Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3633 OF 2019

St.Thomas Orthodox Syrian Church .. Petitioner
Vs
The Commissioner of Income Tax
(Exemptions) and others .. Respondents

Mr.Mandar Vaidya, for the Petitioner.
Mr.Abhay Ahuja a/w Mr.P.A.Narayanan a/w Ms.Sangeeta Yadav, for Respondents.

CORAM : NITIN JAMDAR & M.S.KARNIK , JJ.
Date : 3 January 2020.

P.C. :

At the joint request, taken up for final disposal.

2. The Petitioner has challenged the order dated 26 September 2019 passed by the Commissioner of Income Tax (Exemptions) under Section 119(2)(b) of the Income Tax Act 1961 (the 'Act') in respect of condonation of delay in filing Form No.10 under section 11(2) of the Act.

3. The Petitioner a public trust, is registered under section 12AA of the Act. The Petitioner carries on various charitable activities including services of spiritual nature. The Petitioner filed the return of income on 19 September 2015 under section 139(4A)

disclosing 'NIL' income after claiming exemption under section 11 of the Act. It is the Petitioner's case that the Petitioner had claimed accumulation of income to the tune of Rs.58,00,000/- under section 11(2) of the Act. The Petitioner received an intimation under section 143(1) of the Act on 21 October 2016. By this intimation, the benefit of accumulation under section 11(2) was refused, according to the Petitioner, because the Form 10 required to be filed under the Income-tax Rules, 1962, was filed beyond the period specified in section 11(2).

4. The controversy in the Petition pertains to the rejection of the application filed by the Petitioner for condonation of delay in filing Form 10. By the impugned order the Commissioner, held against the Petitioner on two counts. First, that the Petitioner had made no claim of accumulation under section 11(2) in the return of income and second, no cogent reason was given for condonation of delay.

5. We have heard the learned Counsel Mr.Vaidya for the Petitioner and Mr.Ahuja, the learned Counsel for Respondents.

6. As regards the primary ground of refusal that is the Petitioner did not claim of accumulation under section 11(2) in the return of income, Mr.Vaidya the learned Counsel for the Petitioner submits that in the return of income the claim has been made;

however, it has been made under a wrong head. Mr. Vaidya has drawn our attention to the return of income filed by the Petitioner wherein amount of Rs.58,00,000/- is entered under the column 9(iv) of the form. Mr.Vaidya submits this was due to an error while filling up the Form no.10 electronically and that for this error the entire claim of the Petitioner ought not to be rejected. Mr.Vaidya submits that the error is procedural and the substantive claim of accumulation should not have been defeated in such a manner.

7. Mr.Ahuja, the learned Counsel for the Respondents submits there was no inadvertent error and Petitioner fully knew such claim must be made in the proper column. The Petitioner has chosen not to enter the amount in the proper column to gain an undue advantage.

8. We have considered the rival contentions. There is no finding in the impugned order as to whether the entry was made due to an error or it was a deliberate act. The case of the Petitioner of an error of making a claim under a wrong head needs to be considered by the Commissioner. It is not possible for us to decide this question of fact in the first instance. It is for the Commissioner to decide whether the action of the Petitioner was due to inadvertence as claimed by the Petitioner or is a part of a design as claimed by Respondents. In these circumstances, we deem it appropriate to remand the proceedings to the Commissioner to consider this aspect.

9. The order dated 26 September 2019 passed by the Commissioner of Income Tax (Exemptions) is quashed set aside. The application filed by the Petitioner for condonation of delay stands restored for consideration of the Commissioner. The Commissioner will consider the case of the Petitioner on its own merits. If the Commissioner concludes that the Petitioner had made a claim inadvertently in a wrong column, then the question whether cogent reason exists for condonation of delay would arise for consideration.

10. The Petitioner will appear before the Commissioner on 20 January 2020, for the Commissioner to give further direction as regards the date of hearing of the application. All contentions are kept open.

11. Petition is disposed of in above terms.

M.S.KARNIK, J. *NITIN JAMDAR, J.*