IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 31ST DAY OF OCTOBER 2014/9TH KARTHIKA, 1936

ITA.No. 588 of 2009 ( )

AGAINST THE ORDER IN ITA 712//COCH/2008 of I.T.A.TRIBUNAL,COCHIN BENCH
DATED 19-12-2008

APPELLANT/PETITIONER::

KERALA CRICKET ASSOCIATION
KCA COMPLEX, TC 29/131(1), SASTHAKOVIL ROAD
THYCAUD, TRIVANDRUM-695 014.

BY ADVS.SRI.JOSEPH KODIANTHARA
SRI.TERRY V.JAMES

RESPONDENT:

COMMISSIONER OF INCOME TAX
TRIVANDRUM.

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 31-10-2014, ALONG WITH ITA. 1529/2009, ITA. 38/2012, ITA. 39/2012, ITA. 40/2012 & ITA. 42/2012 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN ITA.NO.588/09

PETITIONER'S ANNEXURES:

ANNEXURE A: WRITE UP ON VARIOUS ACTIVITIES PURSUED BY THE KERALA CRICKET ASSOCIATION.

ANNEXURE B: COPY OF APPELLANT'S APPLICATION DT.13.8.96 BEFORE THE DIRECTOR GENERAL OF INCOME-TAX(EXEMPTION), CALCUTTA.

ANNEXURE C: COPY OF ACKNOWLEDGEMENT DT,13.3.97 ISSUED BY THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTION), CALCUTTA IN RESPECT OF ANNEXURE B APPLICATION.

ANNEXURE D: COPY OF ACKNOWLEDGEMENT DT.9.1.97 ISSUED BY THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTION), CALCUTTA IN RESPECT OF ANNEXURE C APPLICATION.

ANNEXURE E: COPY OF APPELLANT'S APPLICATION DT.26.12.97 UNDER SEC.12A OF THE ACT.

ANNEXURE F: COPY OF APPELLANT'S APPLICATION DT.26.12.97 SUBMITTED BEFORE THE DIRECTOR GENERAL OF INCOME TAX(EXEMPTION), CALCUTTA.

ANNEXURE G: COPY OF LETTER DT.20.11.2001 OF THE DIRECTOR GENERAL OF INCOME TAX(EXEMPTION), CALCUTTA.

ANNEXURE H: COPY OF LETTER DT.9.1.02 OF THE DIRECTOR GENERAL OF INCOME TAX(EXEMPTION), CALCUTTA TO THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

ANNEXURE I: COPY OF LETTER DT.25.2.02 OF THE COMMISSIONER OF INCOME TAX, TRIVANDRUM TO THE APPELLANT.

ANNEXURE J: COPY OF APPLICATION DT.10.3.2006 UNDER SEC.12A FILED BY THE APPELLANT BEFORE THE COMMISSIONER OF INCOME-TAX, TRIVANDRUM.

ANNEXURE K: COPY OF LETTER DT.24.5.06 FROM THE ASST.DIRECTOR OF INCOME TAX(EXEMPTION), TRIVANDRUM TO THE APPELLANT.

ANNEXURE L: COPY OF ORDER DT.17.10.06 OF THE COMMISSIONER OF INCOME-TAX, TRIVANDRUM.

ANNEXURE M: COPY OF APPELLANT'S APPLICATION DT.8.11.2006 TO THE COMMISSIONER OF INCOME-TAX, TRIVANDRUM.

ANNEXURE N: COPY OF ORDER DT.31.5.07 OF THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

ANNEXURE O: COPY OF APPELLANT'S APPEAL DT.JULY 2007 BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN.

ANNEXURE P: COPY OF APPELLANT'S APPEAL DT.14.3.08 BEFORE ITAT.

ANNEXURE Q: COPY OF APPELLANT'S APPLICATION DT.14.3.2008 FOR

APPENDIX IN ITA.NO.588/09

CONDONATION OF DELAY FILED BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN.

ANNEXURE R: CERTIFIED COPY OF ORDER DT.19.12.08 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN.

ANNEXURE S: COPY OF ORDER DT.19.12.08 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN.

ANNEXURE T: COPY OF ORDER DT.18.11.97 OF THE COMMISSIONER OF INCOME TAX IN THE CASE OF KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD.

ANNEXURE U: COPY OF ORDER DT.24.7.84 OF THE COMMISSIONER OF INCOME TAX IN THE CASE OF THIRUVANANTHAPURAM GOLF CLUB.

ANNEXURE V: COPY OF ASSESSMENT ORDER DT.30.12.08 FOR 2006-07.

ANNEXURE W: COPY OF ORDER DT.30.3.09 OF THE ASSESSING OFFICER.

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

I.T.A.Nos.588 & 1529 of 2009
&
37, 38, 39, 40 and 42 of 2012

DATED THIS THE 31st DAY OF OCTOBER, 2014

JUDGMENT

ANTONY DOMINIC , J.

All these appeals are filed by the Kerala Cricket Association. The subject matter of I.T.A.Nos.588/09 and 1529/09 is the claim of the Association for registration under Section 12A of the Income-tax Act('the Act' for short), whereas the other appeals arise out of the assessment orders passed for the assessment years 2001-02 to 2005-06.

2. We shall first deal with I.T.A.Nos.588/2009 and 1529/2009.

3. According to the appellant, they made an application seeking registration under Section 12A of the Act for the period commencing from the assessment year 1992-93. It is stated that the said application was made to the Commissioner on 26.12.1997. According to the appellant, this application was untraceable and therefore was not acted upon by the

Commissioner and that in such circumstances the appellant made another application on 10.3.2006. Admittedly, this application was a defective one. Despite notices issued, the defects were not cured. As a result, by his order dated 17.10.2006, the application was finally rejected by the Commissioner.

4. Aggrieved by the order dated 17.10.2006, the appellant filed an appeal before the Tribunal with an application to condone the delay of 445 days. The Tribunal declined to condone the delay and accordingly, the appeal was also dismissed. It is aggrieved by this order of the Tribunal, which was passed on 19.12.2008, I.T.A.No.1529/2008 is filed.

5. Subsequently, the appellant filed another application on 8.11.2006 with a prayer to grant registration under Section 12A of the Act with retrospective effect. On that application, registration was granted with effect from 1.4.2006. Challenging this order and complaining that the registration should have been granted with retrospective effect as prayed

for, Appeal No.494/Coch/08 was filed before the Tribunal. The Tribunal dismissed this appeal also by its order dated 19.12.2008. It is this order which is challenged in I.T.A.No.588/2008.

6. The learned Senior Counsel appearing for the appellant contended that the order passed by the Tribunal on 19.12.2008 declining to condone the delay of 445 days in filing the appeal against the order dated 17.10.2006, is illegal and that no valid reasons have been given by the Tribunal.

7. Condonation of delay is not a matter of right. Delay can be condoned by the Tribunal only if it is satisfied that the delay has been satisfactorily explained by the appellant. Reading of the order passed by the Tribunal shows that the appellant failed in providing any satisfactory explanation for the inordinate delay of 445 days. It was therefore that the Tribunal declined the prayer.

8. Having gone through the order passed by the Tribunal and the period of this appeal, we fully endorse the

conclusions of the Tribunal regarding absence of reasonable cause for condonation of delay. Therefore, we see absolutely no reason to interfere with the order passed by the Tribunal declining to condone such inordinate delay.

9. Now coming to I.T.A.No.588/09, as we have already stated, the application in question was made for registration on 8.11.2006. The case of the appellant was that it had already made an application on 26.12.1997. However, the fact of having made such an application, the receipt of which was disputed by the Department, could not be proved by the appellant in any manner. The second application made by the appellant on 10.3.2006 was a defective one. The defect was not cured despite opportunities. This application also was rejected by order dated 17.10.2006. It was in such circumstances that the application was made on 8.11.2006.

10. The facts noted above show that the rejection of the defective application dated 10.3.2006 for registration with retrospective effect had attained finality. Thereafter, the first

valid application made is the one dated 8.11.2006, which did not make out any valid circumstance for a retrospective registration under Section 12A of the Act. In such a case, there was no circumstances justifying the condonation of delay for the previous period or registration for any period prior to 1.4.2006 and it was therefore that the Commissioner granted registration with effect from 1.4.2006.

11. The learned counsel for the appellant contended that having allowed the registration with effect from 1.4.2006, the Commissioner should have granted registration with retrospective effect. Though this argument would appear to be attractive, in the facts of this case, we are satisfied that the Commissioner could not grant registration with retrospective effect. If that be so, the Commissioner could have granted registration only with effect from the commencement of the assessment year in which the application in question was made. Therefore, we cannot find fault with the view taken by the Commissioner or the Tribunal. We therefore do not find

any merit in the contentions raised.

12. In the result, I.T.A.Nos.588/09 and 1529/09 are only to be dismissed and we do so.

13. In view of the dismissal of I.T.A.Nos.588/09 and 1529/09, the assessment orders for the period 2001-02 to 2005-06, which are the subject matter of I.T.A.Nos.37, 38, 39, 40 and 42 of 2012 should be confirmed and we do so.

Accordingly, I.T.A.Nos.37, 38, 39, 40 and 42 of 2012 are also dismissed.

Sd/-
ANTONY DOMINIC,
JUDGE

Sd/-
ANIL K.NARENDRAN,
JUDGE

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