

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA No.119 of 2018  
Decided on: 08.01.2019

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M/s E-Governance Society ...Appellant  
Versus

Commissioner of Income Tax (Exemption) ...Respondent

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*Coram*

**The Hon'ble Mr. Justice Surya Kant, Chief Justice**

**The Hon'ble Mr. Justice Ajay Mohan Goel, Judge**

*Whether approved for reporting?*

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For the appellant: Mr.Ajay Vaidya, Advocate.

For the respondent: Mr.Vinay Kuthiala, Senior Advocate, with  
Mr.Diwan Singh Negi, Advocate.

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**Surya Kant, Chief Justice** (*Oral*)

Heard.

2. **Admit** on the following substantial question of law:

Whether the Tribunal was justified in not condoning the delay in filing the appeal on the grounds pleaded before it on behalf of the appellant?

3. On the joint request of learned Counsel for the parties, the appeal is taken on Board for final hearing.

4. This Income Tax Appeal is directed against order dated 7<sup>th</sup> September, 2018, passed by the Income Tax Appellate Tribunal Division Bench, 'A', Chandigarh, (for short, 'the Tribunal') whereby the appellant's appeal against the order dated 30<sup>th</sup> September, 2016 of the Commissioner of Income Tax

(Exemptions), Chandigarh {hereinafter referred to as 'CIT(E)'}, rejecting the appellant's application, seeking approval under Section 10(23)(iv) of the Income Tax Act, 1961, has been dismissed being barred by limitation.

5. Though, the appellant has formulated three substantial questions of law, but in our considered view, the only question which merits consideration is- "whether the Tribunal was justified in not condoning the delay in filing the appeal on the grounds pleaded before it on behalf of the appellant?"

6. The facts may be noticed very briefly. The appellant is a Society, duly registered under the Himachal Pradesh Societies Registration Act, 2006. It has been formed by the Government of Himachal Pradesh with an object of assisting the Department of Food, Civil Supplies and Consumer Affairs of the Government of Himachal Pradesh in formulating and implementing policies, procedures and guidelines for the adoption of Information Technology and governance for improvement of citizen services.

7. The appellant society filed an application on 7<sup>th</sup> September, 2015, in Form No.56, seeking approval under Section 10(23C)(vi) of the Income Tax Act, 1961 alongwith copies of relevant documents. It appears that when the application was

taken up for hearing by CIT(E), neither any one attended on behalf of the appellant society nor any reply to certain queries was filed. CIT(E) noticed that the appellant assessee had not put forth its view despite sufficient opportunities having been afforded. The application was, thus, declined, observing that the assessee has failed to discharge its onus to avail the benefit of beneficial clause.

8. Aggrieved by the order dated 30<sup>th</sup> September, 2016 of the CIT(E), the appellant preferred an appeal before the Tribunal, which was found to be *prima faice* time barred. Hence, the Registry of the Tribunal issued a show cause notice dated 21<sup>st</sup> August, 2017, in response where to the appellant filed an application on 12<sup>th</sup> September, 2017 seeking condonation of delay.

9. The solitary plea taken by the appellant was that it is a State instrumentality of the Government of Himachal Pradesh; that the assessee society made an application before CIT(E); on rejection of the application the documents were mailed "to the counsel in the case"; the Management of the Society was under the impression that the appeal before the ITAT had been filed but subsequently on receipt of notice of demand from the Income Tax Department during the month of July 2017, it was realized that no

appeal had been filed in the case. Thereafter new arrangement to file the appeal was made. The appeal was accordingly filed. The application was duly supported by an affidavit.

10. The Tribunal vide order under appeal viewed that from the contents of the application, it was evident that the appellant was negligent in filing the appeal. The reasons for delay are general in nature and vague. The particulars of the counsel to whom the documents were mailed, were not disclosed and the application for condonation of delay was moved only after the Registry issued the show cause notice as to why the appeal be not treated as time barred. The Tribunal thereafter referred to the case law and held that there were no justifiable reasons to condone the delay. The appeal was accordingly dismissed being time barred.

11. We have heard learned counsel for the parties at a considerable length and gone through the record. It appears to us that though there was some negligence on the part of Management of the Society in not pursuing the filing of appeal after entrustment of the documents to its counsel through mail but the negligence was not such of a degree that the Tribunal ought to have dismissed the appeal being barred by limitation. It has been noticed by the Tribunal that the application was duly

supported by an affidavit. The necessity to disclose the name of the counsel alone would have embarrassed the Advocate concerned and amounted to casting aspersion on a Member of Bar. The fact that the application for condonation of delay was moved after receiving show cause notice from the Registry of the Tribunal gives credence to the appellant's plea that it was under a bonafide impression that the appeal had been filed and it was only when the show cause notice was received that the appellant came to know that the counsel to whom documents were mailed had taken no steps to file the appeal.

12. The aforesaid fact was suggestive of the bonafide on the part of the appellant in not filing the application for condonation of delay alongwith appeal.

13. It is true, that in catena of judgments, some of which have been relied upon by the Tribunal also, it has been authoritatively ruled that Bureaucratic Methodology in making the decision is no longer acceptable as sufficient cause for condonation of delay, nonetheless it is equally true that when a counsel is engaged and the brief is entrusted to him, the litigant would legitimately expect such counsel to take timely steps. As noticed earlier, the only negligence on the part of the appellant society was that it failed to pursue the matter with the counsel to

whom the documents were mailed. In the case of such type of negligence, equities can be well balanced by imposing costs on the party negligent. We are thus of the view that the Tribunal's endeavour ought to have been to decide the appeal on merits instead of rejecting the same on technical ground of being barred by limitation.

14. For the reasons afore-stated, the instant appeal is allowed in part. The impugned order dated 7<sup>th</sup> September, 2018 passed by the Tribunal is set aside and the application filed by the appellant in response to show cause notice issued by the Registry of the Tribunal on 21<sup>st</sup> August, 2017, is accepted and the delay in filing the appeal is condoned, subject to payment of costs of Rs.25,000/- to be paid by the appellant society to the High Court Legal Services Committee. The cost shall be deposited within a period of one week. Parties are directed to appear before the Tribunal at Chandigarh on **4<sup>th</sup> February, 2019**. It is clarified that we have not expressed any views on merits.

**( Surya Kant ),  
Chief Justice**

**( Ajay Mohan Goel ),  
Judge**

**January 8, 2019  
( vt )**