IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.03.2021

CORAM:

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

T.C.A.No.827 of 2010

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

Vs.

Salem Sengunthar Welfare Trust,
No.655/222, Thiru.Vi.Ka. Road,
Ammapet, Salem - 636 003. ... 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.TA.No.1877/Mds/2009 and against the order of the Commissioner of Income Tax, Salem-7 dated 16.10.2009 in C.No.9755(109)/SLM/2005-2006 and against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D' dated 13/06/2008 in ITA No.2113/mds/2006 and against the Commissioner of Income Tax, Salem-636 007 dated 25/08/2006 in C.No.9755(109)//SLM/2005-2006.

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

For Respondent : Mr.T.Vasudevan

JUDGMENT

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

Challenging the order passed in I.T.A.No.1877/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench, the Revenue has filed the above appeal.

2.The appellant has raised the following substantial questions of law in the grounds of appeal:

> "1)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the order of the Commissioner of Income Tax u/s.12AA rejecting the application for registration u/s 12

AA of the Income Tax Act on the ground that all the objects were of the charitable nature and at the time of registration, the Commissioner of Income Tax could only look into the genuineness of the Trust and did not examine the activities of the Trust, relying on the decisions rendered under the old provisions of Section 12A of the Income Tax Act and without considering the new provision of Section 12AA of the Act?

2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that there were sufficient reasons for the delay in filing the application for registration even though the assessee had not explained the delay from January 2003 to 2006 and the assessee Trust itself had by its letter dated 09.10.2009 foregone its claim for registration with retrospective effect?"

3.When the above appeal came up for admission on 31.08.2010, the Hon'ble Division Bench of this Court admitted the appeal on the 2nd question of law. As far as the question raised relating to the genuineness of the Trust claiming exemption and registration under Section 12AA of the Income Tax Act is concerned, the Hon'ble Division Bench rejected the plea of the Revenue and agreed with the conclusion of the Tribunal stating that it is purely a question of fact. The Hon'ble Division Bench has rightly decided the said question of law against the Revenue. Hence, we are not inclined to give any finding with regard to the 1st question of law.

4.So far as the 2nd question of law is concerned, the Tribunal, while setting aside the order passed by the Commissioner of Income Tax with direction to grant registration to the Trust, further directed the Commissioner to decide the issue with regard to condonation of delay by taking a lenient view and in accordance with the observation made by the Tribunal. The application for registration was made by the assessee - Trust on 27.02.2006 for getting the registration done retrospectively from 01.04.2002.

5.As per Section 12A (1) proviso (2) of the Income Tax Act, the registration of the Trust or Institution shall be made from the first day of the Financial Year in which the application is made. So far as the present application is concerned, admittedly, the Trust had submitted their application on 27.02.2006. Therefore, as per Section 12A(1) proviso (2) of the Act, registration can be done only from 01.04.2005. Therefore, as per the said provision, registration cannot be done retrospectively from 01.04.2002, which the respondent is seeking for.

6.It is also pertinent to note that the respondent - Trust itself, by its letter dated 09.10.2009, had foregone its claim for registration with retrospective effect. Therefore, the question of condonation of delay in registering retrospectively, does not arise. Hence, we are of the considered view that the registration can be done from 01.04.2005 based on the assess's application dated 27.02.2006.

7.With these observations, the Tax Case Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//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,
Salem-7.

3.The Income Tax Appellate Tribunal,
Chennai Bench'D'.

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