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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved Date : 19.07.2021

Pronounced Date : 30.07.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY

AND

THE HON'BLE MRS.JUSTICE R. HEMALATHA

Tax Case Appeal Nos.281, 290 & 291 of 2016

Rasipuram Rotary Club Trust,
Rotary Nagar,
Namakkal Road,
Rasipuram Taluk.

... Appellant/Appellant
in TCA No.281 of 2016

(PAN No : AABTR 4516 K)

Rasipuram Kannada Sainigar Samuga
Pradama Sangam Educational Trust,
4/41, Dasa Street,
Rasipuram - Post & Taluk.

... Appellant/Appellant in TCA
Nos.290 & 291 of 2016

(PAN No : AABTR 2734 F)

Vs.

The Income Tax Officer,
Ward II (2),
Salem.

... Respondent in
all TCA's/Respondent

COMMON PRAYER: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Chennai " SMC" Bench, dated 20.11.2015 & 13.11.2015 passed in ITA Nos.45/Mds/2015, 43/Mds/2015 & 44/Mds/2015 for the assessment years 2007-2008, 2008-2009 and 2009-2010 and order in I.T.A.No.43/2010-2011, I.T.A.No.26/2010-2011 and I.T.A.No.27/2010-2011 dated 28/10/2014 by the commissioner of Income Tax (Appeals), Salem and against the order of Income Tax Officer Ward II(2), Salem Assessment order for the year 2007-2008, 2008-2009 and 2009-2010.

In all TCA's



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For Appellant : M/s.G.Vardhini Karthik
for Ms.J.Sree Vidhya
For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

C O M M O N J U D G M E N T

(Common Judgment of the Court was
delivered by R.HEMALATHA, J.)

The three appeals are filed by the appellants M/s.Rasipuram Rotary Club Trust and M/s.Rasipuram Kannada Saineegar Samuga Pradama Sangam Educational Trust, Rasipuram against the orders of the ITAT 'SMC' Bench, Chennai in ITA Nos.45/Mds/2015, 43/Mds/2015 & 44/Mds/2015 for the assessment years 2007-2008, 2008-2009 and 2009-2010 respectively.

2. The common issue in all the three appeals is whether the corpus donations in the form of voluntary contributions made with a specific direction would form part of the corpus of the trust and are exempted under Section 11(1)(d) of the Income Tax Act in the absence of 12AA registration of the Trust. The amount of such donations was Rs.8,71,157/- in 2007-2008, Rs.5,55,607/- in 2008-2009 and Rs.3,00,477/- in 2009-2010. In all the three cases, the Commissioner of Income Tax (Appeals) who heard the appeals against the Assessment Orders held that registration under Section 12AA is a prerequisite for any exemption to be claimed under Section 11(1)(d) of Income Tax Act and in the absence of the registration of the trust under Section 12AA, the voluntary contributions lose the exemption status, irrespective of whether such voluntary contributions are obtained with specific directions or not. The Income Tax Appellate Tribunal in its orders had upheld the orders of the Commissioner of Income Tax (Appeals) and hence these appeals in this Court.

3. These appeals were admitted on the following substantial questions of law:

Substantial Questions of Law in TCA No.281/2016 :

- i. Whether on the facts and circumstances of the case, the contributions towards the corpus fund with specific directions can be treated as income under Section 2(24)(iia) in the case of the assessee, who is not registered charitable trust under Section 12Aa of the Act?



- ii. Whether on the facts and in the circumstances of the case, the conditions laid down in Sections 11 and 12 shall apply even to trusts, which are not registered under Section 12AA of the Act, 1961?

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- iii. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the corpus donations, which are capital receipts, are liable to be taxed at normal rates, since the appellant trust is not registered under Section 12AA, even though the appellant is not claiming exemption under Section 11? and

- iv. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that donations to a non registered trust will be treated as income under Section 56(2)(v) of the Income Tax Act, unless received from the blood relatives?"

Substantial Questions of Law in TCA Nos.290 & 291/2016 :

- i. Whether on the facts and circumstances of the case, the contributions towards the corpus fund with specific directions can be treated as income under Section 2(24)(iia) in the case of the assessee, who is not registered charitable trust under Section 12AA of the Act?
- ii. Whether on the facts and in the circumstances of the case, the conditions laid down in Sections 11 and 12 shall apply even to trusts, which are not registered under Section 12AA of the Act, 1961? and
- iii. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the corpus donations, which are capital receipts, are liable to be taxed at normal rates, since the appellant trust is not registered under Section 12AA, even though the appellant is not claiming exemption under Section 11?

4. Ms.J.Sree Vidhya, learned counsel for the appellants would contend that

- a) the trust has not claimed exemption under Section 11 of the Income Tax Act which the Income Tax Appellate Tribunal failed to note.
- b) the accretion to the corpus fund has to be treated as capital receipts and are not liable to tax.
- c) the voluntary contributions made with specific directions



are not income under Section 2(24)(iia) of the Income Tax Act, 1961.

d) the Income Tax Appellate Tribunal did not follow the decisions of the other tax tribunals across the country.

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5. To make the law provisions crystal clear let us first go into the nitty gritty of the relevant sections.

As per Section 2(24)(iia) of Income Tax Act, 1961

"Income" includes -

voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) of clause (23C) of Section 10] or by an electoral trust.

Explanation - For the purposes of this sub clause, "trust" includes any other legal obligations"

Section 11(1) (d) of Income Tax Act 1961, amended in 1995, reads as follows:

"Income from property held for charitable or religious purposes -

11.(1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income

a.....

b.....

c.....

d.income in the form of voluntary contributions made with a specific directions that they shall form a part of the corpus of the trust or institution."

Section 12 of the Act, reads that-

Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly



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for such purposes (not being contributions made with a specific direction that they shall for a part of the corpus of the trust or institutions) shall for the purposes of Section 11 be deemed to be income derived from the property held under trust wholly for charitable or religious purposes

6. Under Section 12A of the Income Tax Act, 1961, Non-profit organisations like charitable trusts, welfare societies, non-governmental organisations, religious institutions etc., are entitled to tax exemptions. This tax relief was introduced keeping in consideration that non-profit entities work for social welfare and not for generating profit. Owing to their selfless contributions towards the society they are exempted from taxes that come under the purview of Section 11 and Section 12. Nevertheless, to claim such tax benefits individuals need to get registered as per the norms of Section 12A of Income Tax Act. In case a non-profit organisation fails to register under Section 12A, all their future financial transactions and receipts will be deemed taxable. All these make it essential for non-profit entities to become familiar with the components of Section 12A of Income Tax Act in detail. They should also find out more about the eligibility requirements and documents among others.

7. Thus in the light of the above it can be inferred that-

- a) voluntary contributions received with a specific direction that it forms a part of the corpus of the trust is treated as follows :
 - i. If the trust or charitable institution is registered under Section 12 AA of Income Tax Act, 1961 the voluntary contributions are not taxable as per Section 11(1)(d) of Income Tax Act, 1961
 - ii. If the trust or institution is not registered under Section 12AA, the voluntary contributions are taxable as per Section 2 (24) (iia) of the Income Tax Act, 1961
- b) voluntary contributions received without direction that it forms part of corpus is generally taxable in all cases.

8. The learned counsel for the appellants tried to differentiate between Section 2 (24) (iia) and Section 11 (1) (d) of Income Tax Act, 1961. Her contention is that since the Section 2(24)(iia) is silent about the contribution to corpus



fund, it has to be construed as eligible for exemption. But the analysis of these Sections reveal that both these Sections are interlinked and it cannot be said to operate independently. This is like claiming tax exemption available for senior citizens without attaining the age of 60. The appellant assessee had adduced letters expressing the intent of the donors that the donations were with specific directions (of application). The learned counsel for the appellants also relied on the following decisions of various Income Tax Appellate Tribunals, High Court of Andhra Pradesh, High Court of Karnataka and this Court.

I. In the decision in "[2019] 110 taxmann.com 69 (Madras), Commissioner of Income-tax, Chennai Vs. Pentafor Software Employees, Welfare Foundation" the facts are totally different for the simple reason that the assessee was not a charitable trust. Moreover, the assessee had only questioned the re-opening of the assessment under Section 148 after four years of the assessment.

II. In the decision in "[1997] 92 Taxman 0431, Commissioner of Income Tax Vs. S.R.M.T. Staff Association", the High Court of Andhra Pradesh held that the assessee was not a charitable institution and therefore did not fall under the definition of Section 2(24)(ia) of the Income Tax Act.

III. In ITA No.233 of 2017 order dated 19.07.2019 in "Pr. Commissioner of Income Tax - (E) and another Vs. M/s. Vishwa Bharati Education Trust", High Court of Karnataka held that the assessee trust's application for registration under Section 12 AA was rejected for want of documents and the exemption was denied. It was further held that the voluntary contributions received for a specific purpose cannot be considered as income under Section 2 (24) (ia) since they are capital receipts. However, it was observed that the said voluntary contributions was considered as a loan and refunded to the donors. These facts are different from the facts of the present case.

In all the cases relied upon by her the non-registration under Section 12AA was not the issue. In some cases, the applications were made for registration of the trust but the registration was pending, and therefore the facts were different.

9. The various Income Tax Appellate Tribunals in the following decisions also did not deal with an unregistered



trust:

I. ITO Vs. Shrisachyaya Mataji Osian, Jodhpur ITA No.538/Jodh/2013, dated 09/05/2014

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II. DIT (Exemption) Vs. Basanti Devi and Chakkhanlal Garg Educational Trust

III. N.A. Ramachandra Raja Charity Trust V. First ITO (1985) 14 ITD 230 (Mad. Trib) ; Meherangarh Museum Trust V. Asstt. CIT (2014) 48 taxmann.com 129 (Jodh. Trib)

IV. Hakmuddin Mulla Hasanbhai Singaporewala Charitable Trust V. 5th ITO [1985] 23 TTJ 43 (Bom. Trib)

V. DIT V. Sri Ramakrishna Seva Ashrama [2012] 18 taxmann.com 37, 205 Taxman 26 (Kar.)

VI. St. Ann's Home for the Aged V. ITO [1980] 10 TTJ 144 (Bang. Trib)

VII. Shri Vasu Pujiya Jain Derasar Pedhi V. ITO [1991] 39 TTJ 337 (JP. Trib)

VIII. ITO V. Sardar Vallabhbhai Education Society [2012] 26 taxmann.com 174 (Ahd. Trib.) (TM)

IX. CIT Vs. Trustees of Visha Nima Charity Trust, (1982) 138 ITR 0564 (Bom HC) - AY 1965-66

X. ITO Vs. Gaudiya Granth Anuvad Trust, (2014) 65 SOT 0137 (Agra) ((URO)) - AY 2007-08

XI. Chandraprabhu Jain Vs. ACIT, (2016) 47 CCH 0650 Mum Trib, AY 2011-12

10. It is relevant at this juncture to get into the amendment brought in Section 12A by Finance Act 2014 with effect from 01.10.2014 by way of insertion of first proviso to Section 12A (2) of the Act which is reproduced below :-



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Section 12A (2)

(2) Where an application has been made on or after the 1st day of June 2007, the provisions of Section 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

Provided that where registration has been granted to the trust or institution under Section 12AA, then, the provisions of Sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year :

Provided further that no action under Section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration granted to it was cancelled at any time under Section 12AA".

Though this was a subsequent amendment, it is significant to establish the need for registration of a trust to claim exemption under Section 11, registration of a trust is mandatory.

11. In the light of all the aforesaid discussions and interpretations, and also the above amendment in Section 12A, the intention of the statute is to confer the benefits of exemption under Section 11 of the Act on genuine trusts which are registered under Section 12AA. It is true that equity and taxation are strangers. They cannot co-exist together. It may also be argued that equity has to prevail over the taxation even if the literal constructions of law attempts to cause such an



interpretation. But philanthropy in taxation of trusts gets complicated due to the complex situation in our country. If the provision of law is interpreted in such a manner to allow all donations to corpus as exempted from tax, it would certainly open the floodgates to all and sundry, making it difficult for the Income Tax authorities to differentiate between the original and fake. The registration of trust, in case the trust has to accept donations and build corpus, is one way of regulating the flow of money into the trust and avoid unscrupulous elements trust from evading tax by seeking exemptions indiscriminately.

12. Thus substantial questions of law are answered in favour of revenue and against the assessee.

13. In the result, the appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

mtl

To

1. The Income Tax Officer,
Ward II (2),
Salem.
2. The Commissioner of Income Tax (Appeals),
No.3, Gandhi Road,
Salem-7.
3. The Income Tax Appellate Tribunal,
SMC Bench,
Chennai.

+3ccs to M/s.J.Sree Vidhya, Advocate, S.R.No.36825,36826,36827.

T.C.A.Nos.281, 290 & 291 of 2016

SJ(CO)
HS(25/08/2021)