IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.285 of 2013

Director of Income Tax, Exemptions,
Chennai. .. Appellant/Respondent

-vs-

M/s.Alpha India Foundation,
1/123, Mettu Street,
Salamangalam, Padappai,
Chennai-601 301. .. Respondent/Appellant

Appeal under Section 260A of the Income-tax Act, 1961 against the order dated 07.11.2012 on the file of the Income-tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.No.1213/Mds/2012 Against the order of the Director of Income Tax(Exemptions) chennai 34 dated 27.04.2012 and made in DIT(E).NO.2(567)11-12.

For Appellant : Mr.J.Narayanaswamy,
Senior Standing Counsel

For Respondent : Ms.G.Vardine Karthik

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

This appeal by the appellant/Revenue, under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order dated 07.11.2012, passed by the Income-Tax Appellate Tribunal 'D' Bench, Chennai (for brevity, “the Tribunal”), in I.T.A.No.1213/Mds/2012.

2.The above appeal was admitted on 09.07.2013, on the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee trust is entitled for registration under Section 12AA of the Act when the preamble of the trust deed clearly mentions only about benefiting one religion?
>
> (ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee trust is entitled for registration under Section 12AA of the Act when the objects of the trust mention both religious and charitable objects, in violation of Section 11(1)(a) which only allows exemptions to the trust which is either charitable or religious and not both?"

3.We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel for the appellant/Revenue; and Ms.Vardine Karthik, learned counsel for the respondent/assessee and we have perused the order passed by the Tribunal.

4.We find that the Tribunal took note of the factual position and held that even if the assessee Trust is only religious in nature, it would still be entitled for registration under Section 12AA of the Act.

5.In this regard, reliance was placed on the decision of this Court in T.C.A.No.648 of 2011, dated 06.02.2012 in CIT vs. The Mispha Pentecostal Mission, Neerali Thattuvilai Muzhicode wherein the objects of the assessee Trust were both in religious and charitable and it was held that merely because the objects of the Trust are both religious and charitable, that would not be a ground for denying registration under Section 12AA of the Act.

6.In Director of Income Tax Exemptions vs. Seervi Samaj Tambaram Trust, (2014) 362 ITR 0199 (Mad), it was held that there was no bar in granting registration to trust, even if the trust has both charitable as well as religious objects. The operative portion of the decision read as follows:-

> "6. The very issue raised by the Revenue has been dealt with by a Division Bench of

this Curt in the case of CIT V. Arulmighu Sri Kamatchi Amman Trust reported in (2012) 206 Taxman 69. In the said case, the respondent/assessee sought for registration under Section 12AA of the Income Tax Act on the ground that the object of the Trust was religious. The Commissioner of Income Tax rejected the application on the ground that the Trust was spending money in receipts towards religious and administrative purposes and the activities claimed to be carried on by the said Trust were an admixture of both religious and charitable. The said Trust filed an appeal before the Income Tax Appellate Tribunal. Following the decision in the case of CIT V. Upper Ganges Sugar Mills Ltd. reported in 227 ITR 578 and in the case of State of Kerala V. MP.Shantiverma Jain reported in (1998) 231 ITR 787 (SC), the Tribunal allowed the appeal. Challenging the same, the Revenue filed an appeal before this Court contending that the Tribunal failed to appreciate the activities claimed to be carried on by the said assessee, which was an admixture of both religious and charitable in nature. Therefore, the Tribunal ought not to have interfered with the order of the Commissioner of Income Tax. The Division Bench of this Court, after taking into consideration the provision under Section 11 (1)(a) of the Income Tax Act, which states that subject to the provisions of sections 60 to 63, the income derived from property held under trust wholly for charitable or religious purposes, to the extent of which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property shall not be included in the total income of the previous year of the person in receipt of the income. Thus, the Division Bench held "from a reading of the above, it is clear that the income derived from the property held under trust wholly for charitable or religious purpose, shall not be included in the total income of the Trust. Therefore, the said provision would be applicable to both the Trusts established with the object of charitable as well as religious purposes. Therefore, Section 12AA of the Income Tax Act does not make any difference between the Trusts created with the object of charitable and religious purposes and, even if the Trust is not created with both the objects, law does not make any disqualification for the trust to make an application for registration. Therefore, the Tribunal has correctly applied the provision of law and allowed the appeal."

7. The above-said decision squarely applies to the facts of the present case. Further, in the case of The Director of Income Tax (Exemptions), Chennai V. The Chartered Accountant Study Circle reported in CDJ 2012 MHC 658, the Division Bench of this Court, after taking note of the objects of the said Trust, which among other things was to conduct periodical meetings on professional subjects and to achieve the said objects, the assessee was publishing books, booklets, etc. on professional subjects and selling the same only on the subjects related to audit and not on any other subject and after analysing the objects of the said trust, pointed out that the activities of the said trust in publishing and selling books of professional interest, which were meant to be used as a reference material even by the general public as well as the professionals in respect of Bank Audit, Tax Audit etc., could not be construed to be one of commerce in nature. Further, it was pointed out that under Section 12AA of the Income Tax Act, while considering the application, the Officer has to satisfy about the genuineness of the activity of the trust or the institution and for that reason, he may also make such enquiries as he deem it necessary in that behalf."

7.In the light of the above, we find that there is no error in the order passed by the Tribunal.

8.Accordingly, the appeal stands dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//
Sub Assistant Registrar

abr
To

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

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

+1cc to Mr.J.Narayanaswamy , Advocate SR.No. 73467
+1cc to Mr.J.Sreevidhya, Advocate SR.No. 71915

T.C.A.No.285 of 2013

A.SK(15/10/2019)