IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.9.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) No.956 of 2010

Commissioner of Income Tax
Salem. ... Appellant

Vs.

St.Mary's Christian Charitable Trust,
"Voice of God Teacher Training Institute"
Devanarayanapuram,
Erumpatti, Namakkal 637 018. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 19.3.2010 made in ITA No.1269/Mds/2009 against the order dated 24/07/2009 in C.No.9755 (113)/SLM/2008-2009 on the file of Commissioner of Income tax No.3, Gandhi Road, Salem-7

For Appellant : Mr.J.Narayanasamy
Senior Standing Counsel
For Respondent : Mr.S.Sridhar

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

The Revenue has filed this Tax Case (Appeal) under Section 260-A of the Income Tax Act, 1961, aggrieved by the order dated 19.3.2010 passed by the learned Income Tax Appellate Tribunal allowing the Assessee's Appeal and directing the Commissioner to grant registration to the Assessee-Trust under Section 12AA of the Act as it fulfilled all the requisite conditions.

2. The relevant portion of the order passed by the learned Income Tax Appellate Tribunal is quoted below for ready reference:-

> "9. We have considered the above submissions. In a recent decision the Hon'ble P&H High Court in the case of Pinegrove International Charitable Trust v. UOI, CWP No.6031 of 2009 judgment dated 29.1.2010, 1 Taxman.com 81 (a copy of which has

been filed) it has been held thus:

> "Merely because there are surplus in hands of an educational institution would not ipso facto lead to an inevitable conclusion that such an educational institution is existing for making profits and not solely for educational purposes. The interpretation putforth by the Chief Commissioner that there has to be reasonable profit only and then only an institution can be said to be not existing solely for the purposes of profit, is totally a misconception of law."

10. To arrive at the above conclusion, decision of the Hon'ble Delhi High Court in the case of American Hotel and Lodging Association Educational Institute vs. CBDT (2007) 289 ITR 46, against which SLP has been dismissed by the Hon'ble Apex Court has been discussed and relied. In this decision, further decision of CIT v. Jyoti Prabha Society (2009) 177 Taxman 429 (Uttarakhand) has been discussed threadbare including that of Birla Vidya Vihar Trust vs. CIT (1981) 7 Taxman 391 and also other decisions including the cases of --

(i) Mohinder Singh Gill vs. Chief Election Commissioner, AIR 1978 S.C. 851.

(ii) Aditanar Educational Institute vs. Addl. CIT (1997) 224 ITR 310 (S.C.).

11. Therefore, in view of the submissions and our above noted observation, we are of the considered opinion that accumulation of surplus in the hands of an educational institution would not, ipso facto, lead to an irresistible conclusion that such an educational institute is existing for making profits and not solely for educational purposes. There is no other valid and independent evidence to support the above conclusion. Therefore, we direct the CIT to grant registration to the assessee-trust u/s 12AA of the Act, as it fulfils all the requisite conditions.

12. In the result, the appeal of the assessee is allowed."

3. The Appeal was admitted on 14.9.2010 by a coordinate Bench of this Court on the following substantial questions of law:-

"(1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in directing the Commissioner of Income Tax to grant registration to the assessee trust u/s.12AA of the Act holding that it fulfilled all the requisite

conditions?
(2) Whether the Income Tax Appellate Tribunal was right, in the light of the facts of the case and the rulings of various High Courts and Supreme Court, in not holding that the educational institutions were being run by the assessee Trust on commercial line with a view to earn large profits, and that the Commissioner of Income Tax had rightly rejected the applications u/s.12AA?"

4. The learned Senior Standing Counsel Mr.J.Narayanasamy appearing for the Revenue has urged before us that the learned Commissioner of Income Tax, in his order dated 24.7.2009, in para 4.1 has found as under:-

"4.1 It is also noticed that the trust is making systematic profits year after year as per the following table:

	Gross Receipt	Surplus Income (excluding interest on bank deposit)	Percentage %
Asst.Year 2006-2007	Rs.21,30,000	Rs.4,04,799	19%
Asst.Year 2007-2008	Rs.31,04,000	Rs.15,16,772	49%
Asst.Year 2008-2009	Rs.30,00,000	Rs.14,51,132	48%
Asst.Year 2009-2010 (Provisional Accounts	Rs.42,42,000	Rs.34,37,840	81%

Bank deposits have been made out of donations received from Mathammal Sheila Christian Trust. Interest earned on these deposits have been excluded to arrive at real net surplus from activities carried out by the applicant trust. Since the trust is making profit year after year, the functioning of the trust cannot be termed as charitable as laid down in the Uttaranchal High Court's decision in the case of CIT v. M/s.Queen Educational Society reported in 223 ITR 395."

He further submitted that there was a systematic increase of surplus in the Profits of the said Registered Trust which resulted in the findings against the Assessee that the Assessee did not exist for charitable purpose and therefore, the Registration under Section 12AA of the Act was liable to be cancelled.

5. The learned Commissioner of Income Tax had relied upon a decision of the Utharkhand High Court in CIT v. M/s.Queen Educational Society (223 ITR 395) but, the decision of Uttarakhand High Court came to be reversed by the Hon'ble Supreme Court in Queen's Educational Society v. Commissioner of Income-tax (372 ITR 699 (SC)) wherein the Hon'ble Supreme Court held as under:-

> "25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act."

6. Since the judgment of the Uttarakhand High Court was reversed and the Hon'ble Supreme Court and it has laid down that the earlier decision of the Hon'ble Supreme Court in the case of Additional CIT v. Surat Art Silk Cloth Manufacturers Association ((1980) 121 ITR 1), Aditanar Educational Institution

v. Addl. CIT ((1997) 224 ITR 310 (SC)) and American Hotel & Lodging Association Educational Institute v. CBDT ((2008) 301 ITR 86) have to be followed in this regard and since there is no finding of fact by the learned Commissioner of Income Tax that the surplus income generated by the said Trust was diverted for other purposes or employed for the purposes not specified in the registered Trust Deed, such cancellation of Registration under Section 12AA could not have been made.

7. In the light of the Supreme Court's decision, we do not find any error in the order passed by the learned Tribunal as the decision relied upon by the Commissioner of Income Tax of Uttarakhand High Court stands reversed by the Hon'ble Supreme Court. In view of the same, we answer the questions framed against the Revenue and in favour of the Assessee. The Appeal filed by the Revenue is liable to be dismissed and accordingly, it is dismissed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ssk.

To

1. Commissioner of Income Tax
Salem.

2. The Income Tax Appellate
Tribunal B Bench Chennai

3.The Commissioner of Income Tax
No.3 Gandhi Road,
Salem 7

+1 cc to Mr.J.Narayanasamy Advocate sr 76369
+1 cc to Mr.S.Sridhar Advocate sr76075

TC(A) No.956 of 2010

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