

: 1 :

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 17<sup>TH</sup> DAY OF FEBRUARY, 2016

PRESENT

**THE HON'BLE MR.JUSTICE H.BILLAPPA**

**AND**

**THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR**

I.T.A.No.100066/2015

BETWEEN:

M/S SPPORTHI SADAN CONVENT,  
NEAR ANJUMAN COLLEGE,  
HUNASAGI ROAD, TALLIKOTI-586 214,  
DIST. BIJAPUR,  
REPRESENTED BY ITS AUTHOR,  
SR.CELINE MENDONCA,  
AGED ABOUT 64 YEARS,  
D/O OF MR. ROSARIO MENDONCA.

... APPELLANT

(BY SRI.V.K.GURUNATHAN & SRI. H.R.KAMBIYAVUR  
FOR SRI. S.PARTHASARATHI, ADVS.)

AND

1. THE COMMISSIONER OF INCOME TAX  
OPP. CIVIL HOSPITAL  
DR. B.R. AMBEDKAR ROAD,  
BELAGAVI-590 001.
2. THE ASSISTANT COMMISSION OF  
INCOME TAX, CIRCLE -2,  
BELGAVI.

... RESPONDENTS

(BY SRI.Y.V.RAVIRAJ, ADV.)

THIS ITA IS FILED U/S.260A OF THE INCOME-TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI, IN ITA NO.168/PNJ/2014, DTD:7.1.2015

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, P.S.DINESH KUMAR, J., DELIVERED THE FOLLOWING:

#### JUDGMENT

The appellant has called in question the order dated 7/1/2015 in ITA No.168/2014 passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji (ITAT for short), dismissing the appeal as having been barred by limitation.

2. Heard Sri.S.Parthasarathi, the learned counsel appearing for the appellant and Sri. Y.V.Raviraj, learned counsel appearing for the respondent.

3. It is submitted by the learned counsel for the appellant that, the appellant had filed an application under Section 12A of the Income Tax Act, 1961, for registration of trust. The said application had been rejected vide order dated 24/6/2011 by the Commissioner of Income Tax. This order was challenged before the ITAT. The said appeal was presented with the delay of 997 days. The Tribunal on

consideration of the material on record with regard to the delay in filing the appeal has recorded a finding which reads follows:

*"The learned AR though vehemently contended that it was under bonafide impression that Registration u/s 12A was not a condition precedent for the relief by way of exemption u./s 11 of the Act and that it had been advised accordingly, but when questioned could not give the name of the counsel who had advised in this regard. Even when we asked for the Affidavit of the concerned person, the Id. AR expressed his inability to file the same. We were also surprised to see that the Trust Deed has been notarized even though the Trust has been created as per the history given in the Trust Deed for the purpose of properties of school. In our opinion, a Trust cannot hold/acquire immovable properties until and unless it is registered with the Sub-Registrar. It is not a case where a person has put his property in the Trust. Although the Trust was created on 15/3/2010 but the led. AR could not produce any Income & Expenditure Account and Balance sheet, audited or otherwise, for the year ended 31/3/2010, 31/3/2011, 31/3/2012, 31/3/2013 and 31/3/2014. Rather, he explained his inability to submit the same. If the Assessee*

*has applied for condonation of delay, the onus is on the Assessee to explain the reason for each and every day of the delay. Except submitting that the Assessee was not aware of the law, he could not explain the reason for the delay occurred in filing the appeal”.*

4. After recording the aforementioned finding and adverting to the judgement in the case of *Surinder Kumar Boveja Vs. CWT, 287 ITR 52 (Delhi)*, the tribunal dismissed the appeal as having been barred by limitation.

5. A careful perusal of the findings recorded by the Tribunal clearly points to the fact that the delay was sought to be explained on two grounds. Firstly, that the trust was under the bonafide impression that such a registration was not condition precedent for seeking relief under Section 11 of the Income Tax Act 1961 ('Act' for short). Secondly, that the appellant Trust was advised wrongly. In order to substantiate the said contention, no material was placed before the Tribunal. The Tribunal has given sufficient opportunity to the appellant to substantiate its claim that it was ill advised by the consultants. With regard to the

requirement of registration, the trust has apparently not shown any reasonable cause nor answered the queries raised by the Tribunal during the course of hearing.

6. The learned counsel for the appellant before this Court has contended that the Tribunal was not justified in dismissing the application on the ground of limitation and ought to have noted that to meet ends of substantial justice, the delay ought to have been liberally construed.

7. This is not a case wherein the appellant is an illiterate person, who may not know the repercussion in law. Further, it is the specific case of the appellant that the Trust was under banafide impression that Registration under Section 12A was not a condition precedent and such impression was based on advise. But, nonetheless, the appellant neither chose to reveal the source of such advice nor replied to the questions posed by the Tribunal. In such circumstances, the appeal challenging the order of the Tribunal is only a reiteration of grounds urged before the Tribunal.

8. The learned counsel for the appellant contended that though the counsel appearing for the appellant offered to furnish the details sought for by the Tribunal, no time was granted by the Tribunal. No specific ground is urged in this behalf in the pleadings either in the form of statement of facts or affidavit to substantiate such contention.

9. Ignorance of law is no excuse. We may usefully refer to the judgement of the Hon'ble Supreme Court in the case of *The Swadeshi Cotton Mills Co.Ltd. vs. The Government of U.P. and Others reported in (1975) 4 SCC 378*, wherein it is held as follows:-

*".....But we are in agreement with the High Court on the other two grounds. As mentioned earlier, the impugned assessments were made in 1949. The writ petition was filed in 1956. The explanation given by the petitioner for this long delay is that he did not know the correct legal position and he came to know about the same after the decision of the Allahabad High Court in the Commissioner of Sales Tax, U.P. Vs. Modi Food Products Ltd. Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance*

*of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the appellant did not know the true legal position is not one that can be accepted in law. ....”.*

10. In the circumstances, we are of the considered view that the appellant has not made out any ground for condonation of delay of 997 days before the Tribunal. We see no error in the order passed by the Tribunal. Accordingly, the appeal fails and stands dismissed.

Sd/-  
JUDGE

Sd/-  
JUDGE

Vmb