BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 28.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.(MD)No.53 of 2019

Poondimadha Religious Trust,
Rep. by the Chief Functionary,
Fr.A.Packiasamy, Poondi,
Thirukattupalli (Via),
Thanjavur District - 613 104,
Tamil Nadu.
... Appellant / Applicant

- Vs -

The Secretary to Government of India,
Ministry of Home Affairs,
Foreigners Division (FCRA Wing),
Major Dhyan Chand National Stadium,
India Gate, New Delhi - 110 002.
... Respondent / Respondent

Prayer: Appeal filed under Section 31 (2) of The Foreign Contribution (Regulation) Act, 2010, against the order passed in No.0100003722018, dated 22.10.2018 on the file of the Government of India, Ministry of Home Affairs, Foreigners Division (FCRA Wing).

For Appellants : Mr.T.Senthil Kumar
For Respondent : Mr.G.Rajaraman
CGSC

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the order passed in No.0100003722018, dated 22.10.2018 on the file of the Government of India, Ministry of Home Affairs, Foreigners Division (FCRA Wing).

2.The learned counsel for the appellant submitted that the appellant was a Trust registered under the name and style of Poondimadha Religious Trust, on 04.03.2014 under the Trust Act. The Trust was created for the purpose of carrying out the public religious objects and purposes wide enough for the extension of the benefit thereof to all, irrespective of class, community, relief of poor, education, medical relief and advancement of any object of general and / or public utility and so that such benefit may be given directly by the said Trust. According to the appellant, the Trust is working under the Poondimadha Religious Service, Poondi, Thanjavur District. The appellant further submitted that the Trust is in need of contribution in and around the globe to carryout various welfare activities. Hence, Poondimadha Religious Trust made an application under Section 11(1) and (2) and Section 16 of the Foreign Contribution (Regulation) Act, 2010 to the respondent, dated 21.06.2018 for the acceptance of foreign contribution by an association having definite cultural, economic, educational religion or social programme.

3.Further, the learned counsel for the appellant trust contended that the Trust was registered as a public Trust under Section 12AA of the Income Tax Act, 1961 with effect from 08.04.2015 by an order passed by the Commissioner of Income Tax (Exemption), Chennai vide UR No.AACTP6341F/05/15-16/T-0277, dated 20.08.2015. The learned counsel for the appellant would also submit that the entire account of the Trust is being regularly audited and the same is being approved by the Income Tax Authorities for Tax exemption considering the status of the Trust as a public religious Trust.

4.The learned counsel for the appellant would further contend that the registration of the Trust under the Foreign Contribution (Regulation) Act, 2010, could be carried out only through online. Therefore, he has contended that he has filed an application as stated above on 21.06.2018 and it was mechanically without application of mind, rejected the application by non-speaking order in No.0100003722018, dated 22.10.2018 on the file of the Government of India, Ministry of Home Affairs, Foreigners Division (FCRA Wing) and the same was communicated through E-mail. The appellant has challenged the above order on the following grounds:-

(a).The order passed by the respondent is a non-speaking order;

(b).The respondent rejected the application, without considering the aims and service rendered by the Basilica from time immemorial;

(c).The application was rejected without considering the fact that the Board of Trustees are interested only in the welfare activities;

(d).The respondent without considering the fact that the appellant trust has been duly recognised by the Income Tax Authorities under Section 12AA of the Income Tax Act, 1961, for exemption from Income Tax for accepting the donations; and

(e).Further, the application was rejected without providing any opportunities for the appellant to purforth their case before the respondent.

5.On the other hand, the learned counsel for the respondent would contend that the Foreign Contribution (Regulation) Act, 2010 (FCRA or Act) is a self-contained legal code / consolidated law to regulate receipt and utilisation of foreign contribution or foreign hospitality received by eligible individuals / associations / companies / NGOs. The learned counsel would further contend that Section 11 of the Act mandates obtaining prior permission / registration from the Central Government for accepting foreign contribution by any person for a definite cultural, economic, educational, religious or social programme. As per Section 12(4)(b)of the FCRA, 2010, prescribes that the person making an application for registration has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised. Further, he would refer Section 12 of the FCRA, 2010, which provides for specific conditions for granting registration or prior permission which an applicant NGO has to fulfil at all time. Section 12(4) is reproduced below:-

> "*(4).The Following shall be the conditions for the purpose of sub-Section (3), namely:-*
>
> *(a).the person making an application for registration or grant of prior permission under sub-section (1).-*
>
> *(i).is not fictitious or benami;*
>
> *(ii)has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;*
>
> *(iii).has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;*
>
> *(iv).has not been found guilty of diversion or mis-utilisation of its funds;*
>
> *(v).is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;*
>
> *(vi).is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;*
>
> *(vii).has not contravened any of the provisions of this Act;*
>
> *(viii).has not been prohibited from accepting foreign contribution;*
>
> *(b).the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;*
>
> *(c).the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be*

utilised;

(d).in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;

(e).in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;

(f).the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially -
(i).the sovereignty and integrity of India; or
(ii).the security, strategic, scientific or economic interest of the State;
(iii).the public interest; or
(iv).freedom or fairness of election to any Legislature; or
(v).friendly relation with any foreign State; or
(vi).harmony between religious, racial, social, linguistic, regional groups, castes or communities;

(g).the acceptance of foreign contribution referred to in sub-section (1),-
(i).shall not lead to incitement of an offence;
(ii).shall not endanger the life or physical safety of any person."

6.The learned counsel for the respondent would further contend that Section 12(3) of the FCRA, 2010, provides that the Central Government may make such inquiry as deemed fit before granting a certificate of registration. During such an inquiry about the petitioners association, documents submitted by it like audit report and the field report of the security agency were examined by the competent authority and was found that the petitioners trust is running on a commercial basis. Further he would contend that there was a wide gap between earnings made by it and expenditure done on welfare activities. Therefore, the authorities were informed by the security agency that the appellant NGO is likely to use foreign contribution for personal gains.

7.The learned counsel for the respondent would further contend that one of the basic objects of the FCRA, 2010 is to allow/regulate only that kind of foreign contribution / donation which will contribute to social good and not for self-aggrandisement / personal enrichment of the recipients / donees. Therefore, the authorities have carefully considered all the relevant materials and refused to grant certificate of registration and accordingly communicated to the petitioners vide letter dated 22.10.2018. Further, an information in this regard was also conveyed to the petitioners vide email office@poondimadhabasilica.org and SMS (Mobile No.9443703438) on 22.10.2018 as provided by the applicant in FC-3 form while filing the application for registration under The FCRA, 2010. The learned counsel for the respondent would also submit that they are ready to submit the field agency report, being secret in nature, will be produced before this Court in sealed cover envelope if this Court so directs.

8.Heard the learned counsel appearing for the petitioner; the learned counsel appearing for the respondent and perused the materials available on record.

9.The appellant is a Trust registered under the Provisions of Trust Act. The said Trust was registered on 04.03.2014. Subsequent to the creation of the Trust, the appellant also filed an application before the Income Tax Authority under Section 12AA of the Income Tax Act, 1961 and obtained necessary permission for the tax exemption for the donations / contribution made to the Trust. Under these circumstances, the appellant Trust in order to get the contribution in and around the globe to carry out various welfare activities filed the application before the respondent to get foreign contribution under the Act. The said application was filed on 21.06.2018 under Section 11(1)&(2) and Section 16 of the Act. However, the said application was rejected by the respondent on 22.10.2018 by stating that on enquiry and examination thereon, the case attracts Section 12(4)(a)(vi) of the FCRA, 2010.

10.Section 12(4)(a)(vi) of the Act, states as follows:-

"(4).The Following shall be the conditions for the purpose of sub-Section (3), namely:-

(a).the person making an application for registration or grant of prior permission under sub-section (1).-

(i)....

(ii)....

(iii)....

(iv).....

(v)....

(vi).is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;

Therefore, according to the field report obtained by the respondent and on the examination of the audit report, the respondent came to the conclusion that the trust running on a commercial basis and that there was a wide gap between earnings made by it and expenditure done on welfare activities. Therefore, the authorities were informed by the security agency that the appellant NGO is likely to use foreign contribution for personal gains.

11. To verify these aspects, this Court also directed the appellant to file the copy of Trust deed and audit report for the year 2018 - 2019. As per the direction of this Court, the said documents have been filed on 07.11.2010 in the form of Additional type set. This Court also perused the Income and Expenditure Account for the year ended 31.03.2018 and 31.03.2019. On the perusal of the said Income and Expenditure of the financial reports, it appears that the appellant received a sum of Rs.7,39,37,189/- towards income for the year end of 31.03.2018, whereas it appears for the purpose of Charity and donations, it has spent about only a sum of Rs.2,80,300/- and for the purpose of Annanthanam expenses, it has spent only a sum of Rs.7,92,031/-. Further for the year end of 31.03.2019, the total revenue for the appellant Trust is a sum of Rs.8,11,32,134/-, whereas the appellant Trust has spent for Charity and donations for a sum of Rs.1,39,700/- and for the purpose of Annanthanam expenses, it has spent only a sum of Rs.7,74,902/- and it has shown that excess income of Rs.1,98,04,098/- for the year end 31.03.2018 and for the year end 31.03.2019, the excess income was shown as Rs.2,33,03,711/-. One of the grounds for filing this appeal challenging the order passed by the respondent is that the Board of Trustees are interested only in the welfare activities, but the respondent has failed to consider the intention of the Board of Trustees on the welfare activities. But on the perusal of the balance sheet, it appears that only meagre amount has been spent for welfare activities for the financial year ending 2018 and 2019. Further, it appears that the appellant Trust has desperately failed to carry out the real object, for which the Trust has been created. Under these circumstances, the appellants' contention that they have filed the application for the purpose of obtaining the Foreign Contribution to carry out the welfare activities of the public, is only with a view to get the money under the umbrella of welfare activities.

12.Therefore, this court is of the view that the contention of the appellant Trust that the respondent has mechanically rejected their application has no merits. The respondent has considered the aims and services rendered by the appellant Trust and also the welfare activities and thereafter, passed the order rejecting the application of the appellant. As stated by this Court above, the appellant Trust has been spending very meagre amount to the welfare activities, when the main intention for the constitution of the Trust is only for welfare activities and on perusal of the balance sheet, it clearly appears that they are not on the welfare activities, on the other hand it shows that there are lot of income out of the rental income and through other modes, which appears that they are more involved in commercial activities than the welfare activities. The revenue of the appellant Trust for the year ending of 31.03.2019 is more than Rs.8 Crores. When the revenue was Rs.8 Crores and the Trust was created for the purpose of welfare activities, not only for the particular religion, but also for all the religion, here towards the welfare activities, the amount spent by the appellant Trust was very meagre, which clearly shows the intention of the Management, not much on the welfare activities, but on the other activities including in the commercial activities.

13.Even on the mere perusal of the balance sheet, it appears that the involvement of the appellant association in the welfare activities is very very meagre even less than 1%. But on the other hand, on perusal of Trust deed it appears that the appellant association going to involve completely in the welfare activities. Therefore, the acts performed by the appellant association so far, is not in accordance with the Constitution of the Trust and hence, this Court is of the view that the rejection of the application of the appellant Trust by the respondent is genuine and with the proper reason.

14.Under these circumstances, this Court would like to observe that as stated above, the object of the Trust and the welfare activities of the Trust is very very meagre, which is less than 1% and therefore, this Court is of the opinion that the exemption granted by the Income Tax authorities also requires to be reviewed, apart from taking appropriate action for failure on the part of the appellant association to carry out the object of the creation of the Trust, through the appropriate authorities, who granted permission for Trust. Therefore, this Court finds no merit in the appeal.

15.Accordingly, Civil miscellaneous appeal is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Secretary to Government of India,
Ministry of Home Affairs,
Foreigners Division (FCRA Wing),
Major Dhyan Chand National Stadium,
India Gate, New Delhi - 110 002.

2.The Record Keeper,-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.SENTHIL KUMAR, Advocate (SR-102315[F] dated 28/11/2019)

+1 CC to Mr.G.RAJARAMAN, Advocate (SR-102642[F] dated 29/11/2019)

C.M.A.(MD)No.53 of 2019
28.11.2019

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