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Chief Justice's Court

Case :- WRIT TAX No. - 598 of 2014

Petitioner :- I.D. Education Society
Respondent :- Principal Chief Commissioner Of Income Tax

Counsel for Petitioner :- Abhinav Mehrotra
Counsel for Respondent :- C.S.C. It

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice
Hon'ble Pradeep Kumar Singh Baghel,J.

The petitioner submitted an application under Section 10(23C)(vi) of the Income Tax Act, 1961[1] for Assessment Year 2013-14 on 19 March 2014. A notice to show cause was issued to the petitioner on 9 April 2014 to explain why its application should not be rejected on the ground that it was filed beyond the stipulated date of 30 September of the relevant assessment year from which the exemption was sought. Since the petitioner had filed the application beyond 30 September 2013, it sought a condonation of the delay in filing the application. The Principal Chief Commissioner of Income Tax, Kanpur by his impugned order dated 25 April 2014 has declined to entertain the application on the ground that it was filed beyond the stipulated date.

The relevant proviso in Section 10(23C)(vi) of the Act provides as follows:

> "**Provided also** that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made on or

1 the Act

> before the 30th day of September of the relevant assessment year from which the exemption is sought:"

The submission, which has been urged, is that the power which has now been conferred upon the Chief Commissioner was earlier vested in the Central Board of Direct Taxes which, under Section 119(2)(b) of the Act, has the power in cases of genuine hardship to authorize by general or special order any income tax authority not being a Commissioner (Appeals) to admit an application or claim after the expiry of the period specified by the Act. Hence, it was submitted that once the power under the aforesaid proviso has now been vested with the Chief Commissioner, he must necessarily have all ancillary and incidental powers including the power to condone the delay.

The Legislature has carefully included a stipulation that in the case of *inter alia* a fund, trust, institution, university, educational institution, hospital or other medical institution, an application for the purposes of the grant or continuance of an exemption shall be made on or before the 30th day of September of the relevant assessment year from which the exemption is sought. The Chief Commissioner, in whom the power is vested, is not a Court within the meaning of Section 5 of the Limitation Act, 1963. Even if the provisions of Section 29(2) of the Limitation Act, 1963 are considered in the context of fiscal legislation, the principle of law that must govern is as laid down in a judgment of three learned Judges of the Supreme Court in **Commissioner of Customs and Central Excise**

v. Hongo India Private Limited[2]. In that context, the Supreme Court has held as follows:

> "**34.** Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.
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> **35.** It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating

2 (2009) 5 SCC 791

> to filing of reference application to the High Court.
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> **36.** The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court is absolute and unextendable by a court under Section 5 of the Limitation Act. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act."

In view of the principle of law which has been laid down in the aforesaid decision, there is no basis or foundation in the submission that the delay in filing the application for an exemption under Section 10(23C)(vi) of the Act beyond the statutory date of 30 September 2013 should have been condoned. As a matter of fact, the Court is informed that the petitioner has already filed an application under Section 10(23C)(vi), though for Assessment Year 2014-15.

The decision of a Division Bench of the Orissa High Court in **Padmashree Krutarth Acharya Institute of Engineering and Technology v. Chief Commissioner of Income-tax**[3] merely directed the Chief Commissioner to consider an application for condonation of delay in filing an application. The Division Bench had carefully directed that whether delay should be condoned or not, should be decided by the Commissioner. Hence, the decision will not help the case of the petitioner.

For these reasons, we have come to the conclusion that the

3 [2009] 309 ITR 13 (Orissa) : [2009] 222 CTR 516 (Orissa)

impugned order of the Principal Chief Commissioner does not suffer from any error.

The petition is, accordingly, dismissed. There shall be no order as to costs.

Order Date :- 28.10.2014
SKT/-

(Dr. D.Y. Chandrachud, CJ.)

(P.K.S. Baghel, J.)

<u>Hon'ble Dr. D.Y. Chandrachud, Chief Justice</u>
<u>Hon'ble P.K.S. Baghel, J.</u>

Dismissed.

For order, see our order of the date passed on the separate sheets (five pages).

Order Date :-28.10.2014
SKT/-

(Dr. D.Y. Chandrachud, CJ.)

(P.K.S. Baghel, J.)