IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

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The Hon'ble Mr. Justice M.DURAISWAMY
and
The Hon'ble Ms. Justice T.V.THAMILSELVI

T.C.A.Nos.401 and 402 of 2011

The Commissioner of Income Tax I,
Madurai. .. Appellant in both appeals

Vs

Karaikudi ILM Educational Trust,
29, Piranmalai Rawther III Street,
Karaikudi - 630 001. .. Respondent in both appeals

Appeals preferred under Section 260-A of The Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, C Bench, Chennai, dated 03.11.2010 passed in I.T.A.Nos.1383/Mds/2010 and 1384/Mds/2010 against the order of the Commissioner of Income Tax I, Madurai dated 08.12.2009 and made in C.No. 464/42/2009-10.

For Appellant .. Mr.J.Narayanasamy in both appeals

For Respondent .. Mr.Vasudevan in both appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.Nos.1383/Mds/2010 and 1384/Mds/2010 dated 03.11.2010 on the file of the Income Tax Appellate Tribunal, C Bench, Chennai, the Revenue has filed the present appeals.

2.The assessee Trust was created by a Trust Deed dated 09.02.2009. The object of the Trust, as per the Trust deed, is to establish/promote/set up/provide/maintain/assist/running of schools, Islamic educational centres, Arabic and Islamic religious classes, Quran and Hadis coaching classes, institutions for orphanages/widow homes to promote and to set up hospitals, dispensaries etc., According to the Revenue, the

Trust did not produce any report with regard to the activities in support of their contentions. The assessee Trust filed an application for registration under Section 12 AA and approval under Section 80G(5) of the Income Tax Act, 1961 on 09.06.2009. Though several opportunities were given by the Commissioner of Income Tax (hereinafter referred to as 'CIT') to the assessee Trust, the assessee failed to establish the contention before the CIT. Hence the CIT, by order dated 08.12.2009, rejected the registration filed under Section 12 AA and approval under Section 80G(5) of the Income Tax Act, 1961 for the reason that the Trust is not genuine and they are not engaged in any charitable activities. Aggrieved over the order passed by the CIT, the assessee filed appeals before the Income Tax Appellate Tribunal and the Appellate Tribunal, by order dated 03.11.2010, directed the CIT to register the assessee Trust under Section 12AA of the Income Tax Act, 1961 finding that the Trust was constituted only on 09.02.2009 and the CIT had rejected the registration and approval at the threshold. Challenging the order passed by the Income Tax Appellate Tribunal, the Department has filed the above appeals.

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

T.C.A.No.401 of 2011:

1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in setting aside the order of the Commissioner of Income Tax and direct the Commissioner of Income Tax to grant registration under Section 12AA of the Income Tax Act to the assessee valid in law?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in directing the Commissioner of Income Tax to grant registration under Section 12AA of the Act, even though without considering the amendment of the Act with effect from 01.04.1997 whereby Section 12AA was introduced making it mandatory for the Commissioner to conduct necessary enquiry in this regard and to grant registration only if he satisfied about the genuineness of the Trust?

T.C.A.No.402 of 2011:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in directing the Commissioner of Income Tax to grant approval of Section 80G(5) of the Income Tax Act to the assessee Trust, even though it is found that the Trust is not genuine one and is not engaged in any charitable activity?

4.It is not in dispute that the Trust was constituted on 09.02.2009 whereas they sought for registration and approval on 09.06.2009 under Section 12AA and 80G(5) of the Income Tax Act respectively. The CIT, while rejecting the registration and approval, found that it was too early to give a finding with regard to the genuineness of the objects of the Trust for the reason that the activities were not commenced on the date of application. In an unreported judgment in Commissioner of Income Tax, Chennai Vs. Indomer Ananthi Chandramohan Charitable Trust, Chennai dated 05.01.2015, made in Tax Case Appeal No.303 of 2012, the Hon'ble Division Bench of this Court held as follows:

"...

> 2.Learned counsel appearing for the Revenue fairly submits that the issue involved in this appeal is covered by a decision of this Court in T.C.(A) No.579 of 2013 dated 27.01.2014 wherein this Court following the decision of this Court reported in (2012) 206 Taxman 69 (CIT Vs. Arulmighu Sri Kamatchi Amman Trust) dismissed the appeal filed by the Revenue holding that the Revenue would not be justified in refusing the grant of registration at the threshold. For better clarity, the relevant portion of the decision of this Court reads as follows:
>
> > "9.In the present case also, the Revenue only questions the Trust not having commenced its activity for the grant of registration. The provision under Section 12AA of the Income Tax Act does not stipulate such a condition for grant of registration. On the other hand, Section 12AA (1) contemplates satisfaction of the Commissioner about the objects of the Trust and the genuineness of the activities and make such enquiry as may be necessary for the purpose of grant of registration. In so considering the application, the Commissioner has to give an opportunity to the assessee as provided for under proviso to sub-section (1) of Section 12AA. Under sub-section (3) of Section 12AA, the Commissioner is given power to cancel the registration, if he satisfies that the objects of such Trust are not genuine or not being carried on in accordance with the objects of the Trust. When such an authority is vested with the Commissioner to cancel the registration in the event of the Trust not being carried on in accordance with the objects of the Trust, we do not find any ground to say that merely on the date of the application, the assessee Trust had not

commenced its activities, hence, registration could not be granted. it is not denied by the assessee that on the date of the application under Section 12AA, it was yet to commence its operation. But nevertheless the genuineness of the objects of the Trust were not questioned by the Commissioner. Considering the fact that the continuance of registration is further a subject matter of scrutiny by the Commissioner as contemplated under Section 12AA(3) of the Income Tax Act we do not think that the Revenue would be justified in refusing the registration at the threshold. The Tribunal had followed the decision of the Gujarat High Court in the case of CIT Vs. Kutchi Dasa Oswal Moto Pariwar Ambama Trust reported in 29 Taxman 228. We respectfully agree with the decision of the Gujarat High Court."

3.The abovesaid view was followed by this Court, in which one of us was a party (R.Sudhakar, J.) in T.C.(A) No.261 of 2014 dated 22.08.2014.

4.Accordingly, following the decision of this Court in T.C.(A) No.579 of 2013 dated 27.01.2014, this Tax Case (Appeal) stands dismissed. The question of law is answered against the Revenue. No costs."

5.On a reading of the above judgment, it is clear that when the genuineness of the objects of the Trust were not questioned by the CIT and when the Trust was yet to commence its operation and when a subject matter of scrutiny by the CIT as contemplated under section 12 AA(3) of the Income Tax Act, the Revenue would not be justified in refusing the registration at the threshold. The said ratio was laid down in a judgment reported in (2012) 206 Taxman 69 (CIT Vs. Arulmighu Sri Kamatchi Amman Trust). Following the ratio laid down in the judgment, the Hon'ble Division Bench of this Court directed the CIT to register the Trust. The ratio laid down by the Hon'ble Division Bench of this Court squarely applies to the facts of the present case. We do not find any error or irregularity in the order passed by the Income Tax Appellate Tribunal. In such view of the matter, the appeal in T.C.A.No.401 of 2011 is liable to be dismissed.

6.The issue involved in T.C.A.No.402 of 2011 pertains to approval under Section 80G(5) of the Income Tax Act. The ratio laid down by the Hon'ble Division Bench in T.C.A.No.303 of 2012 (cited supra) also applies to the case of the assessee. The Income Tax Appellate Tribunal, after taking into consideration all these aspects, rightly directed the CIT to register the documents under Section 12AA of the Income Tax Act and also granted approval. Hence this appeal is also liable to be dismissed.

7.In view of the above, both the Tax Case Appeals stand dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax I,
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai 625 002.

T.C.A.Nos.401 and 402 of 2011

SV(CO)
GN(16/03/2021)