

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
T.C.A.No.1015 of 2019

M/s.Soundaram Chokkanathan
Educational and Charitable Trust,
389/1B2, Dharmapuri Main Road,
Papparappatti Post, Pennagaram Taluk,
Dharmapuri District.
[PAN:AAKTS2799A] ... Appellant

Versus

The Income Tax Officer,
Exemption Ward,
Salem. ... Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, made in I.T.A.No.1844/CHNY/2017 dated 30.08.2019 relating to the Assessment Year 2013-14 against the commissioner of Income Tax (A), Salem dated 30.05.2017 in ITA.NO.250/2015-2016 and against the proceeding of the Income Tax Officer, Exemptions Ward, Salem dated 17.11.2015 made in F.NO.AAKTS2799A/154/SCM 2015-2016.

For Appellant : Mr.G.Baskar

For Respondent : Mr.J.Narayanasamy
Senior Standing counsel

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 30.08.2019 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1844/CHNY/2017 for the Assessment Year 2013-14. The appeal was admitted on 10.12.2019 on the following Substantial Questions of Law:

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that case of the appellant

would not fall within 1st proviso to Section 12A(2) of the Income Tax Act, 1961?

2. When the Appellant having been granted exemption u/s 12A of Income Tax Act, 1961, with effect from 01.04.2015, is the Income Tax Appellate Tribunal right in law in holding that the Appellant cannot be treated as charitable for the A.Y.2013-14, in spite of complying and satisfying with all other provisions and preconditions for availing the benefit under Sections 11 & 12 of Income Tax Act, 1961?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in not considering and following a catena of decisions relied by the Appellant in support of its claim that 1st Proviso to Section 12A(2) of Income Tax Act, 1961, squarely applies for the A.Y.2013-14?"

2. We have heard Mr.G.Baskar, learned counsel for the appellant/assessee and Mr.J.Narayanasamy, learned Senior Standing counsel for the respondent/Revenue.

3. The assessee is a Trust, which filed the return of income for the Assessment Year under consideration, which was processed by the Centralized Processing Center and intimation under Section 143(1) of the Act was sent on 14.03.2015. The assessee filed a petition under Section 154 of the Act before the Assessing Officer, which was rejected by order dated 17.11.2015 on the ground that the assessee was not registered under Section 12A(a) of the Act, which being the primary criteria for claiming exemption. Aggrieved by such order, the assessee filed appeal before the Commissioner of Income Tax (Appeals), Salem ['CIT(A)' for brevity]. By order dated 30.05.2017, the CIT(A) dismissed the appeal. The said order was put to challenge before the Tribunal, which rejected the appeal filed by the assessee and this is how the assessee is before us by way of this Tax Case Appeal.

4. Mr.G.Baskar, learned counsel for the appellant, would contend that the Appellate Tribunal erred in concluding that the assessee would not fall within the first proviso to Section 12A (2) of the Act. It is an admitted fact that because the appeal was pending before the CIT(A) and it is deemed to be an assessment proceedings pending before the Assessing Officer and therefore, the Tribunal ought to have applied the first proviso to Section 12A(2) of the Act. Further, it is submitted that the assessee was granted registration by order dated 02.03.2016 with effect from 01.04.2015 and the Tribunal erred in holding that the activities of the assessee cannot be treated as Charitable activities for the Assessment Year 2013-14, in spite of complying and satisfying with all the provisions and preconditions for availing the benefit under Sections 11 & 12 of

the Act. In support of his contentions, the learned counsel placed reliance on the decision in the case of Commissioner of Income Tax (Exemptions) Vs. Shree Shyam Mandir Committee, reported in (2018) 400 ITR 0466 (Raj) and the decision in the case of Mathew M.Thomas Vs. Commissioner of Income Tax, reported in (1999) 236 ITR 691(SC).

5. Per contra, Mr.J.Narayanasamy, learned Senior Standing counsel appearing for the respondent submitted that the appeal filed by the assessee before the CIT(A) was not against an order of assessment, but against the order passed on an application for rectification filed under Section 154 of the Act and therefore, it cannot be construed that the assessment was pending in appeal before the CIT(A). Further, it is submitted that the facts of the case were rightly taken note of by the Tribunal and rejected the claim of the assessee for exemption from the Assessment Year 2013-14. Further, it is submitted that exemption provision has to be strictly interpreted and that to in favour of the Revenue and the benefit now sought for by the assessee would go beyond the registration granted to the assessee under Section 12AA of the Act. To support his submission, the learned counsel placed reliance on the decision in the case of Commissioner of Income Tax (Exemption), Lucknow Vs. Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan, reported in [2020] 113 taxmann.com 334 (Allahabad).

6. We have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record including the decisions cited supra.

7. At the outset, we need to point out certain factual aspects before we examine as to the applicability of the decisions cited. Admittedly, the application for registration was filed by the assessee only on 23.02.2016. It appears that the application was not processed as the Commissioner of Income Tax (Exemptions) ['CIT(E)'] for brevity was not satisfied that the activities of the petitioner Trust as mentioned in the deed of trust would qualify for an exemption. This necessitated the assessee to amend the various clauses and covenants in the trust deed and the amended deed of trust was considered by the CIT (E) and an order was passed on 02.03.2016, granting registration with effect from 01.04.2015. Therefore, on facts, the assessee is precluded from contending that the first proviso under Section 12A should be made applicable to them and they should be granted with the benefit from the Assessment Year 2013-14, because the factual position being that only after the deed of trust was amended, the application was considered that too registration having been granted with effect from 01.04.2015 only. Therefore, the Tribunal rightly held against the assessee,

stating that there is nothing on record to show that the exemption activities / operations and genuineness of its claims for the Assessment Year 2013-14 was examined. Since registration has been granted only after the deed of trust was amended, the assessee cannot contend that they are to be granted benefit from the Assessment Year 2013-14. Apart from that the other question, which will also stare at the appellant is that the appeal, which was filed before the CIT (A) was against the order passed in a rectification petition under Section 154 of the Act. The question would be whether the same can be considered to be an assessment proceedings pending before the Assessing Officer. However, since no Substantial Question of Law has been framed to that said effect, we do not wish to express any opinion on the said issue and the question is left open.

8. So far as the decisions cited by the learned counsel for the appellant, we find that the factual position in the case of Shree Shyam Mandir Committee (cited supra) was entirely different as could be seen from paragraph 6.4 of the said judgment as the issue was whether a re-assessment proceedings would also be construed as a pending assessment proceedings and in the background of those facts, the Court took note of the Circular issued by the CBDT and granted relief. The decision of the Hon'ble Supreme Court in the case of Mathew M.Thomas (cited supra) was entirely a different issue pertaining to a case arising under Section 269C, read with Section 269-I of the Act, pertaining to acquisition of immovable properties and initiation of proceedings.

9. Therefore, we find both the decisions cannot be applied to the assessee's case. The decision in the case of Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan (cited supra), in our opinion, would be applicable to the case on hand. The Substantial Questions of Law which fell for consideration in the said case was:

(i) Whether the Income Tax Appellate Tribunal was justified in allowing retrospective coverage to the assessee under Sections 11 and 12 of the Act, by holding that the appellate proceedings can be regarded as assessment proceeding?; (ii) Whether the Income Tax Appellate Tribunal has rightly applied the proviso of Section 12A (2) for the Assessment Year 2011-12 in the case of assessee therein when admittedly the assessee got registration under Section 12AA from Assessment Year 15-16 ?; and (iii) Whether the Income Tax Appellate Tribunal was justified in holding that the assessee is eligible for exemption under Section 11 of the Act even when the assessee was not registered under Section 12AA of the Act?

10. The above questions were answered in the following manner.

"13. We need to consider Section 12 A (2) of Act, 1961 along with proviso to determine the issue raised before us. Section 12 A (2) of the Act, 1961 provide that whenever application has been made for registration of trust or institution is made under Section 12AA of the Act on or after first date of 2007, the provision of Section 11 and 12 of the Act, 1961 shall apply in relation to income of such Trust or Institution from the assessment year immediately following the financial year in which application is made. If we go with the provisions of Section 12 A(2) of the Act, 1961, the question raised before us can be answered holding that the benefit of Sections 11 & 12 of the Act, 1961 can be given from the following financial year in which the application for registration is made and registration was subsequently granted.

14. If the facts of this case are taken into consideration then the assessee made an application for registration on 15.12.2014 i.e. in the assessment year 2015-16. The assessment in question is of the year 2011-12. In view of the above, whether the subsequent registration pursuant to the application dated 15.12.2014 would make the assessee entitled for the benefit of Section 11 & 12. It is in respect of the assessment year prior to the date of application. It is in the circumstances that registration was finally given on 08.06.2015. We are required to consider proviso below sub-Section 2 of Section 12 A of the Act, 1961. The proviso provides that if registration has been given to the Trust or the Institution under Section 12 AA of the Act, 1961, then provisions of Section 11 & 12 of the Act, 1961 shall apply in respect of any income derived from the property held under the Trust or the institution for any assessment year proceeding, for which assessment is pending before the Assessing Authority as on the date of registration. The Tribunal has given interpretation to the proviso to hold that irrespective of the date of application, the benefit of Section 11 & 12 of the Act, 1961 would be available to the assessee retrospectively, if the assessment proceedings were pending and pendency of such proceedings may be not only before the Assessing Office, but even before the Tribunal.

15. According to us, the interpretation of the proviso has been given in ignorance of the main provision of Section 12A(2) of the Act, 1961. Whenever interpretation of the statutes has to be given it should be after making harmonious construction of the statute. For the purpose of proper interpretation of Section 12A of the Act, 1961, the Tribunal was required to make interpretation after taking into consideration the main provision along with the proviso and not by giving meaning to the proviso in ignorance of substantive provision.

16. The Tribunal has even ignored the basic principle of law in giving interpretation in charging provisions, the benefit is to be given to the assessee but same principle is not applicable for an exemption notification or exemption clause, where the benefit of ambiguity must be given to the Revenue/State. It is also that burden to prove applicability of exemption would be on the assessee that it comes squarely within the parameters of the exemption notification or exemption clause. The Tribunal was required to make distinction between charging provision where benefit of ambiguity is given to the assessee and the exemption notification or clause where interpretation is to be given in the form of Revenue. The issue aforesaid has been recently considered and decided by the Apex Court in the Case of Commissioner of Customs (Import) v. Dilip Kumar & Company [2018] 9 SCC 1.

17. Section 12A extends benefit of exemption under Section 11 & 12 of the Act at the first instance to the cases referred under sub-section 1 of Section 12 A. Sub-section 2 of section 12 A extends benefit even when application for registration of Trust or Institution has been made on or after first day of June 2007. It would however be in relation to the income of the Trust or the Institution from the assessment year immediately following the financial year in which application for registration was made. If the simple meaning of the provision of section 12A(2) is to be given, it governs those cases where application was moved for registration after first day of June, 2007. The benefit of Section 11 and 12 would be extended from the assessment year immediately following the financial year in which the application was given. In the instant case the application for registration was given on 15.12.2014 i.e. in the financial year 2014-15. On registration of

the Trust, benefit under Section 11 and 12 would be available to the assessee from the assessment year following the financial year in which application was given and not any previous year. The benefit of registration could not have been extended for the assessment year 2011-12, even if the matter was pending before the Tribunal when application for registration was submitted on 15.12.2014.

18. The proviso to sub-section 2 applies in a given circumstances, but cannot by making main provision of section 12 A as redundant. In the instant case, the application for registration was then submitted on 15.12.2014. The registration was given on 08.06.2015. Since registration has been given on 08.06.2015, the benefit of Section 11 & 12 would be available for the following financial year in which application was made if the assessment proceedings for the relevant assessment year was pending till the date of registration. It cannot be for the assessment year 2011-12 due to pendency of the appeal before the Tribunal. If the benefit of Section 11 and 12 is extended for the assessment year 2011-12, despite submission of the application for registration on 15.12.2014, it would be in contravention of sub-section 2 of Section 12. By virtue of the interpretation taken by the Tribunal the main provision has been made redundant on the facts of the case, though not permissible. The proviso has to be read along with main proviso and not in isolation and contradiction.

19. The Tribunal even ignored the fact that proviso not only require registration of the Trust or the Institution while the assessment proceedings are pending, but it refers to assessment proceedings before the assessing authority and not elsewhere. In a common parlance, whenever matter is pending before the Tribunal in appeal, considered to be pendency of the assessment proceedings. The aforesaid principle would be applicable in the instant case is another question because proviso qualifies not only pendency of the assessment proceedings, but should be before the Assessing Officer not else where, if in the proviso words "pendency of the assessment proceedings", would have been used then pendency of the appeal against the assessment could have been considered to be pendency of the assessment proceedings, but in the instant case the words used are "pendency of the assessment proceedings before the

Assessing Officer". The assessment proceedings of the year 2011-12 was not pending before the Assessing Officer, but before the Tribunal. The observation aforesaid is relevant on the facts of this case. This Court has otherwise given proper interpretation to the substantive provision as well as the proviso.

20. We have further gone through the instruction of the CBDT and find it to be contrary to the proviso to Section 12 A of the Act, 1961. The instruction of the CBDT cannot be forfeited, if it is against the statutory provisions. The provision is not to extend benefit in case assessment is pending but it should be before the Assessing Officer. In that case, pendency of the assessment can be treated to be pending before the Assessing Officer though pending before the Tribunal in Appeal. It cannot be in those cases where provision is very specific, because proviso not only refers to the pendency of the assessment when it is pending before the Assessing Officer. In few cases, the assessment proceedings is considered to be pending before the Tribunal due to pendency of the appeal but it is applicable in those cases where words used are pendency of the assessment proceedings and not with words "pending before the Assessing Officer". The interpretation therein is in reference to the words 'pendency of the assessment' and not in reference to the pendency of the assessment before the Assessment Officer. The instruction of CBDT can not be applied if seems counter the statue.

21. Accordingly the judgment of Gujarat High Court in Mayur Foundation (supra), would not apply. The view expressed therein cannot be applied to the facts of this case, otherwise an anomalous situation may emerge in a given case where for one or the other reason assessment proceedings before the Tribunal remain pending for years together or on a remand or for any other reason it comes before the Assessing Officer and such cases also subsequent application for registration and acceptance would result to extend benefit of Section 11 and 12 creating anomalous position if not meant for. This was not the object sought to be achieved by the legislature. If for one or the other reason, the proceedings in reference to the assessment years 1998-99 remains pending and the application for registration under Section 12AA of the Act, 1961 is filed in the year 2014-15 followed by registration, if the proviso is applied,

then benefit of Section 11 and 12 of the Act, 1961 would be given to the Trust or the Institution even for the year 1998- 99, though the legislatures have not provided such arrangement or to extend the benefit in such cases. The provision is candid to govern only those cases where the application for registration is submitted followed by registration, to extend the benefit to the assessee from the following financial year of the date of application. Taking aforesaid into mind, we find reasons to allow the appeal preferred by the revenue and the substantial questions of law framed herein above are answered in favour of the Revenue and thereby we set-aside the order passed by the Tribunal."

11. The Hon'ble Division Bench rightly took note of the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import) Vs. Dilip Kumar & Co., reported in (2018) 9 SCC 1, in which the Hon'ble Supreme Court has explained as to how the exemption provisions have to be interpreted and such interpretation to lean in favour of the Revenue. Further, we also agreed with the view expressed in Paragraph 20 of the aforementioned judgment, wherein it has been held that the instruction issued by the CBDT cannot be forfeited as it is against the statutory provisions.

12. Apart from the above legal position, the factual matrix as culled out in the assessee's case would disentitle them for any relief.

13. For the above reasons, the Tax Case Appeal is dismissed and the Substantial Questions of Law are answered against the assessee. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Kak
To
The Income Tax Appellate Tribunal,
'B' Bench, Chennai.

2.The commissioner of Income Tax (A),Salem.
3. The Income Tax Officer,Exemptions Ward,Salem

+1cc to Mr.G.Baskar , Advocate SR.No. 39913

T.C.A.No.1015 of 2019

A.SK(07.01.2021)