IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.10.2019
CORAM :
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P.No.32040 of 2013

Navadisha Educational Trust,
No.635/1, 3rd Cross Street,
Kalki Nagar,
Near AG'S Colony VI Main Rd,
Velachery, Chennai - 600 042.
Represented by its Managing Trustee,
Rukmani Ramachandran ... Petitioner

Vs.

1.The Director of Income-tax (Exemptions),
124, M.G. Road,
Chennai - 600 034.
2.The Deputy Director of Income-tax (Exemptions),
124, M.G. Road,
Chennai - 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, to direct the 1st Respondent to consider the Application filed in Form No.10A on 30.03.2010 for registration of charitable trust/institution u/s.12A of the Act.

For Petitioner : Mr.R.Venkata Narayanan for M/s.S.Subbaraya Aiyar Padmanabhan
For Respondents : Mr.D.Prabhu Mukunth Kumar Junior Standing Counsel (I.T.)

ORDER

The petitioner has sought a mandamus directing the 1st respondent, the Director of Income Tax (Exemptions) to consider the application filed by it in Form No.10A on 30.03.2010 for Registration under Section 12A of the Income Tax Act, 1961 ('Act').

2.No counter has been filed, but, Mr.D.Prabhu Mukunth Kumar, learned counsel appearing for the respondents, confirms that till date no order has been passed on the aforesaid application.

3.The provisions of Section 12AA of the Act, reads thus:

'[Procedure for registration.

12AA. (1) ....

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months

from the end of the month in which the application was received under clause (a) [or clause (aa) [or clause (ab)] of sub-section (1)] of section 12A.]'

4.The Supreme Court, in the case of Commissioner of Income Tax and another Vs. Society for the Promotion of Education (382 ITR 0006), confirms the order of a Division Bench of the Allahabad High Court, to the effect that the Registration of an application under Section 12AA of the Act shall take effect six months from the date of the said application. In the present case, the application has been filed on 30.03.2010. Thus, the registration sought for shall be effective on and after 30.09.2010. The relevant part of the judgment of the Allahabad High Court and the confirmation of the same by the Supreme Court are extracted below.

5.The decision of the Allahabad High Court reported in the case of Society for the promotion of Education Adventure Sport & Conservation of Environment vs. Commissioner of Income Tax and Others (372 ITR 0222) is as follows:

'17.Considering the pros and cons of the two views, we are of the opinion that by far the better interpretation would be to hold that the effect of non-consideration of the application for registration within the time fixed by section 12AA(2) would be a deemed grant of registration. We do not find any good reason to make the assessee suffer merely because the IT Department is not able to keep its officers under check and control, so as to take timely decisions in such simple matters such as consideration of applications for registration even within the large six month period provided by s. 12AA(2) of the Act.

18.We accordingly direct the respondents, subject to any order which may be passed under s. 12AA(3), to treat the petitioner society as an institution duly approved and registered under s. 12AA and to recompute its income by applying the provision of s. 11 of the Act. Accordingly, a formal certificate of approval will be issued forthwith to the petitioner by the respondent No.2.'

6.The judgment of the Supreme Court in the case of Society for the Promotion of Education (supra) is to the following effect:

'3.The short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

4.The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of 24.02.2003, at the worst, the same would operate only after six months from the date of the application.

5.We see no basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent shall take effect from 24.08.2003.'

7. In the light of the above, the mandamus, as sought for by the petitioner is issued and the respondent directed to pass an order in the light of the Judgement of the Supreme Court as above within two weeks from date of receipt of a copy of this order. This writ petition is allowed. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

vs

To

1.The Director of Income-tax (Exemptions),
124, M.G. Road, Chennai - 600 034.

2.The Deputy Director of Income-tax (Exemptions),
124, M.G. Road, Chennai - 600 034.

+1cc to Mr.S.Subbaraya Aiyar, Advocate, SR.No.87542.
+1cc to Mr.Hema Muralikrishnan, Advocate, SR.No.87252.

W.P.No.32040 of 2013

RK(CO)
CSR: 10/01/2020019