In the High Court of Judicature at Madras

Dated: 05.01.2015

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Mr.JUSTICE R.KARUPPIAH

Tax Case (Appeal) No.505 of 2013

Director of Income Tax Exemptions
Chennai. .... Appellant

Vs.

M/s.Shri Shanthi Vallab TVH
Lumbini Jain Sangh
Flat No.3063, 3rd Block, 6th Floor,
127A Bricklin Road, Purasawalkam Road,
Chennai - 600 007. .... Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 22.2.2013 made in I.T.A.No.2143/Mds/2012 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai.

against the order of the Director of Income Tax (Exemption) Chennai dated 31.10.2012 made in DIT (E) No.2(42)/12-13.

For Appellant : Mr.J.Narayanasamy
Standing counsel for Income Tax

For Respondent: No appearance

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that DITE had not brought on record any material to hold that the trust is not genuine and thereby directed the DITE to grant registration of trust under Section 12AA when no activities were started by the trust?"

2. The issue involved in the present case is whether the trust on its inception would be disentitled to the benefit of registration under Section 12AA of the Income Tax Act on the ground that it does not yet commenced its activity.

3. Learned counsel appearing for the Revenue fairly submits that the issue involved in this appeal is covered by a decision of this Court in T.C.(A)No.579 of 2013 dated 27.01.2014, wherein this Court, following the decision of this Court reported in (2012) 206 Taxman 69 (CIT V. Arulmighu Sri Kamatchi Amman Trust), dismissed the appeal filed by the Revenue holding that the Revenue would not be justified in refusing the grant of registration at the threshold. For better clarity, the relevant portion of the decision of this Court reads as follows:

> "9. In the present case also, the Revenue only questions the trust not having commenced its activity for the grant of registration. The provision under Section 12AA of the Income Tax Act does not stipulate such a condition for grant of registration. On the other hand, Section 12AA (1) contemplates satisfaction of the Commissioner about the objects of the Trust and the genuineness of the activities and make such enquiry as may be necessary for the purpose of grant of registration. In so considering the application, the Commissioner has to give an opportunity to the assessee as provided for under proviso to sub-section (1) of Section 12AA. Under sub-section (3) of Section 12AA, the Commissioner is given power to cancel the registration, if he satisfies that the objects of such trust are not genuine or not being carried on in accordance with the objects of the trust. When such an authority is vested with the Commissioner to cancel the registration in the event of the trust not being carried on in accordance with the objects of the trust, we do not find any ground to say that merely on the date of the application, the assessee trust had not commenced its activities, hence, registration could not be granted. It is not denied by the assessee that on the date of the application under Section 12AA, it was yet to commence its operation. But nevertheless the genuineness of the objects of the trust were not questioned by the Commissioner. Considering the fact that the continuance of registration is further a subject matter of scrutiny by the Commissioner as contemplated under Section 12AA(3) of the Income Tax Act, we do not think that the Revenue would be justified in refusing the registration at the threshold. The Tribunal had followed the decision of the Gujarat High Court in the case of CIT V. Kutchi Dasa Oswal Moto Pariwar Ambama Trust reported in 29 Taxman 228. We respectfully agree with the decision of the Gujarat High Court."

4. The above-said view was followed by this Court, in which one of us was a party (R.Sudhakar,J) in T.C.(A)No.261 of 2014 dated 22.8.2014.

5. Accordingly, following the decision of this Court in T.C. (A)No.579 of 2013 dated 27.01.2014, this Tax Case (Appeal) stands dismissed. The question of law is answered against the Revenue. No costs.

Sd/-
Asst.Registrar (AD I)

/true copy/

Sub Asst. Registrar

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To

1. The Income Tax Appellate Tribunal 'C' Bench, Chennai
2. The Director of Income Tax Exemptions, Chennai.

1 cc to Mr.R. Sivaraman, Advocate, Sr. 186
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