IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM

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

Tax Case Appeal No.887 of 2009

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

Vs.

Vijayapuram Chatram Trust
Mahalakshmi Mansion, I Floor,
No.14, I Main Road,
Gandhi Nagar, Adyar,
Chennai - 20. .... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 16.04.2009 made in ITA No.455/Mds/2008, against the order of the Director of Income Tax Exemption, Chennai dated 29/01/2008 in DIT(E)No.2(452)/02-03.

For Appellant : Mr.Karthik Renganathan

For Respondent : Mr.R.Kumar

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this appeal raising the following substantial questions of law arising from the order of the Income Tax Appellate Tribunal dated 16.04.2009 allowing the appeal of the assessee - Vijayapuram Chatram Trust in ITA No.455 (Mds)/2008:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that cancellation of registration under section 12AA cannot be done by the Director of Income Tax (Exemptions) as the word used in the section is "Commissioner"?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that there is no power to cancel the registration under section 12AA where immovable property was sold by the assessee trust without obtaining the approval of the Director of Income Tax (Exemptions) contrary to the undertaking given by it?”

2. Even though this Court by order dated 17.09.2009 admitted only question of law (i) quoted above, we feel it necessary to admit question (ii) also. Accordingly, question of law (ii) quoted above is also admitted.

3. The learned Tribunal held that the assessee/trust had given an undertaking before the learned Commissioner, who granted registration to the effect that the property of the trust would not be alienated. However, in the course of time, on certain disputes arising the matters were taken before the competent Civil Court and under the orders of the Civil Court, some of the properties of the trust were required to be sold. Under the Will executed by Mr.V.T.Somasundaram on 20.04.1981, under which the said Trust was created, even though it was stated that the building should be used for family trust activities and the income of the property should be used to manage the chatram and meals will be provided to Brahmins daily, the objects of the Trust were fulfilled by the sale of certain properties with the leave of Civil Courts and hostel for students was constructed and such poor students were also given food. The learned Tribunal, therefore, found that in such circumstances, the alleged breach of aforesaid Undertaking given by the assessee/trust before the learned Commissioner could not result in refusal of the renewal of registration of the trust for the purpose of availing exemption under the Income Tax Act, since the objects of the Trust could not be said to have been defeated by the aforesaid activities.

4. The learned counsel for the Revenue has urged before us that the sale of property of the Trust even though under the orders of the Civil Court will have no effect on the continuation of the registration under the provisions of Income Tax Act and since the Undertaking given before the learned Commissioner of Income Tax stood violated on the own showing of the assessee, the Tribunal has erred in allowing the appeal filed by the assessee and setting aside the order of the Director of Income Tax (Exemptions), Chennai dated 29.01.2008.

5. Learned counsel for the respondent/assessee has however supported the order passed by the Income Tax Appellate Tribunal.

6. Having heard the learned counsel, we are satisfied that the present appeal filed by the Revenue has no merit and deserves to be dismissed.

7. The findings of the learned Tribunal recorded in paragraphs 10 and 11 of the order dated 16.04.2009 are essentially findings of fact and do not reflect any breach of the objects of the said Trust by the sale of certain properties of the Trust under the orders passed by the Civil Court and no misuse of the funds by the trust for the activities which are not covered by the trust deed or the Will under which the said trust was created has been established. The registration of the trust under Section 12A of the Income Tax Act cannot be revoked or cancelled, unless specific findings are recorded, as the basis of evidence by the authorities concerned that the objects of the trust have been defeated or the funds of the trust have been diverted or misused for the purposes, other than the objects covered by the trust deed. There is no such finding against the Trust before us on record. The sale of property under the orders of the Civil Court was a due legal sanction for such sale of property and, therefore, the formal undertaking given before the Director of Income Tax (Exemptions) by the assessee/trust will not amount to defeating the objects of the trust so as to result in the cancellation of registration.

8. In view of the aforesaid, question No.(ii) stands answered against the Revenue and in favour of the assessee.

9. However, with regard to question No.(i) in respect of jurisdiction of Director of Income Tax (Exemptions) to pass the impugned order, we find that the relevant definition of the term "Commissioner" as defined under section 2(16) of the Act prior to substitution by Finance (No.2) Act 2014 with effect from 01.06.2013 and even after that included the Director of Income Tax within the definition of "Commissioner" and therefore to that extent, it cannot be said that the Director of Income Tax (Exemptions) had no jurisdiction to pass the impugned order dated 29.01.2008.

10. Accordingly this appeal is disposed of answering question No.(i) in favour of the Revenue and against the assessee and question No.(ii) in favour of the assessee and against the Revenue. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

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

2. Director of Income Tax (Exemptions)
   Ayakar Bhawan, Annexe III Floor,
   121, Mahatma Gandhi Road, Chennai.

+1cc to Mr.Karthik Ranganathan, Advocate SR.No.81865

+1cc to Mr.T.N.Seetharaman, Advocate SR.No.87230

TCA No.887 of 2009

SPD(CO)

GMY(27/12/2018)