IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM

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

Tax Case Appeal No.229 of 2011

Commissioner of Income Tax,
Salem. ... Appellant

Vs.

M/s.Veda Vikas Educational
& Charitable Trust,
36-IB, N.H.7 Salem, Santhiyur,
Salem - 636 203. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "C" Bench, dated 12.11.2010 passed in I.T.A.No.1609/Mds/2009, preferred against the order of the Commissioner of Income Tax, Salem-I, made in C.No.9755(138)/SCM/2008-2009, order dated 12.08.2009.

For Appellant : Mr.J.Narayanaswamy
Senior Standing Counsel

For Respondent : No appearance

J U D G M E N T
(Delivered by M. DURAISWAMY, J.)

The above appeal has been filed by the Revenue challenging the order passed in I.T.A.No.1609/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai Bench "C".

2.The Trust was created by Trust Deed, dated 24.05.2001, by 30 persons in the name of "M/s.Shanmuga Venkateshwara Educational Trust". According to the appellant, one of the Trustees was a minor aged about 14 years on the date of execution of the Trust Deed. The main object of the Trust was for the cause of promotion of education culture and ethics irrespective of religion, caste and races among the public. Further, it has been recited in the document that the Trust was to take all efforts for the betterment of the society by festinating organisation to provide better education, Arts, and culture which are common good for promotion of Society.

The respondent Trust filed an application in Form-10A for registration under Section 12-AA of the Income Tax Act, 1961 ("the Act" for brevity) on 24.02.2009. The Commissioner of Income Tax found that all the 30 persons have signed the Trust Deed and out of the 30 persons, 13 were stated to be Executive Committee members. By a supplementary deed, the object clause was diluted by a new object clause to the effect that the object was to be achieved by establishing agricultural farm and proceeds to be utilised for the purpose of achieving the objects of the Trust.

3.The Revenue contended that these amendments in the supplementary deed are against the object mentioned in the original Trust Deed. The Commissioner of Income Tax, taking into consideration the case of both sides, refused to register the Trust under Section 12AA of the Act. While rejecting the application, the Commissioner of Income Tax observed that a minor has been inducted as a Trustee under the Trust Deed and he was also allowed to cast his vote independently. Further, the Commissioner of Income Tax observed that the main object of the Trust was diluted in the supplementary deed, and therefore, the same is violative of Section 12AA of the Act.

4.Challenging the order passed by the Commissioner of Income Tax, the respondent filed an appeal before the Income Tax Appellate Tribunal and the Tribunal, by order dated 12.11.2010, allowed the appeal and directed the Commissioner of Income Tax to allow registration of the Trust under Section 12AA of the Act. Aggrieved over the same, the Revenue has filed the above appeal. The above appeal was admitted on the following substantial questions of law :

> "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 grant registration under Section 12AA of the Income Tax Act, 1961?
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> 2.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 grant registration under Section 12AA when the assessee had failed to furnish the details called for by him in the course of the registration proceedings, which were necessary to satisfy himself about the genuineness of the activities of the Trust?
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> 3.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 grant registration under Section 12AA when the conditions laid down in Section 12AA of the Act regarding satisfaction of the Commissioner

of Income Tax with regard to the charitable nature of the objects and the genuineness of the activities carried out by the Trust were not fulfilled?"

5.On a perusal of the order passed by the Tribunal, it is clear that the Tribunal has not gone into the issues that were decided by the Commissioner of Income Tax. While reversing the order passed by the Commissioner of Income Tax, the Tribunal should have considered the findings given by the Commissioner of Income Tax in detail. However, the Tribunal, in Para No.4, observed that the substitution or change of Trustees subsequent to the Trust Deed would not effect the original object unless the object itself is changed by the subsequent supplementary deed. When the Commissioner of Income Tax had given findings with regard to the induction of a minor as a Trustee and that the main object of the Trust would be lost by the subsequent supplementary deed, the Tribunal should have considered those aspects and given findings with regard to the same. Since the Tribunal has not considered those issues, we are of the considered view that the order passed by the Tribunal should be set aside and the matter be remitted back to the Tribunal for fresh consideration.

6.Accordingly, the order passed by the Income Tax Appellate Tribunal in I.T.A.No.1609/Mds/2009, dated 12.11.2010, is set aside and the matter is remitted back to the Tribunal for fresh consideration. The Tribunal is directed to decide the matter afresh, specifically with regard to the findings that were given by the Commissioner of Income Tax in his order, dated 12.08.2009, and also give a finding whether the respondent had complied with the provisions of Section 12AA of the Act. The appeal shall be decided afresh after giving opportunity of hearing to both sides.

With these observations, this Tax Case Appeal is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Chennai “C” Bench

2.The Commissioner of Income Tax,
Salem.

Tax Case Appeal No.229 of 2011

CP(CO)
CB(05/03/2021)