

No denial of registration to trust as activities of children home register with juvenile law couldn't be doubted

Summary – The High Court of Madras in a recent case of Hosanna Ministries., (the Assessee) held that where assessee-trust, which was running a children home, had been functioning after getting compulsory registration in Directorate of Social Defence of State of Tamil Nadu under Juvenile Justice (Care and protection of children) Act, 2015, its genuineness could not be doubted

Facts

- The assessee-charitable trust was engaged in running a children home. It applied for registration under section 12AA which was rejected by the Commissioner. No further action was taken by the assessee.
- On receiving a recovery notice from the Revenue after passing of almost 5 years, the assessee came to know on getting professional advise that the order of rejection made by the Commissioner was appealable to the Tribunal under section 253(1)(c). Immediately thereafter, an appeal was filed before the Tribunal with the application for condonation of delay of 1902 days.
- The Tribunal rejected the appeal *in limine* on the ground of delay holding that the assessee was not vigilant in pursuing the appeal. Further, it held that the assessee was not engaged in the activities in accordance with the objects specified in the Trust deed.
- On appeal before the High Court:

Held

Activities being carried out as per Trust's objects

- In so far as the genuinity and functioning of the assessee's institution as trust is concerned, the assessee has produced documents to show that the assessee's institute had been functioning with proper registration in the Directorate of Social Defence, State of Tamil Nadu, especially after the coming into effect of Juvenile Justice (Care and Protection of Children) Act, 2015. Every such children home had necessarily to be registered under the said Act and without such registration, no institute or home dealing with children can function.
- In consonance with the provisions of the Juvenile Act, the assessee's children home, after having been registered by the authority concerned, was certified by the Directorate of Social Defence, Government of Tamil Nadu.
- Therefore, it becomes obvious that the assessee institution is running under the provisions of the Juvenile Act after having been duly registered under the said Act. Therefore, the additional reason given by the Tribunal in the order impugned to say that the assessee was not engaging in activities in accordance with the objects specified in the trust deed, may not be backed by any materials.

Condonation of delay

- No doubt, the delay of 1902 days is a huge and enormous delay. But, when the reasons given by the assessee for such a delay have been looked into, it shows that it is not attributable to any lame excuses on medical grounds or otherwise. But, it is only the reason of either non advise on the part of the professional, who has been engaged by the assessee or the ignorance of law by the assessee itself. The assessee knew well that if a plea of ignorance of law is taken, that would be, on the face of it, rejected by the court/Tribunal; nevertheless, such a plea alone had been taken by the assessee and that itself would show the inherent genuineness attached with the reason cited by the assessee for such huge delay.
- In this regard, it is emphasised that no doubt, the delay that too a long delay has to be explained with proper reasons. But, it does not mean that every day's delay must be explained. The court must take a pragmatic view in appreciating the reasons attributable to the delay caused to the party to approach the court of law. No pedantic view or approach to be adopted by the court in considering the reasons given by the parties for delay in approaching the court.
- In *United Christmas Celebration Committee Charitable Trust v. ITO*, T.C.A. No. 886 of 2016, dated 7-3-2017 it was held that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.
- In view of these reasons, the order impugned of the Tribunal rejecting the appeal of the assessee mainly on the ground of delay, is liable to be interfered with. Further reason given by the Tribunal for arriving at such a conclusion that the assessee was not engaging in activities in accordance with the objects specified in the trust deed also is not supported by materials as the assessee has been functioning after proper registration with the authorities concerned under the Juvenile Act and a recent certification the authorities concerned as referred to above would be valid for next five years. Therefore, the genuineness or otherwise of the functioning of the assessee cannot be easily doubted, in view of the certification issued by the Directorate of Social Defence, Government of Tamil Nadu as stated supra.
- Therefore, even that reason given by the Tribunal for its conclusion in the order impugned cannot stand in the legal scrutiny. Therefore, both the reasons cited in the impugned order of the Tribunal are liable to be interfered with and accordingly, the impugned Judgment is set aside.