IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM :

The Hon'ble Dr.JUSTICE VINEET KOTHARI
AND
The Hon'ble Mr.JUSTICE R.SURESH KUMAR

T.C. (A) No.957 of 2010

Commissioner of Income Tax
Salem. .. Appellant/Respondent

-vs-

M/s.Vasavi Manikandan Hospital Trust,
No.48, Iyappa Hospital,
Andal Street, Shevapet,
Salem 636 002. .. Respondent/Appellant

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, dated 09.04.2010 passed in I.T.A.No.1902/Mds/2009 and against the order of the Commissioner of Income Tax, Salem-7, dt.13.10.2009, made in C.No.9755(90)/SLM/2002-2003.

For Appellant : Mr.J.Narayanasamy
Sr. Stdg. Counsel

For Respondent : Mr.M.P.Senthilkumar
for Mr.G.Baskar

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O R D E R
(Order of the Court was made by Dr.Vineet Kothari, J.)

This appeal has been filed by the Revenue aggrieved by the order of the Income Tax Appellate Tribunal dated 09.04.2010, whereby the learned Tribunal directed the Commissioner of Income Tax to grant registration to the respondent Assessee, M/s.Vasavi Manikandan Hospital Trust, under Section 12A of the Income Tax

Act.

2.Learned Counsel for the Appellant/Revenue, Mr.J.Narayanasamy, urged that in the present case, the Assessee Trust had simply not appeared before the learned Commissioner of Income Tax, who was considering it's application under Section 12A of the Income Tax Act, 1961, and after the remand by the learned Tribunal, the Commissioner of Income Tax had asked for seven informations/documents to be furnished by the Respondent/Assessee Trust. But, the Respondent/ Assessee Trust simply did not appear thereafter before the Commissioner of Income Tax and therefore, it's application was dismissed for want of prosecution.

3.However, the Respondent Assessee Trust preferred an appeal before the learned Tribunal and the learned Tribunal, without those compliances being made by the Assessee Trust before the Commissioner of Income Tax, recorded its independent opinions that either some of the compliances stood made by the Assessee and some other requirements were not even necessary for considering the application, under Section 12AA of the Act and therefore, treating the compliances as sufficient, the learned Tribunal directed the Commissioner of Income Tax to accord registration to the Respondent Assessee Trust under Section 12A of the Act. The relevant findings of the learned Tribunal as recorded in paragraphs 7 and 8 of the impugned order are quoted below for ready reference.

> "7.As regards the first query of the Commissioner of Income Tax is concerned, the assessee has duly produced the records showing the registration and certificate for conducting various diagnostic tests. The assessee hospital is also registered with the Government of Tamil Nadu under Pre-conception and Pre-natal Diagnostic Techniques as per certificate dated 14.7.2006 placed at p.38 of the Paper Book. We further note that the assessee hospital is also a bonafide Member of the Nursing Homes & Hospitals Board of Association, Tamil Nadu vide membership certificate dated 3.9.2009 placed at p.40 of the Paper Book. Therefore, there was no further requirement of any approval and permission for running a hospital. Since the assessee has filed details of bank accounts, then, the second query of the Commissioner of Income Tax is also satisfied. As regards the meaning of ' Founder Trustee' in the Trust Deed is concerned, it has its natural meaning and no other meaning is required to be given to the said term. When the Trust Deed is signed

by the founder trustees and later on some other trustees are inducted, then there is a clear difference between the two. It is not the case of the Revenue that the decisions are not taken by the majority and the trust is controlled by only one person. At the time of registration, until and unless something is apparent to show the irregularity and mismanagement, the existence and genuineness of the trust cannot be doubted. Since the Trust Deed is signed only by original founder members, therefore, there is no requirement of signing of the Trust Deed by all the trustees who were inducted later on. As regards the activity of the trust, the assessee has clearly mentioned the activities of the assessee in its letter dated 26.12.2008 as well as furnished the details of hospital activities and fee charged along with the said letter dated 26.12.2008.

8.Once the requisite details have been field by the assessee, then, in the absence of any finding or any material to show that the object of the assessee trust are not charitable, then there is no reason to deny the registration. It is not the case of the Revenue that the funds or income of the trust were utilised for any other purpose than the object of the trust. Therefore, merely because the trust hospital is charging some fee from the patients, it cannot be said that the activity is not charitable, particularly, when the said income earned by the assessee is not due to an exorbitant fee charged from the patients or the same was utilised for purposes other than the object of the trust. The Commissioner of Income Tax (Appeals) has not given any finding on the existence and genuineness of the trust. Moreover, at the time of registration u/s 12A, the Commissioner of Income Tax is not supposed to conduct an investigation when the objects of the trust are found charitable in nature. The registration cannot be denied on grounds, which are not relevant at the stage of grant of registration, and which can be relevant only at the stage of assessment of income of the assessee and grant of exemption. Accordingly, we direct the Commissioner of Income Tax to grant the registration to the assessee u/s 12A of the Income Tax Act from the date on which the application for registration was filed."

4.Learned counsel for the Appellant/Revenue has also relied on the judgment of the Supreme Court in the case of Commissioner of Income-tax (Exemptions) vs. Jagannath Gupta Family Trust (2019) 102 taxmann.com 34 (SC).

5.Mr.M.P.Senthil Kumar, learned counsel for the Respondent/Assessee Trust, however, submitted that the registration in pursuance of the order of the learned Tribunal passed in 2010 has already been granted to the Respondent/Assessee Trust and no action has been taken by the Revenue Department to cancel that registration. He has also submitted that the informations as desired by the Commissioner of Income Tax were furnished before the learned Tribunal.

6.We have heard the learned counsels and we are of the opinion that the learned Tribunal, in these circumstances, ought to have remanded the case back to the learned Commissioner of Income Tax, so that the requisite informations/documents furnished by the Assessee Trust could be examined and verified by the learned Commissioner of Income Tax, who was to consider the said application on merits. However, the fact remains that the Trust stands registered for the last ten years in pursuance of the impugned order of the learned Income Tax Appellate Tribunal. It was also open for the Revenue Authorities to take steps for cancellation of the registration, if there was any material against the Assessee Trust or they have violated the conditions of registration or the provisions of the Act in any manner. That course is even now open to the Revenue Authorities. We do not find any useful purpose to be served by now remanding the case back to the learned Commissioner of Income Tax to consider the said application under Section 12A of the Act afresh at this stage, as the said registration already stands granted about ten years back and therefore, we dispose of the present appeal filed by the Revenue only by making an observation that if any breach or violation on the part of the Respondent/Assessee Trust is found, they will be free to proceed against the Assessee/Trust in accordance with law.

The Appeal is, accordingly, disposed of. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1.The Commissioner of Income-Tax,
Salem.

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

3.The Assistant Commissioner of
Income Tax,
Circle III. Salem.

+1cc to Mr.G.Baskar, Advocate SR.15901
+1cc to Mr.J.Narayanswamy, Advocate SR.16878

MR(CO)
CB(19/03/2020)