IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.03.2018**

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HON'BLE MR.JUSTICE **P.VELMURUGAN**

W.A.No.1037 of 2013
and M.P.No.1 of 2013

1.Director of Income Tax (Exemptions)
121 Mahathma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.Deputy Director of Income Tax (Exemption)
Annexe Building III Floor,
121 Mahathma Gandhi Road,
Nungambakkam, Chennai-600 034. ...Appellants

Vs

M/s.Chennai Port Trust,
Rep. by its Chairman,
Mr.Atulya Mishra,
No.1, Rajaji Salai,
Chennai-600 001. ...Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.No.23088 of 2011 dated 02.12.2011.

For Appellants : Mr.M.P.Senthil Kumar
for Mrs.Hema Muralikrishnan

For Respondent : Mr.N.Muthukumar

J U D G M E N T

(Judgment of the Court was delivered
by K.K.SASIDHARAN, J.)

The Chennai Port Trust initially filed returns for the assessment year 2006-2007 in Form No.10 within the due date treating it as a "Local Authority". Since registration under Section 12AA of the Income Tax Act was not granted as on that date, declaration in Form 10 was not furnished. The Chennai Port Trust immediately on receipt of declaration under Section 12AA of the Income Tax Act with retrospective effect submitted necessary documents claiming the benefit of exemption under Section 11 of the Income Tax Act. The appellant made a prayer for condonation of the delay on the ground that immediately after receipt of registration under Section 12AA with retrospective effect, necessary application in Form No.10 along with audit report in Form No.10(b) was filed. The Director of Income Tax (Exemptions) by order dated 30 December 2010 rejected the statement in Form No.10 on the ground that condonation can be given only when the assessee has not filed Form No.10 by oversight. According to the Director of Income Tax, it cannot be said that the non-filing of Form No.10 by the respondent was due to oversight. The application for condonation of delay for the Assessment Year 2006- 2007 for accumulation of income under Section 11(2) was rejected. The order dated 31 December 2010 was set aside by the learned single Judge in the writ petition in W.P.No.23088 of 2011. Feeling aggrieved, the appellants have come up with this intra court appeal.

2. The learned Standing Counsel for the appellants contended that the respondent used a different form for claiming exemption and as such, the Director of Income Tax was justified in rejecting the claim. According to the learned Standing Counsel, the original return filed on 31 October 2006 was in Form No.2, which was meant for non-corporate taxable assessees.

3. We have also heard the learned counsel for the respondent.

4. The respondent submitted returns for the assessment year 2006-2007 before the cut-off date. Since there was no registration under Section 12AA of the Income Tax Act, Form No.10 was not filed. It is a matter of record that even before the submission of returns for the assessment year, the respondent submitted application for registration under Section 12AA of the Income Tax Act. It is also a matter of record

that subsequently, the respondent was given registration retrospectively. There was absolutely no delay on the part of the assessee in filing Form No.10.

5. Form No.10 prescribed under Rule 17 of the Income Tax Act indicates that it is a notice to the Assessing Officer/Prescribed Authority under Section 11(2) as regards the accumulated income available or set apart, so as to enable the Trustees/governing body to accumulate sufficient funds for carrying out the purpose of the Trust/Association in terms of the memorandum of association/registration granted to the charitable institution.

6. The learned single Judge scanned the materials available on record including the date on which the assessee originally filed the return, the date on which Income Tax Appellate Tribunal remanded the matter, the date on which subsequent returns were filed, the date of registration under Section 12AA of the Income Tax Act and ultimately the date of filing Form No.10 and held that there was no exorbitant delay in filing the statutory forms.

7. The grounds taken in the memorandum of appeal was not the

ground on which the application for condoning the delay was rejected. In any case, we are of the view that the appellants have not made out a case to arrive at a finding that Form No.10 was belatedly submitted by the respondent without any justifiable reason. We are in full agreement with the views expressed by the learned single Judge.

8. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

(K.K.SASIDHARAN.,J.) **(P.VELMURUGAN, J.)**

21 March 2018

svki

To

The Chairman
M/s.Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.

K.K.SASIDHARAN, J.
AND
P.VELMURUGAN, J.

(svki)

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