IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.02.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.784 of 2010

Commissioner of Income Tax,
Salem ... Appellant/Respondent

Vs.

Young Women's Christian Association,
No.76-A, Cherry Road,
Hasthampatty,
Salem – 636 007. ... Respondent/Appellant

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 11.02.2010 in I.T.A.No.1879/Mds/2009.
And against the order of the Commissioner of Income- Tax, Salem dated 12/10/2009 made in C.No.9755(136)/SLM/2006-2007.

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

For Respondent : Mr.G.Baskar

JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed by the Income Tax Appellate Tribunal, Madras "B" Bench in I.T.A.No.1879/Mds/2009, the Revenue has filed the above appeal.

2.The assessee - Society filed an application under Section 10 on 19.01.2007 for registration under Section 12AA of the Income Tax Act with a delay of 5 years and 10 months without any supporting evidence and instrument of formation of the Society and bye-laws. There was no response to the letters issued to the Society for production of the instrument of creation for the Society. The Society also did not file the instrument of creation of Society reflecting the bye-laws. A letter dated 05.04.2007 was sent to the assessee seeking the above details and the activities of Trust, donations, donors, etc. Since there was no response inspite of opportunity, the order dated

24.07.2007 was passed rejecting the application for registration based on the materials available on record as the Deed/Bye-laws did not have the necessary Clauses as enumerated in Page – 1 of the CIT order, which are mandatory for granting registration under Section 12AA. The said Clauses need to be in writing and cannot be left open to assumptions for the purpose of compliance under the Act governing the Trusts. On appeal by the assessee, the Tribunal by order dated 12.09.2012, remitted the case back to the CIT for re-consideration of the application of registration. On remittance, the CIT gave another opportunity to the assessee and the assessee filed an instrument of amendment containing amended bye-laws with effect from 14.06.2009. On the assessee's appeal, the assessee sought for registration with retrospective effect being the original date of creation of the assessee - Society by condoning the delay and the Tribunal had granted the same. Aggrieved over the same, the Revenue has filed the above appeal.

3.At the time of admission, the following substantial questions of law arose for consideration:

> “1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in directing the Commissioner of Income Tax to condone the delay in filing of the application and to grant registration to the assessee Society with retrospective effect from the date from which it was sought?
>
> 2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that rectification / amendments made to the bye-laws for the Society would operate retrospectively while granting registration under Section 12AA of the Income Tax Act?
>
> 3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the mode of application of income, and funds and the mode of investment for the Society could be locked into only for assessment purposes and not at the time of considering the application for registration, overlooking the clear mandate provided in Section 12AA of the Income Tax Act?”

4.Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant – Revenue submitted that the Hon'ble Supreme Court in the judgment reported in (1996) 84 Taxman 248 (SC) [Commissioner of Income-Tax Vs. Kamla Town Trust] held that the amendments to the Bye-laws/Deed will have only prospective effect and cannot have retrospective application for the purpose of any proceedings, including granting registration. Further, the learned Senior Standing Counsel submitted that the Tribunal grossly erred in holding that the said decision does not apply to the Society and the same is not right in law. The learned Standing Counsel further submitted that granting registration under Section 12AA with effect from 12.09.2012 can only be prospective and shall not operate retrospectively as sought for by the assessee.

5.Mr.G.Baskar, learned counsel appearing for the respondent – assessee submitted that the amendment made by the Society shall not alternate the objects of the Society, therefore, the order passed by the Tribunal is proper. In support of his contention, the learned counsel relied upon an un-reported judgment dated 24.02.2020 made in T.C.A.No.957 of 2010 [Commissioner of Income Tax, Salem Vs. M/s.Vasavi Manikandan Hospital Trust, No.48, Iyappa Hospital, Andal Street, Shevapet, Salem 636 002] wherein the Division Bench of this Court held as follows:

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> 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."

6.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the Tribunal, while allowing the appeal filed by the assessee, held that the ratio laid down by the Hon'ble Supreme Court of India in the judgment reported in (1996) 84 Taxman 248 (SC) [Commissioner of Income-Tax Vs. Kamla Town Trust] is not applicable to the case on hand for the reason that the said case pertains to a Trust and the present case pertains to a Society. The Hon'ble Supreme Court in the judgment reported in(1996) 84 Taxman 248 (SC) [Commissioner of Income-Tax Vs. Kamla Town Trust] held as follows:

> "...
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> The order of rectification of an instrument of trust by a civil court would not be a judgment in rem. it would be a judgment in personam binding on the parties to the rectified instrument, namely, the settlor on the one hand and the trustees on the other, as well as on the ultimate beneficiaries. But a trust deed rectified pursuant to the order of the court would make the rectification order relevant under the provisions of section 11 of the Indian Evidence Act, as the fact in issue in an enquiry before the Income-tax Officer would be whether on the basis of the rectified trust instrument the assessee-trust is entitled to get its income exempted from tax under the relevant provisions of the Income-tax Act. In such proceedings, therefore, the order granting rectification of such instrument of trust would remain relevant. The Income-tax Officer will have to take the instrument as it exists in its amended form when it is pressed in service for framing the assessment concerning the relevant assessment year in which such rectified instrument holds the field.
>
> The assessee was a trust created by a trust deed dated October 27, 1941, executed by a company which had its registered office at Kanpur. The objects of the trust deed were to construct a settlement or colony for their workmen together with amenities in the shape of hospitals, schools, temples, mosques, recreation places and for such other works directly concerning the amenities of workmen. On application by the company to the Town Improvement Trust two plots had been demised to the company at concessional rates for the welfare of its workmen by two deeds of indenture in 1936 and 1938. The company transferred both the plots by the trust deed of October 27, 1941, to the trustees for effectuating its object of settling these plots upon the charitable trust thereinafter mentioned in the deed. In 1945, the company filed a suit for rectification of the trust deed, and the deed was

rectified. Clause 2(b)(i) of the deed as rectified laid down that the object of the trust was to construct "residential quarters, chawls or buildings for the workmen in general and in particular for the workmen, staff and other employees of the company or other allied concerns under the management of or in which the directors of the company may for the time being be interested". The High Court while interpreting the deed in another case [(1971) 81 ITR 557] held that the objects of the trust deed as rectified in 1945 did not create a public charitable trust. There was a further rectification of the trust deed in 1955, Clause (b)(i) of the deed rectified in 1955 provided for construction of residential quarters, chawls or buildings for the workmen in the town of Kanpur and the surrounding areas and extensions, and for their respective families and dependents. Clause 2(b)(iv) empowered the trustees to erect such other works, building and installations as the trustees may in their discretion think fit to provide for the advancement of any other similar object of general public utility. The Income-tax Officer issued notices to the assessee under section 34 of the Indian Income-tax Act, 1922, and section 148 of the Income-tax Act, 1961, for the assessment years 1949-50 to 1965-66. The assessments were completed. On appeal, the Tribunal dismissed the assessee's appeals for the assessment years 1949-50 to 1955-56 but allowed those for the assessment years 1956-57 to 1965-66 subject to the rider that the income derived from the trust property by the assessee would be exempt only within the limit permissible under Section 11(1)(a) of the Income-tax Act, 1961. On a reference of the questions, inter alia, whether the assessee was not a public charitable trust and its income was not exempt under section 4(3)(i) of the Indian Income-tax Act, 1922, for the assessment years 1949-50 to 1955-56; whether the second rectification decree dated May 10, 1955, operated prospectively from the assessment years 1956-57 and did not have effect of rectifying the deed of trust dated October 27, 1942, as from the date of its execution and whether the objects and activities of the trust fell within the first limb of the definition of charitable purpose in section 2(15) of the

1961 Act and the residuary clause thereof was not attracted for the assessment years 1962-63 to 1965-66 and whether the Income-tax Officer was entitled to adjudge the validity of the rectification, the High Court answered all the referred questions in favour of the assessee and against the Revenue. On appeal to the

Supreme Court:

Held, (i) upon a concession by the assessee, that the rectification brought about by the order of the civil court in 1955, namely, the second rectification, had no retrospective effect and would operate prospectively from the date on which such rectification was effected and would cover assessment years 1956-57 onwards up to the assessment years 1965-66 and would not have effect for the assessment years 1949-50 to 1955-56.”

7.The CIT, after remand, after taking into consideration the case of both sides, rejected the case of the assessee following the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Income-Tax Vs. Kamla Town Trust reported in (1996) 84 Taxman 248 (SC) and held that the rectification shall not have retrospective effect and would operate prospectively from the date when the rectification saw the light of the day. However, the Tribunal erroneously allowed the appeal observing that the order passed by the Hon'ble Supreme Court pertains to a Trust and the same is not applicable to the assessee's case which is a Society. The finding of the Tribunal cannot be sustained for the reason that the Tribunal should have only followed the principle laid down by the Hon'ble Supreme Court to the effect that the rectification shall not have retrospective effect and would operate prospectively from the date on which such rectification saw the light of the day.

8.The ratio laid down by the Hon'ble Supreme Court squarely applies to the facts and circumstances of the present case. The rectification/amendments made to the bye-laws of the Society would only operate prospectively while granting registration under Section 12AA of the Income Tax Act.

9.Following the ratio laid down by the Hon'ble Supreme Court in the judgment reported in (1996) 84 Taxman 248 (SC) [Commissioner of Income-Tax Vs. Kamla Town Trust], cited supra, the order passed by the Income Tax Appellate Tribunal is liable to be set aside and the questions of law 1 and 2 are decided in favour of the Revenue - appellant. The appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal, Chennai, "B" Bench

2.The Commissioner of Income Tax,
3, Gandhi Road, Salem-7.

3.The Income Tax Officer, Ward IIB(4), Salem.

+1 cc to M/s.G.Baskar, Advocate Sr.No.9468

T.C.A.No.784 of 2010

VGII(CO)
RMP(25/03/2021)