analyze the objective of the Society, which, in my view, was an exercise not called for. Having rejected the application on the ground of limitation, the question of examining the merits of the matter would not arise and it is a superseded exercise. Therefore, to that extent, this Court is inclined to accept the

submissions of the learned counsel for the petitioner and taking note of the decision of the Hon'ble Division Bench of this Court in *Centre for Individual and Corporate Action (CICA)* (*cited supra*).

15. However, considering the legal position that there is no power to condone the delay in filing an application under Section 10(23C) of the Act, this Court is not inclined to exercise its extraordinary jurisdiction to condone the delay. However, this Court is inclined to give appropriate direction to the respondent to consider the petitioner's application as an application for the subsequent assessment year, namely, 2013-2014 in accordance with law. Such direction is issued considering the peculiar facts and circumstances of the case and that the petitioner could not have made an application for the subsequent assessment year 2013-2014, since their application for assessment year 2012-2013 was still pending consideration and the impugned order came to be passed only on 13.11.2013. The respondent is at liberty to consider the amended objectives of the petitioner Trust.

16. Accordingly, the writ petition is partly allowed and the finding rendered by the respondent that the petitioner's application cannot be

considered as the same is time barred is affirmed and the finding with regard to objectives of the Society by respondent holding that the Society cannot be said to be solely for education purpose is set aside. Consequently, the matter is remanded back to the respondent for fresh consideration and the petitioner's application is directed to be considered for the assessment year 2013-2014 in accordance with law and while doing so, may consider the amendments made to the objectives of the petitioner Trust. No Costs. M.P.No.1 of 2014 is closed.

28.07.2016

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Index: Yes/No

Internet: Yes/No

To

The Chief Commissioner of Income Tax,
Chennai – III,
124, M.G.Road,
Chennai – 34.

T.S.SIVAGNANAM, J.

Rkm

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