REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELH**

\+ **WP(C) No.1791/2007 and CM Appl. Nos.3292/2007 and 15279/20098**
with
WP(C) No.7481/2009

Date of Hearing: 08.12.2010
% Date of Decision:22.01.2010

1) WP(C) No.1791/2007 and CM Appl. Nos.3292/2007 and 15279/20098

Church's Auxiliary For Social Action and Another .....Appellant
Through: Mr. C.S. Aggarwal,
Sr. Advocate Mr.Prakash Kumar

Versus

Director General of Income Tax (Exemptions) New Delhi and Others
.....Respondents
Through Ms.P.L. Bansal

And

2) WP(C) No.7481/2009

Caritas India .....Appellant
Through: Mr.Ajay Vohra
with Ms.Kavita Jha and
Ms. Akansha Aggarwal

Versus

Union of India and Another .....Respondents
Through Ms.Sonia Mathur for
respondents No.1 and 2
Ms. P.L. Bansal for respondent
No.3

CORAM :-
THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1.Whether Reporters of Local papers may be allowed to see the Judgment?
2.To be referred to the Reporter or not?
3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Both these writ petitions involve identical question of law which has

heard together and are being disposed of by this common judgment. I for the sake of brevity we shall take note of the facts of WP(C) No.1791/2007 and that would serve our purpose as it has the same bearing on the other writ petition as well.

2. The petitioner No.1, in this writ petition, is "Church's Auxiliary for Social Action" and the petitioner No.2 is the Director thereof. The petitioner No.1 is a society registered under the Societies Act, 1860. It was registered on 12.2.1976. The basic aim and object of the petitioner society is to undertake, promote and assist in the upliftment of the poor, needy, backward, under-privileged and handicapped people irrespective of caste, creed or colour by itself or in collaboration with others and undertake to assist emergency relief work for the victims of flood, famine, earthquake and other disasters, to assist in resettlement and rehabilitation of displaced persons and repatriates. It was also granted registration under Section 12A of the Income-Tax Act (hereinafter referred to as the 'Act') on 22.9.1976. It has also received approval under Section 80G of the Act in relation to donations received by it which approval has existed all through. It is a charitable society having high repute in India and abroad.

3. As is well-known, a disastrous earthquake occurred in Gujarat on 26th January, 2001 which literally shook the earth up and down resulting into vast spread calamities, affecting millions of people. Not only the Government of India but other sovereign countries came forward to help the victims of the said earthquake. Various NGOs took positive steps in the same direction. The petitioner society was one of such societies. It even received the contributions/donations aggregating to Rs.24.51.58,192.08 between 26th January 2001 to 30th September, 2001 which contribution was specifically aimed

at providing succor to the worst affected people in the state of Guj result of the said disaster.

4. The Legislature also stepped in. Specific provisions were inserted in the Income-Tax Act to encourage such NGOs as well as those giving donations to come forward and extend helping hand to rehabilitate the affected people. This insertion was made by Taxation Laws (Amendment) Act, 2001 amending Section 80G of the Act appropriately which came to effect from 3rd February, 2001. Section 80G deals with deduction in respect of donations to certain funds and charitable institutions etc. and various kinds of donations to different categories of funds and charitable institutions mentioned therein are entitled to certain amount of deductions. In respect of earthquake in Gujarat, the following legislative provision was introduced:-

> **"Deduction in respect of donations to certain funds, charitable institutions, etc.**
>
> **80G.** [(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this
> [(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in …… **[or in clause (d) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature *plus* fifty per cent of the balance of such aggregate; and] ……**
>
> (2) The sums referred to in sub-section (1) shall be the following, namely:-
>
> (a) …..
> (b) ……
> (c) ……
> (d) any sums paid by the assessee, during the period beginning on the 26th day of January, 2001 and ending on the 30th day of September, 2001, to any trust, institutions or fund to which this section applies for providing relief to the victims of earthquake in Gujarat.].
>
> ……..
>
> (5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:-
>
> [(5A) ……

(5C) **This [section] applies in relation to amounts referred t clause (d) of sub-section (2) only if the trust or institution or fu established in India for a charitable purpose and it fulfils the following conditions, namely:-**

(i) it is approved in terms of clause (vi) of sub-section (5);

(ii) it maintains separate accounts of income and expenditure for providing relief to the victims of earthquake in Gujarat;

(iii) the donations made to the trust or institution or fund are applied only for providing relief to the earthquake victims of Gujarat on or before the 31st day of March, [2004];

(iv) [(iv) the amount of donation remaining unutilised on the 31st day of March, [2004] is transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, [204];]

(v) it renders accounts of income and expenditure to such authority and in such manner as may be prescribed, on or before the 30th day of June, [2004].]"

5. This amendment signaled hundred per cent of donation given for the purpose of Gujarat Earthquake Relief as deductible in contra-distinction to fifty per cent deductions allowed in normal cases. Condition that was imposed in clause (d) of sub-section (2) of Section 80G was that such donation is to be given between 26th January 2001 to 30th September 2001. Thus, all those assessees who had given such donations became entitled to hundred per cent deductions in respect of the amount of donations so given. This provision is clearly for the benefit of the persons contributing for such a cause, i.e., who extended the charity. However, sub-section (5C) thereof laid down certain conditions which were required to be fulfilled and these obligations were cast upon the Trust or the Institutions or the Funds receiving those donations.

6. In the present case, the petitioner has fulfilled all the conditions except the one stipulated in Clause (v) of sub-Section (5C) of Section 80G of the Act. As mentioned above, it is not in dispute that the petitioner has the necessary registration under Section 80G of the Act. It is also registered as charitable

September 2001. Again, there is no dispute that the petitioner m separate accounts of income and expenditure for providing relief to the victims of earthquake in Gujarat. It is also claimed that the entire amount was spent only for providing relief to the earthquake victims of Gujarat by the specified date, i.e., 31st March 2004. However, it could not render the accounts of income and expenditure to the prescribed authority by 30th June 2004. Because of this failure on the part of the petitioner, in the income-tax return filed by the petitioner for the assessment year 2003-04 entire donation of Rs.24.51.58,192.08 has been treated as taxable income of the petitioner society, *i.e.*, deemed taxable income under Section 12(3) of the Act vide assessment order dated 20th December 2006.

7. It so happened that the petitioner realized belatedly when it received questionnaire from the respondent/Assessing Officer asking for details in respect of the aforesaid donations received and raising various queries with regard to non-filing of Form No.10AA before the prescribed authority as required under Section 12(3) of the Act read with Rule 18AAA of the Income-Tax, 1962. The petitioner while submitting the details to those queries by furnishing requisite particulars, also tried to file Form No.10AA on 29th March 2006 and 30th March 2006 in the office of the respondent No.1. It was, however, not accepted stating that "they had no jurisdiction to receive this form." On the very next day, i.e., 31st March 2006 this form was filed before the Director of Income-Tax (Exemption) along with a letter seeking condonation of delay in filing the same. However, vide communication dated 8th August 2006, respondent No.2 purportedly acting on behalf of the respondent No.1 rejected the said application seeking condonation of delay. Operative portion of this communication reads as under:-

"Sub. **Condonation of delay in filing of Form 10A Regarding.**

Please refer to your letter reference NO.Fin/660 dated 27th March, 2006 though addressed to Director General of Income Tax Exemptions, Aaykar Bhawan, Distt. Centre, Laxmi Nagar, Delhi but filed in the office of Director of Income Tax Exemptions on 31st March, 2006 (vide receipt No.10626) on the above mentioned subject which has been received in this office on 7th August, 2006, whereby you have filed statement in form No.10AA in your case and requested for condonation of delay thereof. In this connection, I am directed to mention that keeping in view provision of Section 80G(5C) (v) of the Income Tax Act, 1961, there is no provision as to condonation of delay for any reason and as your application can not be entertained."

8. This writ petition is filed challenging the aforesaid communication resulting in passing of order dated 20th December 2006 making entire donations as exigible to tax treating it as deemed taxable under Section 12(3) of the Act, which provides as under:-

"Income of trusts or institutions from contributions.

12. (1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G [in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that caluse, or] which has been utilized for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilized in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, [2004] shall be deemed to be the income of the previous year and shall accordingly be charged to tax.]"

9. One other significant fact, which is required to be mentioned at this stage is that out of the aforesaid donations received by the petitioner during this

local contributions were only Rs.8,17,015.28. As is clear from the i order dated 8th August 2006, the application for condonation of delay preferred by the petitioner is dismissed on the ground that there is no provision to condone the delay. Challenge to this stance of the respondent is predicated on the following:-

i. Provision contained in Clause (v) of Sub-Section (5C) of Section 80G is not mandatory, but directory in nature. In other words, it is contended that the date of 30th June 2004 specified therein is not sacrosanct or inflexible;

ii. No hearing was given to the petitioner before rejecting the application and thus, principles of natural justice are violated.

10. Almost identical situation occurred in the other writ petition inasmuch as there also the application for condonation of delay is rejected on the plea of want of power. We may state at the outset that concededly no hearing was given to the petitioners before passing the impugned orders and taking the view that there is no provision to condone of delay for any reason, in Section 80G(5C)(v) of the Act. Naturally, this order has far reaching ramifications and adversely affects the interests of the petitioners. Before passing such an order, therefore, it was necessary to provide an opportunity of being heard to the petitioners herein. The impugned orders could be set aside on this ground alone. However, since view is taken by the respondents that there is no provision for condonation of delay and the respondents have taken the same position by arguing the matter at length before us and since this view is questioned by the learned counsel for the petitioners, it is deemed appropriate to decide this pure question of law in the present writ petitions. This was so urged by the counsel for both the parties as

proceed to determine as to whether the said provision is only directory mandatory and whether it is within the powers of the Competent Authority to entertain the application given after the stipulated date, on showing sufficient cause for delay.

11. Keeping in view the purpose for which this provision was specifically inserted by the legislator, *viz.*, to encourage the donors showing magnanimity in giving the donations liberally to generate funds for providing reliefs to the victims of the calamity due to earthquake in Gujarat and other relevant material, we are of the opinion that such a provision has to be considered directory in nature. We have to keep in mind that the provision like Section 80G has been introduced in the statute to confer benefit upon the donors and this provision is not directly concerned with the societies, trust, etc., who are recipients of these donors. Section 80G encourages grant of donations to certain funds, charitable institutions, etc. by enabling such donors/assessee to claim deductions in respect of those donations.

12. In normal course, therefore, the assessee giving donations would be entitled to deduction under Section 80G. No doubt, as provision was made providing liberalized deductions to the donors, sub-section (5C) stipulated certain conditions as well, which were required to be fulfilled. Obligation to fulfil these conditions is cast upon the Trust or Institutions or Funds for a charitable purpose receiving such donations/amounts. It was necessary to rest this obligation on such institutions, etc., as these are those institutions receiving donations only, which could establish that the amount is received during the period specified in the statute, it is spent only for providing relief to the victims in Gujarat; such institutions maintain separate accounts of income and

unutilized as on 31st Day of March of the year, the same is transferred to Prime Minister's National Relief Fund on or before 31.03.2004. Since such accounts, etc. are to be maintained by these trusts/institutions, it is their obligation to render the accounts as well for which last date of 30.06.2004 is prescribed.

13. If the conditions are not fulfilled as mentioned in sub-section (5C) of Section 80G, it entails certain consequences. The donations received are, otherwise, treated as income under Section 12 of the Act. At the same time, if such trusts or charitable institutions are treated as registered under Section 12 of the Act and granted exemption for the purpose of Section under 80G of the Act, this income is not liable for tax. However, in respect of donation received for providing relief to the victims of earthquake in Gujarat, speciation provision in the form of sub-section (3) of Section 12 has been inserted *inter alia* stipulating that the amount of donations in respect of which accounts of income and expenditure have not be rendered to the authority prescribed under clause (v) of sub-section (5C) of Section 80G, such amount of donation received by the trusts or institutions is deemed to be income of the previous year and is to be charged to tax.

14. In the beginning itself, we may observe that in case separate accounts of income and expenditure are not prepared or the donations received are not exclusively applied for providing relief to the earthquake victims of Gujarat by 31.03.2004 or unspent amount is not transferred to Prime Minister's Relief Fund, such donation received would be exigible to tax. These are clearly the mandatory provisions inasmuch as schemes of the donation is: the amount of donation has to be received within specific period, *i.e.*, from 26.01.2001 to

Commissioner in accordance with Rules made in this behalf, these fun be utilized unnecessarily for providing relief to the earthquake victims of Gujarat; the last date for utilizing the funds is 31.03.2004 and in order to prove that the funds were so utilized, separate accounts of income and expenditure for such purpose are to be maintained. Therefore, there cannot be any relaxation insofar as these conditions are concerned. Likewise, if the amount is not utilized by 31.03.2004, obligation is to remit the same to the Prime Minister's National Relief Fund, otherwise unspent amount has to be treated as income in the hands of such institutions or funds. So far so good. However, such a rigour would not apply to the conditions stipulated in Clause (v) of sub-section (5C) of Section 80G of the Act, *viz.*, rendition of accounts to the Competent Authority in the manner prescribed, which are required to be done on or before 30.06.2004.

15. No doubt, the opening words of sub-section (5C) are that this Section applies "only" when conditions mentioned in sub-clause(i) to (v) are fulfilled. We are, however, concerned with the question as to whether the date of 30.06.2004 is so sacrosanct that a particular institution or fund will suffer the consequence as stipulated in Section 12(3), if there is some delay in rendition of accounts? On this aspect, we are of the opinion that if for some genuine *bona fide* reasons accounts are not rendered by 30.06.2004, such disastrous and onerous consequence of treating the entire donation as income and taxing the same should not follow particularly when the entire amount of donation so received was spent for the purpose mentioned therein, *viz.*, providing relief to the earthquake victims of Gujarat by 31.03.2004. If the provision is to be interpreted in the manner Revenue wants, even in the given case where the petitioner in first petition received donations of more than Rs. 24.50 Crores for this specific purpose and spent the entire amount for same specified cause will

still be called upon to pay the tax of several Crores even when the petiti not keep with itself a penny from those donations received.

16. In Black's Law Dictionary, 6th Edn. (at P.461), the word "directory" is defined as "permissive" and "mandatory" as "imperative". It is explained that under a general classification, statutes are either "directory" or "mandatory", and if mandatory, they prescribe, in addition to requiring the doing of the things specified, the result that will follow if they are not done, whereas, if directory, their terms are limited to what is required to be done. A "mandatory" provision in a statute is one the omission to follow which renders the proceedings to which it relates void, while "directory" provision is one the observance of which is not necessary to the validity of the proceeding. It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory; otherwise when it relates to form and manner, and where an incident, or after jurisdiction acquired, it is directory merely. Mandatory provision is one which must be observed, as distinguished from "directory" provision, which leaves it optional with department or officer to which addressed to obey it or not.

17. A number of principles of interpreting provisions with regard to their mandatory or directory effect have been evolved by the Courts over a period of time. Though there is no universal tests, one test is the language used by a statute, which can provide significant indications as to whether the statute or its provisions are intended to be construed in a mandatory or directory sense.

18. The Kansas Supreme Court set forth in ***Wilcox v. Billings***, 200 Kan. 654 (1968), rules and aids to be used in determining whether a statutory provision is directory or mandatory.

> "The difference between directory and mandatory statutes, w their provisions are not adhered to, is one of effect only; legislature intends neither to be disregarded. However, violation of the former is attended with no consequences but failure to comply with the requirements of the latter either invalidates purported transactions or subjects the noncomplier to affirmative legal liabilities (2 Sutherland Statutory Construction [3rd ed.] & 2008).
>
> "No absolute test exists by which it may be determined whether a statute is directory or mandatory. Each case must stand largely on its own facts, to be determined on an interpretation of the particular language used. Certain rules and aids to construction have been stated. The primary rule is to determine legislative intent as revealed by an examination of the whole act. Consideration must be given to the entire statute, its nature, its object, and the consequences which would result from construing it one way or the other. It has been said that whether a statute is directory or mandatory depends on whether the thing directed to be done is of the essence of the thing required, or is a mere matter of form. Accordingly, when a particular provision of a statute related to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, it is generally regarded as directory, unless followed by rules of absolute prohibitions; and a statute is regarded as directory where no substantial rights depend on it, no injury can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than that prescribed, with substantially the same results. On the other hand, a provision relating to the essence of the thing to interpretation of a statute, which directs acts or proceedings to be done in a certain way, shows that the legislature intended a [sic] compliance with such provision to be essential to the validity of the act or proceeding, or when some antecedent and prerequisite conditions must exist prior to the exercise of power or must be performed before certain other powers can be exercised, the statute must be regarded as mandatory. (82 C.J.S., Statutes, $ 376)." ***Wilcox***, 200 Kan. At 657-58."

19. Recent judgment of the Supreme Court in the case of ***Smt. Bachahan Devi and Another*** Vs. ***Nagar Nigam, Gorakhpur and Another*** [AIR 2008 SC 1282] provides sufficient guidelines to ascertain as to whether a particular provision is obligatory or directory. Following discussions in the said judgment are worth of reproduction:

> "28. The use of the words `shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every

outcome of the proceeding would be invalid. On the other hand, not always correct to say that when the word `may' has been u the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid.

29. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word `shall' is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. The word `shall', though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word `shall' is construed as having mandatory character, the mischief that would ensure by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory.

30. The question, whether a particular provision of a statute, which, on the face of it, appears mandatory inasmuch as it used the word 'shall', or is merely directory, cannot be resolved by laying down any general rule, but depends upon the facts of each case particularly on a consideration of the purpose and object of the enactment in making the provision. To ascertain the intention, the court has to examine carefully the object of the statute, consequence that may follow from insisting on a strict observance of the particular provision and, above all, the general scheme of the other provisions of which it forms a part. The purpose for which the provision has been made, the object to be attained, the intention of the legislature in making the provision, the serious inconvenience or injustice which may result in treating the provision one way or the other, the relation of the provision to other consideration which may arise on the facts of any particular case, have all to be taken into account in arriving at the conclusion whether the provision is mandatory or directory. Two main considerations for regarding a rule as directory are: (i) absence of any provision for the contingency of any particular rule not being complied with or followed, and (ii) serious general inconvenience and prejudice to the general public would result if the act in question is declared invalid for non-compliance with the particular rule."

To use the language of **Lord Cairns** in the case of **Julius v. B Oxford: (5 AC 214):**

> *"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."*

20. Again, in order to find out the legislative intent, an examination of the whole Act or the provision is to be made whether a statute is directory or mandatory depends on whether the thing directed to be done is of the essence of the thing required, or is a mere matter of form. Furthermore, where the provision relates to procedural requirement, consideration has to be as to whether the defect is such which cannot be a remedy either and as the effect of rendering subsequent effects, depending on the requirement is nullity. At the same time, the test of substantial compliance with the requirement is also to be followed. This is lucidly stated by Lord Woolf MR subjected the doctrine to further analysis in ***R v Immigration Appeal Tribunal,*** *ex parte Jeyeanthan* [1999] 3 AII ER 231, in which he posed the difficulty at page:235:

> "The conventional approach when there has been non-compliance with a procedural requirement laid down by a statute or regulation is to consider whether the requirement which was not complied with should be categorized as directory or mandatory. If it is categorized as directory it is usually assumed it can be safely ignored. If it is categorized as mandatory then it is usually assumed the defect cannot be remedied and has the effect or rendering subsequent events dependent on the requirement a nullity or void or as being made without jurisdiction and of no effect. The position is more complex than this and this approach distracts attention from the important question of what the legislator should be judged to have intended should be the consequence of the non-compliance. This has to be assessed on the consideration of the language of the legislation against the factual circumstances of the non-compliance. This has to be assessed on the consideration of the language of the legislation against the factual

> provides limited, if any, assistance to inquire whether requirement is mandatory or directory."

He went to say at pages 238-9:

> "… I suggest that the right approach is to regard the question of whether a requirement is directory or mandatory as only at most a first step. In the majority of cases there are other questions which have to be asked which are more likely to be of greater assistance than the applicant of the mandatory/directory test. The questions which are likely to arise are as follows: Is the statutory requirement fulfilled fi there has been substantial compliance with the requirement and, if so, has there been substantial compliance in the case in issue even though there has not been strict compliance? (The substantial compliance question.) Is the non-compliance capable of being waived, and if so, has it or can it and should it be waived in this particular case? (The discretionary question.) I treat the grant of an extension of time for compliance as a waiver. If it is not capable of being waived or is not waived then what is the consequence of the non-compliance? (The consequences questions.)
>
> Which questions arise will depend upon the facts of the case and the nature of the particular requirement. The advantage of focusing on these questions is that they should avoid the unjust and unintended consequences which can flow from an approach solely dependent on dividing requirements into mandatory ones, which oust jurisdiction, or directory, which do not. If the result of non-compliance goes to jurisdiction it will be said jurisdiction cannot be conferred where it does not otherwise exist by consent or waiver."

21. On the application of these tests also, in the context of present provision relating to rendition of the accounts, the date mentioned therein is to be treated as directory and not mandatory. We find that the real intention of the legislature while enacting sub-section (5C) of Section 80G of the Act was to ensure application of donations to specific purpose by specified date and that part of the provision is mandatory. In order to find out that donations are applied for the stipulated purpose, requirement of rendition of accounts is to be introduced. However, if there is some delay in submitting this accounts, the legislature never intended that such institutions or funds should pay the taxes on the donations received even when necessary applications with the provisions

and cannot be the purpose behind this provision. In support, we may refer to some of the following observations in ***In Re* Presidential Election**:

> *"In determining the question whether a provision is mandatory or directory, the subject-matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending to the whole scope of the proviso to be construed. The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the lawmaker expressed in the law itself, taken as a whole.*

22. We may also, at this stage, refer to another judgment of the Apex Court in ***Union of India (UOI)* v. *Ranbaxy Laboratories Ltd. and Ors.*** [2008 (7) SCC 502]. In this judgment, the Court opined that purposive consideration may be given full effect to the exemption notification and it had to be construed to be a workable one.

23. In respect of taxation statutes, the Courts have held that the statues that regulate the assessment of taxation must be construed as mandatory. However, if the establishing a uniform system of procedure, to promote dispatch, non-compliance with such payer, the statute should be construed as directory. There are catena of judgments where different provisions of the Income Tax Act imposing time limit in order to enable an assessee to seek deduction or benefit are interpreted as merely directory and not mandatory. Section 80HHC(4) read with Rule 18BBA(3) is treated as directory in the following cases:

1) ***Commissioner of Income Tax*** Vs. ***Valii Cotton Traders (P) Ltd.*** [288 ITR 400(Mad.)];
2) ***Commissioner of Income Tax*** Vs. ***Magnum Export (P) Ltd.*** [262 ITR 10 (Cal.)];
3) ***Commissioner of Income Tax*** Vs. ***Gupta Fabs*** [274 ITR 620 (P&H)];

4) ***Murali Exports*** Vs. ***Commissioner of Income Tax*** [238 (Cal.);

5) ***Commissioner of Income Tax*** Vs. ***G. Krishnan Nair*** [259 ITR 727 (Ker.)]; and

6) ***Commissioner of Income Tax*** Vs. ***Hemsons Industries*** [251 ITR 693 (AP)].

Likewise Section 80I (7) read with Rule 18BBB is treated as directory and not mandatory in the case of ***Commissioner of Income Tax.*** Vs. ***Panama Chemical Works*** [292 ITR 147] and the same principle is also applied under Section 80J in the following judgments:

1) ***Commissioner of Income Tax*** Vs. ***Mahalaxmi Rice Factory*** [294 ITR 631 (P & H)];

2) ***Commissioner of Income Tax*** Vs. ***Shivanand Electronics*** [209 ITR 63 (Bom.)]; and

3) ***Commissioner of Income Tax*** Vs. ***Gujarat Oil and Allied Industries*** [201 ITR 325 (Guj.)].

Likewise, requirement of furnishing of Audit Report along with income tax return is treated as directory and not mandatory.

24. Going by all these considerations, we are of the opinion that the application for condonation of delay should not have been rejected on the ground that there is no power to condone. We accordingly set aside the impugned order dated 08.08.2006 and make the rule absolute and remit the case back to the Competent Authority to decide the application for condonation of delay on merits after giving opportunity of being heard to the petitioners. In these circumstances, parties are left to bear their own cost.

(A.K. SIKRI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE