IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2019

CORAM

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

Tax Case (Appeal) Nos.526 and 527 of 2011

The Director of Income Tax [Exemptions],
Chennai. ... Appellant in both the Appeals

-vs-

Founder Ramachandra Iyer Trust,
No.5, Main Road,
Dr.Subbaraya Nagger, Kodambakkam,
Chennai-600 024. ... Respondent in both the Appeals

APPEALS under Section 260A of the Income-tax Act, 1961 against the common order dated 10.05.2011, made in I.T.A.Nos.2143 and 2144/Mds/2010, on the file of the Income-tax Appellate Tribunal, Chennai Bench 'D' against the proceedings of the Director of Income Tax (Exemptions), Chennai DIT(E)No.2 (1270)/09-10, dated 30.09.2010

For Appellant : Mr.J.Narayanaswamy,
(In both the Appeals) Senior Panel Counsel

For Respondent : M/s.Pushya Sitaraman,
(In both the Appeals) Senior Counsel
: assisted by M/s.J.Sree Vidya

COMMON JUDGMENT

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

These appeals, by the Revenue filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), are directed against the common order of the Income-tax Appellate Tribunal, Chennai Bench 'D' (for brevity “the

Tribunal"), in I.T.A.Nos.2143 and 2144/Mds/2010, dated 10.05.2011.

2.The above appeals were admitted, on 12.12.2011, on the following substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case, the tribunal was right in deciding the object of the Trust are charitable on nature contrary to the mandatory provisions stipulated under Section 12AA of the Act?
>
> (ii) Whether on the facts and circumstances of the case, the Tribunal was right in deciding to consider afresh for the approval under Section 80G without considering explanation 3 read with Sec.80G of the Act?"

3.Heard Mr.J.Narayanaswamy, learned Senior Panel Counsel for the appellant; and M/s.Pushya Sitaraman, learned Senior Counsel, assisted by M/s.J.Sree Vidya, learned counsel for the respondent.

4.The assessee applied for registration under Section 12AA of the Act, vide applications dated 15.03.2010 filed in Form 10A and Form 10G. The assessee constituted a Trust under a Deed of Trust dated 05.03.2010, and requested for registration under Section 12AA and also for grant of approval under Section 80G of the Act. The applications were rejected by the respondent on the ground that the assessee has not undertaken any activity on its own towards implementation of the objects of the trust. Further, in respect of the application for grant of approval under Section 80G of the Act, the respondent held that in terms of Section 80G, even if any one of the activities of a trust is wholly or substantially wholly of a religious nature, then the trust would not come in the scope of Section 80G. The assessee filed appeals before the Tribunal, which were allowed by the impugned order. The correctness of the same is questioned before us by the Revenue.

5.The first substantial question of law alone survives for consideration, since pursuant to the observations made by the Tribunal in the impugned order, the respondent has considered the application filed by the assessee for grant of approval under Section 80G of the Act and has granted the same, vide order dated 13.06.2012. Therefore, there is no necessity to decide the second substantial question of law. This leaves us with one substantial question of law to be decided, viz., the first substantial question of law.

6.The Tribunal, while considering the correctness of the order passed by the respondent dated 30.09.2011, pointed out that the objects of the trust are definitely charitable in nature. To support such a finding, the activities done by the trust were noted by the Tribunal in paragraph 6 of its order.

7.We find the reasons assigned by the Tribunal to be legally valid and perfect. As pointed out by us earlier, the respondent rejected the applications on the ground that the assessee had not commenced any activity.

8.To be noted that the assessee constituted a trust on 05.03.2010 and made applications on 15.03.2010. Therefore, in such circumstances, it has to be seen as to whether the respondent was justified in rejecting the applications on the ground that no activities of the trust have been shown, though ten days had lapsed after the formation of the trust.

9.Identical issue was considered by the Division Bench of this Court in the case of Director of Income Tax Exemptions vs. Seervi Samaj Tambaram Trust, (2014) 362 ITR 0199 (Mad) wherein, it was held that where the genuineness of the objects of the trust was not doubted, registration under Section 12AA of the Act cannot be refused on the ground that the trust has not yet started its activities.

(i) Further, in the case of Director of Income Tax Exemptions vs. Sri Arunachala Smaranamrutam Trust [T.C.(A) No.403 of 2013: dated 05.01.2015], a Division Bench of this Court held that refusing the registration on the threshold, when the genuineness of the objects of the trust was never questioned, was held to be bad in law.

(ii) Similar view was taken by the Division Bench of this Court in the case of CIT vs. Desperate for Him Ministries [T.C.(A) No.319 of 2012: dated 05.01.2015].

10.Thus, for the above reasons, we find that the order passed by the Tribunal to be just and proper, and legally correct.

11.In the result, these tax case appeals are dismissed and the first substantial question of law is answered against the Revenue. No costs.

abr

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

2. The Director of Income Tax
(Exemptions),
Nungambakkam,
Chennai.

+1cc to Mrs.R.Sreevidya , Advocate, S.R.No.6239

+1cc to Mr.J.Naryanaswamy , Advocate, S.R.No.5366

T.C.(A) Nos.526
and 527 of 2011

RK(CO)
KAK(25/02/2019)