In the High Court of Judicature at Madras

Dated : 28.6.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.402 of 2019

M/s.Tamil Nadu Leather Tanners
Exporters Importers Association,
Chennai-3 ...Appellant

Vs

The Income Tax Officer (Exemptions),
Ward 2, Chennai ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 to set aside the order dated 28.11.2018 made in ITA.No.841/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2012-13. Prefered against the order of the Commissioner of Income Tax (Appeals)-17, Chennai dated 22.01.2018 made in ITA No.116/2015-16 for the assessment year 2012-2013 against the order dated 27.03.2015 passed by the Income Tax Officer (Exemptions), Ward-2, Chennai.

For Appellant : Mr.A.S.Sriraman
For Respondent : Mr.J.Narayanaswamy, SSC

Judgment was delivered by T.S.Sivagnanam,J

This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for brevity, the Act), is directed against the order dated 28.11.2018 made in ITA.No.841/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench (for short, the Tribunal) for the assessment year 2012-13.

2. The assessee filed this appeal by raising the following substantial questions of law :

> "1. Whether the Appellate Tribunal is correct in law in denying the tax exemption under Section 11 of the Act for the assessment year under consideration despite the continued availability of registration

under Section 12A(a) of the Act for the appellant as a public charitable trust?

2. Whether the Appellate Tribunal is correct in law in denying the tax exemption under Section 11 of the Act for the assessment year under consideration on the misconstruction of the Provisos below Section 2(15) of the Act while recording perverse findings of fact on the activity pursued as a trading activity ?

3. Whether the Appellate Tribunal is correct in confirming the assessment order passed for the assessment year under consideration without examining the objects and financial statements of the appellant for the purpose of considering the grant of tax exemption on the principles of mutuality ? And

4. Whether the Provisos below Section 2 (15) of the Act would get attracted to the activity of the appellant aimed at protecting the environment for the purpose of testing the availability of tax exemption benefit under Section 11 of the Act?"

3. We have heard Mr.A.S.Sriraman, learned counsel appearing for the assessee and Mr.J.Narayanaswamy, learned Senior Standing Counsel accepting notice for the respondent - Revenue.

4. In the assessee's own case for the assessment years 2009-10, 2010-11 and 2011-12, the Tribunal, by a common order dated 03.8.2017, dismissed the appeals filed by the assessee thereby denying the benefit of tax exemption computation despite recognition in the form of continued registration under Section 12A(a) of the Act. The said common order dated 03.8.2017 was challenged by the appellant - assessee before this Court in TCA.Nos.705 to 707 of 2018 and by a common judgment dated 24.6.2019, we allowed the appeals, set aside the common order passed by the Tribunal and remanded the matters to the Tribunal for a fresh consideration on all issues that may be raised by both the assessee as well as the Revenue.

5. The relevant portions of the said common judgment dated 24.6.2019 in TCA.Nos.705 to 707 of 2018 read as follows :

"10. It was also necessary to consider the fact of Circular No.11 of 2008 dated 19.12.2008, issued by the CBDT and the operative portion of which are as follows:

'3.1. There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'.

Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15).'

11. Further, we may note the decisions on this point more particularly the followings:

India Trade Promotion Organization Vs. The DGIT (371 ITR 333); Institute of Chartered Accountants of India Vs. DGIT (358 ITR 91); ACIT Vs. South India Hire Purchase Association (116 ITR 793); CIT Vs. India Pepper & Spice Trade Association (111 ITR 206) and Madras Kirana Merchants Association Vs. Commissioner of Income Tax (111 ITR 156).

12. Apart from the above decisions, there are other decisions of the Chennai Bench of the Tribunal in the case of Income Tax (Exemptions) Vs. All India Skins and Hide Tanners and Merchants Association in ITA.Nos.1240 to 1242/Mds/2016 dated 23.09.2016 and Income Tax Officer (Exemptions) Vs. All India Skins and Hide Tanners and Merchants Association in ITA. No.1851/Mds/ 2017 dated 06.10.2017.

13. In this case also the earlier decision of the Tribunal dated 25.03.2013 has been referred to. We have pointed out these orders only for the purpose that in those cases the objectives of the concerned

assessee were analysed by the Tribunal. However, we find such exercise was not done in the instant case, which was required to be done. We also make it clear that we have not expressed any opinion on the merits of the matter but, what we are concerned is that, an exercise should be done to examine the contention advanced by the assessee. More particularly, the contention which were raised in this appeal and the decisions which were cited at the bar.

14. One more aspect, which weighed in our minds is the show cause notices issued by the Director of Income Tax (Exemptions). The first of which was issued on 04.03.2009, calling upon the assessee to explain as to why the registration granted under Section 12AA of the Act should not be cancelled. The assesseee submitted their reply dated 27.03.2009, no orders were passed and the matter was not pursued further. Subsequently, the Director of Income Tax (Exemptions) issued another show cause notice on 01.11.2011 for the same purpose. The assessee submitted their reply dated 16.11.2011. In the said reply, the following stand was taken by the assessee:

'g.) As explained above, our Association have imported wattle extract, a raw material essential for leather tanning and available only in African countries, and distributed among the members of the trade at a lesser rate than usually available in the market. For the service the Association has never charged any fee, cess are any other consideration from the individual receivers and users.

h.) Instead of individual member placing order in the foreign countries, wasting time, labour and money in import formalities, the Association pooled the demand and placed bulk orders resulting in large economy. Even this activity of the Association is assumed to, but without conceding, in the nature of service rendering to any trade, commerce or business, but definitely not carried out for any cess or fee or any other consideration.

i.) Proviso to section 2(15) of Income Tax Act doesn't exclude the activity involves in the nature of trade, commerce or business or rendering any service in relation to any trade, commerce, or business in entirety from the definition of "charitable purpose", but it outlined the above referred activities from the ambit of the definition of "charitable purpose" only if it is carried out for a cess or fee or any other consideration.

j.) In our Association's case, from the wattle extract distribution activity some surpluses are arising due to the following reasons:

i.) At the time of clearing the consignment of wattle extract from foreign countries, the exact cost per ton could not be ascertained because of interest rate and uncertainty in the period of repayment of loan availed from the bank for importing the raw materials and fluctuations in foreign exchange.

ii.) So the Association fixed an "adhoc"cost for distribution of wattle extract with the help of market experts in such a manner that the "adhoc"cost fixed should not exceed the price for the same material available in the market and at the same time it should not cost the Association a loss.

Thus wattle extract distribution and the cost fixing for the distribution are done neither for any profit motive nor for any cess, fee or other consideration.

k.) Thus wattle extract distribution activity carried out by the Association is not done for any cess or fee or any other consideration and hence submit that the Association does not violate the provisions contained in section 2(15) of the Income Tax Act.

8.) To sum up, the Honorable DIT(E)'s proposal to initiate proceeding u/s.12AA(3) is wholly devoid of merits and is not based on any valid or proper provisions of law. The amendment to section 2(15) by itself does not vest in DIT(E) the power to cancel the registration of a Trust which carries on, among others, certain objects constituting the "Advancement of General Public Utility". Even where the fourth limb of the definition is included as part of the objects of the trust it is only that specified object which can be linked and treated as non-charitable and would not justify the cancellation of the registration of the trust as a whole.

In the above circumstances, we request the Hon'ourable DIT(E) to drop his proposal to initiate proceedings u/s.12AA(3).'

15. The learned counsel appearing for the appellant/assessee submitted that on receipt of the aforementioned reply the proceeding proposing to cancel the said registration under Section 12AA was dropped and till date the assessee is enjoying such registration. However, Mr.J.Narayanaswami, learned Senior Standing Counsel, does not have any instructions in that regard but would submit that in any event, the facts of the case is only relevant factor to be gone into.

16. In the light of the above, we are of the opinion that the matter requires reconsideration by the Tribunal by examining the factual matrix in greater depth. For the above reason, this appeal is allowed. The order passed by the Tribunal is set aside and the matter is remanded back to the Tribunal for fresh consideration to consider all issues that may be raised by the assessee as well as by the Revenue. We make it clear that we have not expressed any opinion on the merits of the contentions advanced by the appellant/ assessee nor the defence, which was raised before this court by Mr.J.Narayanaswami learned counsel for the Revenue.

17. Consequently, the substantial questions of law are left open."

6. The order impugned before us in this appeal is identical to that of the common order impugned in TCA.Nos.705 to 707 of 2018, as the said common order was followed in the present order passed by the Tribunal. Therefore, this appeal needs to be disposed of on the same lines as TCA.Nos. 705 to 707 of 2018 were disposed of.

7. In the result, the above tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for a fresh consideration of all the issues that may be raised by both the assessee as well as the Revenue. The appeal filed before the Tribunal for the assessment year 2012-13 can be taken up together with the appeals relating to the assessment years 2009-10, 2010-11 and

2011-12, which were remanded for a fresh consideration before the Tribunal vide our judgment dated 24.6.2019 in TCA.Nos.705 to 707 of 2018. We make it clear that we have not expressed any opinion on the merits of the contentions advanced by the appellant - assessee nor the defence, which was raised by the Revenue. Consequently, the substantial questions of law raised are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Chennai 'D' Bench.
2.The Income Tax Officer (Exemptions), Ward 2, Chennai
3.The Commissioner of Income Tax (Appeals)-17,
Chennai-34.

+1cc to M/s.S.Sridhar, Advocate, Sr.No.53785
+1cc to M/s.J.Narayanaswamy,Advocate, Sr.No.53971

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