

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

(Civil Review Jurisdiction)

**Civil Review No. 119 of 2019**

Adarsh Sahkari Grih Nirman Swawlambi Samiti Limited, a cooperative society registered under the provision of Jharkhand Swawlambi Sahkari Samiti Adhiniyam Act having its office at 6-S, 3<sup>rd</sup> phase, Aadarsh Nagar, Sonari, PO Sonari, PS Sonari, District Jamshedpur through its Chief Executive Yog Nandan Yadav, aged about 75 years, son of late Ram Prasad Yadav 12, Adarsh Nagar, 1<sup>st</sup> Phase Sonari, PS Sonari, Jamshedpur

..... **Appellant**

**Versus**

1. Commissioner of Income Tax, Jamshedpur having its office at office road, PO and PS Office Road, Jamshedpur, District East Singhbhum

2. Deputy Commissioner of Income Tax, Circle-1, PO and PS Office Road Jamshedpur, District East Singhbhum

.... **Respondents/Opposite Parties**

(Through Hybrid Mode)

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE  
HON'BLE MR. JUSTICE NAVNEET KUMAR**

For the Petitioner(s) : Mr. D. V. Pathy, Advocate (through V.C.)  
Mr. Abhishek Kumar, Advocate  
For the Respondents : Mr. Anurag Vijay, SC  
Mr. Om Prakash, Advocate

**Order No.09/Dated: 18<sup>th</sup> March 2024**

**I.A. No. 2610 of 2020**

Civil Review No. 119 of 2019 has been filed seeking review of the judgment dated 14<sup>th</sup> February 2018 passed in Tax Appeal No. 16 of 2015.

2. I.A. No. 2610 of 2020 has been filed seeking condonation of delay in filing the Civil Review petition.

3. In this application, the Samiti has made the following statements:

“3. That the appellant states that it was not aware of the judgment and order passed/pronounced by this Hon’ble Court on 14.02.2018.

4. That the appellant states that it came to know of the judgment and order of the Hon’ble Supreme Court of India case of Income Tax Officer,

Mumbai v. Venkatesh Premises Co Operative Society Ltd. in SLP (C) No.30194/2010 on 10.11.2019. The appellant immediately thereafter approached its counsel to inform him of the status of his appeal.

5. That the appellant states that to its utter dismay the counsel informed him that the judgement and order was passed by this Hon'ble Court on 14.02.2018 and that being visibly shaken he could not attempt to inform him. The appellant states that immediately thereafter he requested the counsel to immediately file the present petition for review in the light of the judgment of the Hon'ble Supreme Court of India.

6. That the appellant states that thereafter the Counsel it took steps to get the present petition filed before this Hon'ble Court.

7. That the appellant states that the delay in filing of the present appeal is attributable to the Counsel. The appellant states that being wholly unaware of the judgment and order passed by this Hon'ble Court it could not take necessary steps in the matter. The appellant submits that the delay therefore, has occurred due to reasons beyond its control and is thus due to a reasonable cause.

8. That the appellant submits that since the delay in filing of the present appeal has occurred due to a reasonable cause the same merits to be condoned.”

4. The explanation put forth by the Samiti for condonation of delay of 619 days is quite strange. This is really surprising that such an explanation has been afforded in the application under section 5 of the Limitation Act, 1963 putting blame on the learned counsel. However, with a view to form a prima-facie opinion as to maintainability of this review petition, we deem it proper to record the stand taken by the rival parties.

5. In Tax Appeal No. 16 of 2015, a challenge was laid by Adarsh Sahkari Grih Nirman Swawlambi Samiti Limited (in short, Samiti) to the order passed by the Income Tax Appellate Tribunal at Ranchi (Circuit Bench) in ITA No. 136/ Ran/2010 for the assessment year 2002-03. The controversy involved was whether the Samiti was entitled for exemption under section 80-P(2)(a)(i) of the Income Tax Act, 1961 on the interest received by it. Another plea raised by the Samiti was that the transfer charge received by it is not taxable income. The writ Court after examining the provisions under section 80-P and other relevant provisions under the Income Tax Act held that no substantial question of law was involved and the Tax Appeal was dismissed with a cost of Rs. 5,000/-.

6. Mr. D. V. Pathy, the learned counsel appearing for the Samiti submits that in “*Income Tax Officer, Mumbai v. Venkatesh Premises*

*Cooperative Society Ltd.*” (2018) 15 SCC 37 the Hon’ble Supreme Court has laid down the law on the subject and it has been held that the transfer charges payable by the outgoing member does not partake the nature of profit or commerciality as the amount is appropriated only after the transferee is inducted as the member. The submission made at the Bar is that in view of the law laid down in “*Venkatesh Premises Cooperative Society Ltd.*” the judgment rendered by this Court in Tax Appeal No. 16 of 2015 needs a relook and, accordingly, modified/reviewed. On the other hand, Mr. Anurag Vijay, the learned counsel for the Income Tax Department has taken objection to this review petition on three-fold grounds (i) delay in filing the review petition is not explained (ii) there is no error apparent on the face of the order passed in Tax Appeal No. 16 of 2015 (iii) judgment passed in “*Venkatesh Premises Cooperative Society Ltd.*” was rendered after the decision in the Tax Appeal filed by the petitioner.

7. Explanation to Rule (1) to Order 47 of the Code of Civil Procedure provides that a decision on a question of law on which the judgment of the Court is based if reversed or modified by the subsequent decision of the Superior Court in any other case that shall not form a ground for review of such judgment. The judgment in “*Venkatesh Premises Cooperative Society Ltd.*” was rendered on 12<sup>th</sup> March 2018 but before that Tax Appeal No. 16 of 2015 was dismissed by order dated 14<sup>th</sup> February 2018. Mr. Abhishek Kumar, the learned counsel who is also appearing for the Samiti has brought to our notice a decision in “*Govt. of NCT of Delhi through the Secretary, Land and building Department and Another v. M/s K. L. Rathi Steels Limited and Others*” 2023 LiveLaw (SC) 204 to support maintainability of this review petition on the basis of a subsequent judgment. However, the decision in “*M/s K. L. Rathi Steels Limited*” is a split verdict of the Hon’ble Supreme Court and a final decision thereon is awaited. In the opinion of this Court, if a review petition is entertained ignoring the statutory provisions under Order 47 of the Code of Civil Procedure which are applied in the writ proceedings, that would bring uncertainty and chaos in the system.

8. For the foregoing reasons, I.A. No. 2610 of 2020 filed for condonation of delay of 619 days in filing the present Civil Review petition is dismissed.

9. Consequently, Civil Review No. 119 of 2019 is dismissed.

**(Shree Chandrashekhar, A.C.J.)**

**(Navneet Kumar, J.)**

*Tanuj*