

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.332 of 2012

Commissioner of Income Tax,
Chennai.

.... Appellant

Vs.

Ayur Siddha Health & Research Foundation
45/11,Konnur High Road, Chennai.

... Respondent

Tax Case filed under Section 260A of the Income Tax Act 1961 against the order dated 02.05.2012 passed in ITA No.1601/Mds/2011 by the Income Tax Appellate Tribunal 'D' Bench, Chennai.,

against the order passed by the Director of Income Tax (Exemptions), Chennai dated 29/07/2011 made in DIT(E) No.2 (898)10-11.

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

For Respondent : Mr.N.Devanathan

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET
KOTHARI,J)

This appeal has been filed by the Revenue under Section 260A of the Act aggrieved by the order of the learned Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 02.05.2012, whereby the learned Tribunal allowed the appeal filed by the Assessee, a Trust viz., Ayur Siddha Health & Research Foundation, Chennai and held that the Assessee Trust cannot be said to be engaged in any trading or business activity so as to deny the benefit of

registration under Section 12AA of the Act. The learned Director of Income Tax (Exemptions) had rejected the said application of the Assessee Trust for registration under Section 12AA of the Act vide order dated 29.07.2011 on the ground that the Object Clause 3.3(e) of the Trust Deed provides for development of new drugs or medicines, Object Clause 3.6(g) speaks about printing, publishing and selling journals, periodicals, books etc., Object Clause 3.8(f) mentions about establishing financial institutions etc., and therefore the learned Commissioner felt that the Assessee Trust might itself engage in business activities and therefore not entitled to registration under Section 12AA of the Act. The Assessee preferred an appeal before the learned Income Tax Appellate Tribunal, which allowed the appeal of the Assessee with the following observations.

"9. In view of the above order of the Tribunal, we further observe that whether the assessee foundation is contravening any provisions of the Act relating to charities is a matter to be considered subsequent to registration on application of the actual area in which the assessee is operating and the Revenue is having enough safeguard to make such examination from every year to year at the time of assessment. Any contravention of the provisions in future can well be considered in assessment proceedings. Therefore, while eligibility of the assessee for registration u/s. 12AA of the Act is examined in the declared objects of the assessee, we find no reason why registration should not be granted. In the light of the above judicial pronouncement, we find that the assessee foundation is entitled for registration under Section 12AA of the Act and direct the DIT (Exemptions) to grant registration to the assessee society u/s.12AA of the Act."

2. The Revenue preferred the present appeal against the said order and the appeal was admitted by the Coordinate Bench of this Court on 19.10.2012 on the following substantial question of law.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to grant of registration under Section 12AA of the Income Tax Act?

3. Learned Senior Standing Counsel for the Revenue Mr.J.Narayanaswamy urged that the definition of 'Charitable Purposes' under Section 2(15) stood amended by the Finance

Act 2008 and by the insertion of Proviso therein by the Finance Act 2015 with effect from 01.04.2016, the activities in the nature of trade, commerce or business are excluded from the said definition of 'Charitable Purposes' and therefore, since the activities under the specified clauses of the Trust Deed were found to be in the nature of business, which the Assessee may engage and therefore, the learned Commissioner of Income Tax was justified in rejecting the registration under Section 12AA of the Act. He further submitted that the Revenue authority had a genuine apprehension about the intended business activity of the applicant Trust.

4. On the other hand, the learned counsel for the Assessee supported the impugned order of the learned Tribunal and urged that the Assessee is not engaged in any business activity and the Object Clause providing for Research and Development work for new medicines is part of their activity, which is covered by the definition of 'Charitable Purposes', which include medical relief, yoga etc., even as per the amended definition.

5. Having heard the learned counsel for the parties, we are of the opinion that a mere apprehension on the part of the Revenue authorities that the Object Clause of the Trust Deed provided for development of new drugs / publication of journals etc., cannot per se amount to any business or trading activity on the part of the respondent Trust. These activities are prima facie incidental to the charitable activity of providing good health and medical relief to the affected persons. The learned Tribunal however has made it clear in its order that it is even otherwise open to the Revenue authorities under the provisions of the Act to consider the factual aspects of the matter as to whether the Trust is engaged in any business activity or not upon granting annual renewal of such registration under Section 12AA of the Act and therefore unless the Charitable Trust is found to be engaged in the business or trading activity apart from the charitable purposes for which the Trust is incorporated, the benefit of registration under Section 12AA of the Act cannot be denied to the Trust.

6. Therefore, in our opinion, the learned Tribunal was perfectly justified in allowing the appeal filed by the Assessee and directing the Revenue authorities to grant registration under Section 12AA of the act to the applicant / Assessee. The present appeal by the Revenue is therefore

devoid of any merits and is liable to be dismissed and the same is accordingly dismissed. The question of law is answered in against the Revenue and in favour of the Assessee. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

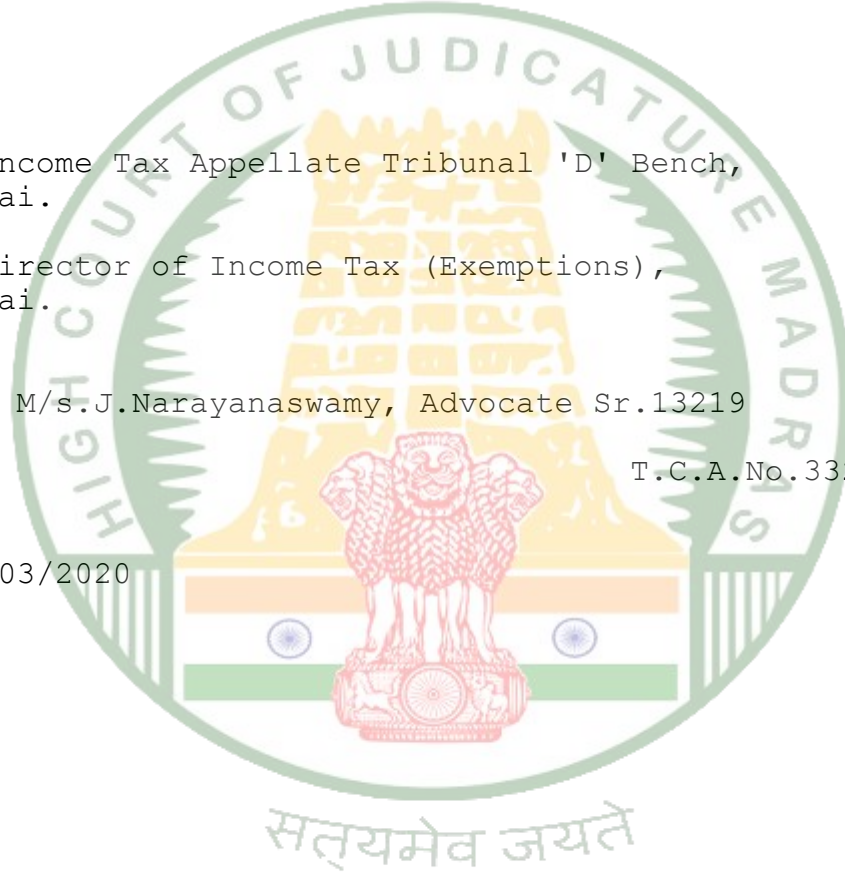
To

- 1.The Income Tax Appellate Tribunal 'D' Bench,
Chennai.
- 2.The Director of Income Tax (Exemptions),
Chennai.

+1cc to M/s.J.Narayanaswamy, Advocate Sr.13219

T.C.A.No.332 of 2012

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srg 16/03/2020



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