IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM :

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

Tax Case Nos.705 to 707 of 2018

M/s. Tamil Nadu Leather Tanners Exporters
Importers Association,
69/66, Sydenhams Road, Periamet,
Chennai-600003
PAN:AAATT4312Q ...Appellant

-vs-

The Deputy Director of Income Tax (Exemptions)-II
Aayakar Bhavan, 3rd Floor
121, Nungambakkam High Road
Chennai-600034 ...Respondent

Tax Case Appeals under Section 260-A of the Income Tax Act, 1961, are directed against the common order passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai in I.T.A Nos.2006/Mds/2014, 2007/Mds/2014 and 2008/Mds/2014 dated 03.08.2016 for the assessment years 2009-10, 2010-11 & 2011-12 respectively and is filed to challenge the action of the Income Tax Appellate Tribunal in denying the benefits of tax exemption computation despite the recognition in the form of the continued registration under the Income Tax Act, 1961 in Section 12A(a) of the Act vide order in DIT(E) No.2(529)/1999-2000 dated 22.12.2000 while considering one of the activities of import and distribution of wattle extracts which constituted one of the main cleaning agents for processing the raw hides as commercial in nature within the scope of the provisos below Section 2(15) of the Act.

Against the order of the Commissioner of Income Tax (Appeals)-VII, Chennai-34, dated 28.03.2014 and made in ITA Nos.560/11-12, 249/12-13 & 1080/13-14 for the Assessment Year 2009-10 to 2011-12 and against the order of the Joint Commissioner of Income Tax, Exemptions-II, Chennai 34 dated 28.12.2011 made in AAATT4312Q and the order of the Deputy Director of Income Tax (Exemption)-II, Chennai, dated 04.02.2013 and 29.11.2013 respectively.

For appellant : Mr.A.S.Sriraman

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel

JUDGEMENT

[Judgement of the Court was made by T.S.Sivagnanam, J.]

These Tax Case Appeals by the assessee, filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) are directed against the common order passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai in I.T.A Nos.2006/Mds/2014, 2007/Mds/2014 and 2008/Mds/2014 dated 03.08.2016 for the assessment years 2009-10, 2010-11 & 2011-12 respectively.

2.The above Tax Case Appeals have been filed raising the following substantial questions of law:-

> "(i) Whether the Appellate Tribunal is correct in law in denying the tax exemption u/s 11 of the Act for the Assessment Years under consideration despite the continued availability of registration u/s 12A(a) of the Act for the appellant as a Public Charitable Trust?
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> 2. Whether the appellate Tribunal is correct in law in denying the tax exemption u/s 11 of the Act for the Assessment Years under consideration on the misconstruction of the provisos below section 2 (15) of the Act while recording perverse findings of the fact on the activity pursued as a trading activity?
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> 3.Whether the Appellate Tribunal is correct in confirming the assessment orders passed for the Assessment Years 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?"

3. We have heard Mr.A.S.Sriraman, learned counsel for the appellant and Mr.J.Narayanaswami, learned Senior Standing counsel for the respondent. On consent of either side, we take up the appeals for final disposal.

4. The assessment for the years under consideration was completed by the Assessing Officer vide orders dated 28.12.2011, 04.02.2013 & 29.11.2013 respectively. The Assessing Officer held that, there is no denying to the fact that wattle extract

purchased from abroad was sold at a lower price which is not less than the cost of the goods. The explanation given by the assessee that this is an activity of distribution was rejected by the Assessing Officer and it was held that the assessee has earned profits out of the activity of selling wattle extract. Since the assessee enjoyed the benefit of exemption by virtue of registration under Section 12AA of the Act, the Assessing Officer recommended for cancellation of the registration and proceeded to assess the appellant/assessee as an association of persons (AoP).

5. The assessee filed appeals before the Commissioner of Income Tax(Appeals)-VII (CIT(A)) raising various contentions and relying upon several decisions. The CIT(A) by order dated 28.03.2016 allowed the appeals.

6. The Revenue preferred appeals before the Tribunal contending that the assessee's activities are purely in the nature of trade, commerce or business thereby bringing their case squarely under the proviso to Section 2(15) of the Act. The Tribunal in paragraph 6 of the impugned order extracted the findings of the CIT(A). In paragraph 7 and 8, the stand taken by the authorised representative of the assessee has been referred. The discussion is in paragraph 9.

7. We find that the only finding recorded by the Tribunal is that from the objectives of the assessee trust, it is evident that trading activities indulged by them is not mentioned in the objectives of the society. Moreover, the activities of the assessee society namely, procuring raw material from abroad and distributing the same will amount to pure commercial transaction because it is purely a trading activity generating substantial profit.

8. In our considered view, this finding is insufficient to dislodge the order passed by the CIT(A). We say so for more than one reason. Firstly, the Tribunal was required to take note of the legal position, which prevailed at the relevant time, in fact, one of the decisions of the Tribunal which considered similar case in respect of The Assistant Commissioner of Income Tax (Exemptions) Vs. All India Skin and Hide Tanners and Merchants Association in ITA.No.2749 to 2751/Mds/1994 dated 25.03.2013, was available when the Tribunal decided the impugned appeals. In the said decision, the Tribunal elaborately discussed the issue, examined the memorandum of association of the said assessee association and held in favour of the assessee.

9. Mr.J.Narayanaswami, learned Senior Standing Counsel for the Revenue submitted that the decision has not been accepted by the Department and they have preferred appeal. Be that as it

may, what is required to be seen in the instant case is with regard to the objects of the Association and as to whether their activity would fall within the scope of advancement of any other object of general public utility.

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.
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> 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. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Income Tax (Appels)-VIII,
121, mahatma Gandhi Road, Chennai 600 034.

2. The Deputy Director of Income Tax (Exemptions)-II
Aayakar Bhavan, 3rd Floor, 121, Nungambakkam High Road,
Chennai-600034.

3. The Assistant Registrar,
Income Tax Appellate Tribunal,
'B' Bench, Chennai.

+1 cc to Mr.S.Sridhar, Advocate Sr.No.51545
+3 cc's to Mr.J.Narayanaswamy, Advocate Sr.No.52463

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CSL/02.08.2019