IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

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

Tax Case (Appeal) No.270 of 2011

Commissioner of Income Tax
Salem. .. Appellant/Respondent

-vs-

M/s.Arvinth Charitable Trust,
No.17, Rangar Sannathi Street,
Namakkal- 637 001. .. 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 22.12.2010, passed in I.T.A.No.267/Mds/2010. Against the Order of the commissioner of Income Tax Salem, Order dated 29/01/2010 made in C.No.9755(55) SLM/2009-2010.

For Appellant : Mr.J.Narayanaswamy, Standing Counsel

For Respondent : Mr.R.Venkatanarayanan for M/s.Subbaraya Aiyar, Padmanabhan & Ramamani

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue filed 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 (for brevity "the Tribunal"), dated 22.12.2010, in I.T.A.No.267/Mds/2010.

2.The above appeal has been admitted, vide order dated 20.07.2011, on the following substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in directing the Commissioner of Income Tax to grant registration to the applicant Trust under Section 12AA of the Income Tax Act on the ground

that at the stage of consideration of the application for registration, the Commissioner of Income Tax should examine only the objects as stated in the trust deed and other matters should be examined only at the time of making regular assessment?

(ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the applicant trust is entitled to registration under Section 12AA of the Act in spite of the several infirmities in the Trust deed and activities of the trust and the huge margin of profits earned by the trust in running the Nursing College that have been brought out in detail by the Commissioner of Income Tax in his order?"

3.We have heard Mr.J.Narayanaswamy, learned Standing Counsel appearing for the appellant/Revenue; and Mr.R.Venkatanarayanan, learned counsel appearing for the respondent/assessee.

4.The respondent-Trust applied for registration in Form No.10A, dated 22.07.2009 under Section 12AA of the Act. The application was rejected by the Commissioner of Income Tax, Salem, vide order 29.01.2010.

5.The Commissioner, in the said order, analysed the various clauses in the trust deed, the nature of the activities, which they were carrying on, the fee levied on the students in the nursing college, etc., and came to the conclusion that neither the activities of the trust are charitable, nor the funds of the trust are invested for the benefit of the trust. Challenging the same, the assessee filed appeal before the Tribunal. The Tribunal, vide the impugned order, allowed the assessee's appeal and set aside the order passed by the Commissioner and directed the Commissioner to grant registration to the trust and allow the claim of the assessee. Challenging the correctness of the said order, the Revenue is before us.

6.We have perused the order passed by the Commissioner dated 29.01.2010, and we find the order to be a well reasoned order. The Commissioner has examined the objects of the trust, who are all the trustees, the lease deed, the construction put up, checked the tax which they impart, the fee they have collected from the students and after taken into consideration all the factual aspects, held that the activities of the trust are not charitable and the funds of the trust are not invested for any charitable purpose. If the Tribunal was of the view that the order passed by the Commissioner needs to be reversed, then the Tribunal requires to give a factual finding as to how the Commissioner erred in appreciating the materials placed before him and how the Commissioner erred while recording his satisfaction in terms of Section 12AA(1)(a) of the Act. Further, we find that the Tribunal made a remark that running of a nursing college itself is charitable. We do not agree with the said finding because, the Commissioner while rejecting the application found that the trust collects a sum of Rs.2,72,000/- as fees from the candidates, who are admitted to the nursing course. Therefore, the burden is heavily on the assessee to prove that the objects of the trust are bona fide and there is bona fide charitable activity being done.

7.The learned counsel appearing for the respondent/assessee referred to the definition of "charitable purpose" as defined under Section 2(15) of the Act. It is the submission that the definition is an inclusive definition and education is one of the aspects mentioned therein and therefore, the activities of the trust are deemed to be charitable in nature. It is true that the definition of "charitable purpose" as defined under Section 2(15) is an inclusive definition to qualify for a registration under Section 12AA of the Act. The Commissioner should be satisfied about the genuineness of the activities of the trust or the institution, and is entitled to make such an enquiry, as he deems necessary in this behalf. In the opinion of the Commissioner, the assessee did not satisfy the requirements.

8.One more aspect which is to be noted is that the proviso to Section 2(15) of the Act provides that advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Therefore, in our considered view, the Tribunal failed to properly examine the contentions advanced by the Revenue and by a non-speaking order, allowed the appeal filed by the assessee. Therefore, we are of the considered view that the matter requires to be re-considered by the Tribunal.

9.The learned counsel for the respondent/assessee relied upon Circular No.14/2015, dated 17.08.2015 whereby, the Board issued "'clarification on certain issues relating to grant of approval and claim of exemption under Section 10(23C)(VI) of the Act". In our view, if this clarification comes to the aid of the assessee, it is well open to the assessee to place the same for consideration before the Tribunal for de nova consideration.

10.For the above reasons, the appeal filed by the Revenue is allowed, the impugned order passed by the Tribunal is set aside, and the matter is remanded to the Tribunal to decide the same afresh, after taking into consideration all the facts and circumstances of the case. It is well open to the assessee to place all materials before the Tribunal to decide their claim for registration under Section 12AA of the Act.

11.Mr.J.Narayanaswamy, learned Standing Counsel pointed out that the circular will have no application to the facts of the case because, the same is pertaining to Section 10(23C) and the present proceedings is relating to claim for registration under Section 12AA.

12.The learned counsel appearing for the respondent/assessee pointed out that the Commissioner while rejecting the registration under Section 12AA, had followed the decision in the case of CIT vs. M/s.Queens Educational Society, (2009) 319 ITR 160. This decision has been reversed by the Hon'ble Supreme Court in Queen's Educational Society vs. Commissioner of Income Tax, (2015) 372 ITR 0699 (SC).

13.In the preceding paragraphs, we have recorded our satisfaction as to how the Tribunal failed to record its satisfaction with regard to the factual aspect dealt with by the Commissioner. Therefore, first the assessee should convince the Tribunal on facts that their activities, obligation of the income etc., qualify for a charitable purpose. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income-tax Appellate Tribunal, Bench 'C', Chennai.

2.The Commissioner of Income-tax,
No.3, Gandhi Road, Salem-7.

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.7967
+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No. 8335

T.C.(A) No.270 of 2011

CP(CO)
GN(13/03/2019)