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.404 of 2012

Commissioner of Income Tax
Chennai ... Appellant/Respondent

Vs.

M/s.Sri Bhagawan Mahavir Digambara
Jain Management Trust, No.23
Perumal Koil Street,
Chennai-600 015. ... Respondent /Appellant

Tax Case filed under Section 260A of the Income Tax Act 1961 against the order dated 29.03.2012 passed in ITA No.727/Mds/2011 by the Income Tax Appellate Tribunal 'D' Bench, Chennai.

Against the order of the Director of Income Tax (Exemptions) Chennai, dated 30/11/2010 in DIT(E) No. 2 (117/10-11.

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

For Respondent : Mr.Venkat Narayanan
for M/s.Subbaraya Iyer Padmanabhan

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, whereby the learned Tribunal allowed the appeal filed by the Assessee, a Charitable Trust viz., Bhagawan Mahavir Digambara Jain Management Trust, Chennai and held that the Assessee was entitled to registration as Charitable Trust under Section 12AA of the Act read with Section 80G of the Act. The relevant portion of the order passed by the learned Tribunal is quoted below for ready reference.

> "4. It is to be seen that Section 11 of the Act provides for exemption not only for the charitable institutions, but also for religious institutions. The DIT (E) is therefore not justified in rejecting the applications of the assessee trust for registration under Section 12AA and grant of approval under Section 80G. We, therefore set aside the impugned order of the DIT(E) and direct the DIT (E) to grant registration under Section 12AA of the Act. We also direct the DIT(E) to grant approval under Section 80G subject to the provisions of Section 80G(5B) of the Act."

2. The present appeal was admitted by the Coordinate Bench of this Court on 10.12.2012 on the following substantial questions of law.

> "1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled for registration u/s 12AA?
> 2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled for approval u/s 80G?"

3. Learned counsel at Bar on both sides submit fairly that the issue involved in this case is no longer res integra and has been decided by the Coordinate Bench of this Court in the case of "Director of Income Tax (Exemptions) -Vs- Seervi Samaj Tambaram Trust", following the Supreme Court decision in the case of "Commissioner of Income Tax -Vs- Upper Ganges Sugar Mills Ltd., reported in 227 ITR 578 and another case decided by the Honourable Supreme Court in "State of Kerala -Vs- MP.Shantiverma Jain" reported in (1998) 231 ITR 787 (SC), in which the Honourable Supreme Court has held that the Income Tax Act, 1961 does not make any distinction with regard to the objectives of the Charitable and Religious purposes and the Trusts having both these objectives can also be registered under Section 11 or 12AA of the Act. The relevant portion of the judgment rendered by the Madras High Court is quoted below for ready reference.

> "5. Learned standing counsel appearing for the Revenue reiterated the submissions made before the Tribunal and contended that the registration under Section 12AA of the Income Tax Act cannot be granted

to a trust having both charitable and religious objects on an application under Section 11(1)(a) of the Income Tax Act.

6. The very issue raised by the Revenue has been dealt with by a Division Bench of this Court in the case of CIT Vs. Arulmighu Sri Kamatchi Amman Trust reported in (2012) 206 Taxmann 69. In the said case, the respondent / assessee sought for registration under Section 12AA of the Income Tax Act on the ground that the object of the Trust was religious. The Commissioner of Income Tax rejected the application on the ground that the Trust was spending money in receipts towards religious and administrative purposes and the activities claimed to be carried on by the said Trust were an admixture of both religious and charitable. The said Trust filed an appeal before the Income Tax Appellate Tribunal. Following the decision in the case of CIT Vs. Upper Ganges Sugar Mills Ltd., reported in 227 ITR 578 and in the case of State of Kerala Vs.MP.Shantiverma Jain reported in (1998) 231 ITR 787 (SC), the Tribunal allowed the appeal. Challenging the same, the Revenue filed an appeal before this Court contending that the Tribunal failed to appreciate the activities claimed to be carried on by the said assessee, which was an admixture of both religious and charitable in nature. Therefore, the Tribunal ought not to have interfered with the order of the Commissioner of Income Tax. The Division Bench of this Court, after taking into consideration the provision under Section 11(1)(a) of the Income Tax Act, which states that subject to the provisions of Sections 60 to 63, the income derived from property held under trust wholly for charitable or religious purposes, to the extent of which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income as accumulated or set apart is not in excess of fiteen per cent of the income from such property shall not be included in the total income of the previous year of the person in receipt of the income. Thus, the Division Bench held "from a reading of the above, it is clear that the income derived from the property held under trust wholly for charitable and religious purpose, shall not be included in the total income of the Trust. Therefore, the said provision would be applicable to

both the Trusts established with the object of charitable as well as religious purposes. Therefore, Section 12AA of the Income Tax Act does not make any difference between the Trusts created with the object of charitable and religious purposes and, even if the Trust is not created with both the objects, law does not make any disqualification for the Trust to make an application for registration. Therefore, the Tribunal has correctly applied the provision of law and allowed the appeal."

4. In view of the aforesaid settled legal position, we are of the clear opinion that the learned Tribunal was justified in allowing the appeal filed by the Assessee and upholding the registration of the Trust under Section 12AA read with Section 80G of the Act. The appeal filed by the Revenue is devoid of any merits and is liable to be dismissed and is accordingly dismissed. The questions of law are answered against the Revenue and in favour of the Assessee. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KST

To

1.Income Tax Appellate Tribunal 'D' Bench,
Chennai.

2.The Director of Income Tax,
(Exemptions), Chennai.

+1cc to Mr.Subbaraya Aiyar Padmanaban, Advocate, S.R.No.12149
+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No. 73220

T.C.A.No.404 of 2012

KK(CO)
GN(13/03/2020)