IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.32 of 2011

The Director of Income-tax Exemption,
Chennai. ... Appellant/Respondent

-vs-

M/s.Sri.Krishna Trust,
32, Servai Munisamy Mudali Street,
Velapadi, Vellore - 632 001. ... Respondent/Appellant

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Bench 'C', Chennai, dated 18.08.2010, in I.T.A.No.815/Mds/2010 for the assessment year 2010-11, against the order passed by the Director of Income Tax (Exemptions), Chennai 600 034 order dated 26/02/2010 made in DIT(E)No.2(487)/09-10.

For Appellant : Mr.D.Prabhu Mukund Arunkumar
Standing Counsel

JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal, filed by the Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order passed by the Income Tax Appellate Tribunal Bench 'C', Chennai, dated 18.08.2010, in I.T.A.No.815/Mds/2010 for the assessment year 2010-11.

2.The appeal has been admitted by order dated 22.02.2011, on the following substantial question of law:-

> "Whether on the facts and circumstances of the case, the Tribunal was right on deciding that the Assessee should be deemed to have been granted the Registration u/s.12AA without considering the material facts of the case?

3.Heard Mr.Prabhu Mukund Arunkumar, learned Standing Counsel for the appellant revenue. Though the respondent/assessee has been served and their name is printed in the cause list, none appears for the respondent.

4.The short issue falls for consideration in the instant case is whether the respondent assessee would be deemed to have been granted registration under Section 12AA of the Act on the ground that the assessee's application for registration under the said provision was not accepted or refused before the expiry of six months from the end of the month in which the application is received in terms of Section 12AA(2) of the Act.

5.On a plain reading of Sub-section (2) of Section 12AA of the Act, we find that there is no such deeming provision. The Tribunal erred in including the words in the statute which cannot be done. Therefore, this is sufficient to interfere with the impugned order. That apart, the Tribunal came to the conclusion that no order has been passed by the Director of Income Tax (Exemptions) on the application filed by the assessee dated 21.08.2009. We do not agree with the finding of the Tribunal in this regard since the Director of Income Tax (Exemptions) has rejected the application. It may be true that the authority has used the word "lodged". However, the said word should be read in isolation. The said word is contained in paragraph 5 of the order. However, the reasons for not being convinced to grant registration is contained in paragraph 4 , which reads as follows:

> "4.Shri V.S.Ravindran attended the hearing on 29.01.2010 along with Shri S.Ramalingam, CA and they filed reply. It was examined. In the reply, it is stated that "manufacture of naturopathy medicine is to be given only to the patients coming for treatment to the clinic. It is not meant for sale to the general public". Hence, it is clear that the medicines will be sold to the patients coming for treatment to the clinic. Manufacturing and selling medicines are not charitable activities and it falls within the amended provisions of section 2(15) of the Income Tax. Likewise publishing books audio and visual materials relating to yoga also cannot be considered as charitable."

6.A reading of paragraph 5 along with the reasons assigned in paragraph 4 and the last sentence in the order which rejects the application for grant of exemption under Section 80G will clearly show that the request made by the respondent assessee for registration has been rejected and the reasons have been recorded for such rejection. Therefore, in our considered view, the order passed by the Tribunal is utterly perverse and unsustainable in the eye of law.

7.For the above reasons, the appeal filed by the revenue is allowed and the order passed by the Tribunal is set aside and consequently, the substantial question of law is answered in favour of the revenue. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Director of Income Tax (Exemptions) Chennai 600 034.

T.C.(A) No.32 of 2011

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