IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.621 of 2009

M/s.Jessie Memorial Trust,
25, S.P.Koil Street, Puthur,
Tiruchirappalli - 620 017. .... Appellant

Vs.

The Commissioner of Income Tax
Circle IX, Fourth Floor,
611, Anna Salai,
Chennai - 600 006. .... Respondent

Prayer:-
Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 13.01.2009 made in ITA No.344/Mds/2008. against the Order of the Commissioner of Income Tax-I, in C.No.6162 E(12)/2004-2005/CIT-1/TRY dated 19.10.2004 against the order of the Income Tax Officer in C.No.6162 E(12)/CIT-1/TRY/2004-2005 dated 27.07.2004.

For Appellant : Mr.A.S.Sriraman
for Mr.S.Sridhar

For Respondent : Mr.Karthik Renganathan
assisted by Mr.S.Rajesh
Standing Counsel

J U D G M E N T
(Delivered by DR.ANITA SUMANTH,J)

The appellant before us is a charitable Trust constituted under deed of Trust dated 28.08.1991 to carry out various objects in line with the stipulations of section 2(15) of the Income Tax Act, 1961 (in short 'Act').

2. The present appeal challenges an order of the Income Tax Appellate Tribunal dated 13.01.2009 and this Court, vide order dated 24.11.2009, has admitted the appeal on the the following substantial questions of law :

> '(i) Whether the Appellate Tribunal is correct in law in dismissing the appeal in limini being time-barred even though there were sufficient reasons for the belated filing of the appeal as averred in the affidavit filed before them, which reasons were apparently not considered in paragraph-4 of the impugned order?
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> (ii) Whether the Appellate Tribunal is correct in law in rejecting the prayer for condonation of delay in filing the appeal before them without granting adequate opportunity of hearing on the facts and in the circumstances of the case?

3. The sole issue that arises in the appeal is whether the Tribunal was right in not condoning the delay of 1160 days occasioned in filing an appeal challenging the order of the Commissioner of Income Tax (in short 'CIT') dated 19.10.2004.

4. The CIT, in the aforesaid order, had considered an application for registration under section 12AA of the Act filed by the appellant, granting registration with effect from 01.04.2004 i.e., assessment year 2005-06 onwards. The ground for challenge before the Tribunal was that registration ought to have been granted from the inception of the Trust, i.e., with effect from 28.08.1991 and not from 01.04.2004 only.

5. According to the appellant, the main activity of the Trust is to manage a school under the name and style of Jessy Matriculation Higher Secondary School. The entire administration of the school was being carried out by the Trustee and his wife. Since the Trustee, aged over 60 years had not been keeping good health, the entire responsibility of running the school has fallen upon his wife, who had, in view of various administrative and financial challenges, lost sight of filing the appeal in time.

6. The Tribunal has declined condonation for the reason that no evidence had been filed in support of the aforesaid explanation.

7. We find that the application for registration under section 12A before the CIT was itself filed belatedly. The CIT has declined condonation of the delay by way of a cryptic order granting registration only with effect from 01.04.2004.

However, evidently the charitable activities carried on by the assessee have not been disputed as the CIT has thought it fit to grant registration.

8. The Trust has been filing its return regularly and there is no dispute on the position that the Trust has been managing and running the school since 1991 till date. In our view, the interests of justice require that the delay is condoned and the matter remanded to the Tribunal for disposal on merits.

9. The learned Standing Counsel appearing for the Revenue is also fair enough not to raise any serious objection to oppose the present appeal.

10. In the light of the above discussion, the Tax Case (Appeal) is allowed directing the Tribunal to adjudicate upon I.T.A.No.344/Mds/2008 on merits after affording an opportunity of hearing to the parties, and pass orders within a period of one (1) month from the date of receipt of a copy of the present order. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1. The Income Tax Appellate Tribunal,
Madras 'C' Bench, Chennai

2. The Commissioner of Income Tax-I,
Tiruchirapalli.

3. The Income Tax Office (Head Quarters)
O/o. Commissioner of Income Tax-I,
Tiruchirapalli

4. The Assistant Commissioner of Income Tax
Company Circle-II, Trichy.

+1cc to Mr.Karthik Renganathan, Advocate, S.R.No.84149
+1cc to Mr.S.Sridhar, Advocate, S.R.No.84122

TCA No.621 of 2009

PPA(CO)
CS/19/02/2019