IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

T.C.A.No.1181 of 2015

Commissioner of Income Tax,
Trichy. .. Appellant

-vs-

M/s.Shine Educational and Social Welfare Trust,
Aadhavan Arts and Science College Campus,
Alanthur, Manaparai-621 307. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 27.02.2015 made in I.T.A.No.2778/Mds/2014 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai.

Against the Proceedings of the Commissioner of Income Tax-I, Tiruchirapalli, dated 24.09.2014 in C.No.6162E/CIT-I/TRY/2014-15.

For Appellant : Mr.J.Narayanasamy

For Respondent : Mr.Ashok Pathy,
for M/s.Pass Associates

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/Revenue, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 27.02.2015 made in I.T.A.No.2778/Mds/2014 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai (for brevity, "the Tribunal").

2.The appeal was admitted on 05.01.2016, on the following substantial questions of law:-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the registration granted under Section 12AA cannot be withdrawn/cancelled on the ground that the assessee had not filed the return of income?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the registration under section 12AA cannot be cancelled on the ground of non-genuineness when the assessee had not filed the return of income for four years and had not intimated the address for communication?"

3.Heard Mr.J.Narayanasamy, learned Senior Standing Counsel for the appellant/Revenue and Mr.Ashok Pathy, learned counsel, for M/s.Pass Associates, for the respondent.

4.The Tribunal has held in favour of the assessee on the sole ground that non-filing of the return cannot be a ground for cancellation of the registration under Section 12AA of the Act. However, we find that before the Commissioner of Income Tax-I, Tiruchirappalli, (for brevity, "the CIT") the assessee did not appear, in spite of several notices calling upon them to produce the copies of the return of income for the four previous years. Therefore, in our view, the Tribunal should have first tested the conduct of the assessee and thereafter, the bonafides and thereafter, the questions of law. Since such an exercise has not been done, we are of the view that the matter should be re-agitated before the CIT.

5.Accordingly, the order dated 27.02.2015, passed by the Tribunal is set aside and the matter is remanded to the Commissioner of Income Tax-I, No.44, Williams Road, Cantonment, Tiruchirappalli, for fresh consideration. The Commissioner shall issue notice to the respondent-assessee, hear them in detail and pass fresh orders on merits in accordance with law uninfluenced by any other observations made in the order passed by the Tribunal, impugned before us, nor the reasons assigned by the Commissioner for cancellation of the registration. It is needles to state that the decision should be a fresh decision on merits and in accordance with law. Consequently, the substantial questions of law are left open and the appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income Tax Appellate Tribunal 'A' Bench,
Chennai.

2.The Commissioner of Income Tax-I,
Tiruchirapalli.

T.C.A.No.1181 of 2015

PA (CO)
PR (26/08/2021)