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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved Date : 24.06.2021

Pronounced Date : 02.07.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY

AND

THE HON'BLE MRS.JUSTICE R. HEMALATHA

Tax Case Appeal No.1059 of 2014

Director of Income Tax Exemptions,
Chennai

... Appellant

Vs.

M/s.Shanmuga Arts, Science,
Technology & Research
Academy(SASTRA) No.5,
Main road,
Dr. Subbaraya Nagar,
Kodabakkam,
Chennai-24.

...Respondent

PRAYER:Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "B" Bench, dated 20.07.2011 passed in I.T.A.No.1531/mds/2010 for the assessment year 2007-2008. Appeal against the order dated.29.06.2010 made in ITA NO.201/09-10 on the file of the Commissioner of Income Tax (Appeals)-XII, Chennai and Appeal against the order dated.31.12.09 made in PAN/GIR No.AAAAB0187C3636-B on the file of the Income Tax Officer(OSD) Exemption-III, Chennai.

For Appellant : Mr.J. Narayanaswamy
Senior Standing Counsel

For Respondent : Ms.Pushya Sitaraman
Senior Counsel
for Ms.J. Sree Vidya

J U D G M E N T

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

This appeal is filed against the order dated 20.07.2011 in ITA.No.1531/MDS/2009 of ITAT Chennai, Bench-B.



2. The respondent/assessee is a Trust registered under Section 12AA of the Income Tax Act, 1961 vide C.No.1146/III/106/84 dated 03.07.1985. The Trust had filed the return of income for assessment year 2007-2008 on 02.11.2007 for Rs.60,76,26,276/- and claiming exemption for Rs.6,65,60,886/- being the amount of donation made by it under Section 11 of the Act. The Assessing Officer had issued a notice u/s.143(2) of the Act on 21.08.2008 through which the details of donations made during the period were called for and according to the Assessing Officer, there was no explanation offered for many donations made by the Trust as to whether they were for activities in conformity with the objects of the Trust. Therefore, all the donations were treated as not exempted and a demand was reworked by the Assessing Officer. Consequently, the capital expenditure claimed for Rs.21,00,56,146/- was not considered as the assessee was being taxed in the status of AOP (Association of persons) whereas an unclaimed depreciation of Rs.10,09,67,711/- was allowed for the same reason of status of AOP. It was also observed by the Assessing Officer that out of a total amount of Rs.6,70,21,273/- paid as donations, the assessee had claimed only Rs.6,65,60,886/- in its return explaining that two items of Rs.39,613/- and Rs.5,00,000/- were given to Charities for Tsunami and to political parties, individuals and others, out of which Rs.5,00,000/- was recovered back during the same financial year from the founder Mr.S.Ramachandra Iyer. The assessee Trust themselves had removed that amount from the list of donations.

3. The Respondent/Trust, aggrieved over this order, approached the Commissioner of Income Tax (Appeals) XII, Chennai, who in a 33 page order discussed threadbare as to how the Assessing Officer was incorrect in concluding that the respondent/Trust was not eligible for the exemption for the donations made by it. A remand report was called for by the Commissioner of Income Tax (Appeals) from the Assessing Officer and the remand report dated 25.05.2010 was also discussed in his order. The Assessing Officer in his remand report had once again reiterated that the assessee being a deemed University and having objects solely educational in nature had definitely deviated from the objects of the Trust deed by making donations to activities which were not covered by the ambit of the Trust-deed. The Commissioner of Income Tax (Appeals) concluded that the Trust-deed had empowered the Trustees to apply the trust funds to anyone or more of the specified objects of the Trust and the Assessing Officer cannot interfere in the discretion of the Trustees. Furthermore, it was also held by the Commissioner of Income Tax (Appeals) that the Assessing Officer ought to have referred the matter to Commissioner of Income Tax for withdrawal of the Registration u/s. 12(AA) (3) of the Act and only upon the receipt of the order of the Commissioner, the denial of exemption u/s.11 could have been proceeded with.



Thus the lack of jurisdiction on the part of Assessing Officer was also pointed out in that order. It was further observed that

"out of the total sum of Rs.6,65,60,886/- disbursed by the appellant towards "Charity and Donations" during the previous year 2006-07 relevant to the Assessment Year 2007-08, the Assessing Officer has accepted an amount of Rs.6,50,66,000/- as donations made in pursuant of the objects of the Appellant. According to the Assessing Officer, the balance of Rs.14,94,886/-, constituting 0.34% of the total expenditure of the appellant, are not in accordance with the objects of the appellant trust, though the donations were made for charitable purposes. Hence, exemption u/s.11 of the Income Tax Act, 1961 was denied by the Assessing Officer. The appellant had submitted that the donations specified by the Assessing Officer were also permitted by the objects of its Trust Deed dated 19.04.1984."

4. The Commissioner of Income Tax (Appeals) also relied on the order of the Andhra Pradesh High Court in the Trustees of H.E.H. the Nizam's Pilgrimage Money Trust Vs. CWT/IT (171 ITR 323), which held that

"if any part of the income of the trust has been applied to charitable or religious purposes in India in the assessment year 1974-75 or is accumulated or is set apart for application to such purposes in India, the income to that extent is entitled to be dealt with under Section 11 (1) (a) and exemption granted in accordance with the said section".

5. According to the Commissioner of Income Tax (Appeals), it is immaterial whether the Charitable and religious purposes for which the Trust is created are confined to the objects of the Trust and what is required is that the income must be applied or accumulated for application or set apart for application as per the provisions of the Income Tax Act, 1961. Thus it was observed that even assuming that the objects of the Trust do not empower the Trustees to spend any part of the income of the Trust property for a particular purpose, still if they do spend any part of the income for charitable or religious purpose in India, it would be entitled for exemption u/s.11 (1) (a) of the Act for that year. The Commissioner of Income Tax (Appeals) gave a verdict in favour of the assessee.



6. The Revenue filed an appeal before the Income Tax Appellate Tribunal, Chennai Bench - B in ITA.No.1531/MDS/2010. The Income Tax Appellate Tribunal in its order found that the Assessing Officer in his remand report had finally accepted almost all the donations except Rs.14,94,886/- constituting 0.34% of the total expenditure. However, the Assessing Officer erred in claiming that the application of funds by the Trust was contrary to the objects of the Trust. The Income Tax Appellate Tribunal held that the application of the income was more relevant even if the objects of the Trust do not empower the Trustees to spend a part of the income for a particular purpose and that any such expenditure for charitable or religious purpose would be entitled for exemption u/s.11 (1) (a) of the Act for that year as held by the Andhra Pradesh High Court in Trustees of H.E.H. the Nizam's Pilgrimage Money Trust Vs. CWT/IT (171 ITR 323), which was also confirmed by the Apex Court. It was also concluded by the Income Tax Appellate Tribunal that the Trust was a Public Charitable Trust as evidenced in the Trust deed dated 19.04.1984 and the supplementary deeds dated 06.05.2000 and 19.01.2001. The Income Tax Appellate Tribunal has upheld the order of the Commissioner of Income Tax (Appeals).

7. Now the present appeal is filed on the following substantial questions of law and additional substantial question of law:

Substantial Questions of law:

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the trust deed dated 19.04.1984 alone would be relevant to conclude about the objects and activities of the trust?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the income of the trust need not be applied towards the objects of the trust and it is suffice that income be applied or accumulated as per the Act irrespective of the object of the trust deed whether charitable/religious purpose and thereby holding that the assessee is entitled for exemption under Section 11?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee trust is to be treated as a public charitable trust with the



activity of education when the assessee had amended the trust deed with the main object of education and the assessee trust is running an educational institution as a deemed university?

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4. Whether on the facts and the circumstances of the case, the Tribunal was right in holding that the assessee trust running educational institution by charging fee can be treated as a public charitable trust as per Section 2 (15)?

5. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditures and donation made by the assessee trust to related individuals, political parties and others, in contravention to the objects of the trusts can be ignored while considering the applicability of exemption under Section 11?

Additional Question of Law:

" Whether on the facts and the circumstances of the case the order of the tribunal is not perverse and right in holding that the expenditures and donation made by assessee trust to related individuals, political parties and others, in contravention to the objects of the trusts, can be ignored while considering the applicability of exemption under Section 11"

8. Mr.J.Narayanaswamy, learned Senior Standing Counsel for the Appellant/Revenue argued that the Tribunal was wrong in holding that the assessee was entitled for the exemption u/s.11 of the Act. According to him, the Tribunal also erred in interpreting the contents of the Trust-Deed while declaring the Trust as Public Charitable Trust. It was also contended that the Tribunal accepting the view of the Commissioner of Income Tax (Appeals) that the Assessing Officer was not empowered to deny exemption u/s.11 of the Act without referring the case to the Commissioner of Income Tax for withdrawal of Registrations u/s.12AA (3) of the Act was also erroneous. It was also argued by the Learned Counsel that the Commissioner of Income Tax (Appeals) as well as the Tribunal did not reasonably answer the question as to whether the payments of donations by the Trust were in consonance with the objects of the Trust. Therefore, his contention was that the Assessing Officer was right in declaring the donations which were not in conformity with the objects of the Trust as not entitled for exemption u/s.11 of the Act. He also contended that the order of both Commissioner of Income Tax



(Appeals) and Income Tax Appellate Tribunal are perverse and liable to be set aside.

9. Per contra, Ms. Pushya Sitaraman, learned counsel for the respondent/assessee made certain arguments which are listed below.

(i) The Assessing Officer though in her original report had declared all the donations to the tune of Rs.6,65,60,886/- as not entitled for exemption took a complete u-turn in her remand report accepting most of the donations as permissible barring a few totalling to Rs.14,94,886/-

(ii) The Assessing Officer's interpretation that the Trust was granted Registration under Section 12AA of the Act only based on the objects of the Trust which were solely educational in nature and any donations/contribution to activities other than educational purposes were violative and not entitled for exemption was hypothetical and against the various rulings of the Courts.

(iii) When there is no violation of provisions of Section 13 of the Act, exemption u/s.11 cannot be denied.

(iv) Relying on the following decision in Commissioner of Income-Tax Vs. Rama Krishna Jewellers, the learned counsel for the assessee contended that concurrent findings of the Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal on factual issues should not be re-appreciated on appeals unless it is shown to be ex-facie perverse.

(v) There is no substantial question of law to decide in the instant case and the findings of both Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal are based on proper reasoning and analysis.

10. We have carefully perused the facts of the case, rival submissions, relevant records including the Assessing Officer's order, remand report, Commissioner of Income Tax (Appeals)'s order and Income Tax Appellate Tribunal's order. On a thorough reading of the Section 11 of the Income Tax Act, it is evident that there is no bar for the charitable or religious trust to claim the exemption as long as it is applied in India for such charitable or religious purposes.

Section 11 (1) (a) reads as under:

"Income derived from property held under Trust wholly for charitable and religious purposes, shall be exempted -



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1) to the extent such income is applied in India for such purposes and

2) where any such income is accumulated or set apart for such application to such purpose in India, to the extent to which the income re-accumulated or set apart is not in excess of 15% of the income from such property.

Therefore, it is clear that as per Section 11(1)(a) exemption of 15% of income is unfettered and not subject to any conditions.

11. The Respondent/Trust is a Public Charitable Trust and doing educational services. It is not the case of the Appellant that the entire amount claimed as donations was liable to be disallowed. The remand report had categorised all the donations made by the Trust into those which were satisfactorily explained and those which were not. A cursory glance of the list of beneficiaries would only show that there have been donations to charitable and religious institutions only and that philanthropy has been the essence of all the donations.

12. The Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal disagreed with the contention of the Assessing Officer that withdrawal of registration u/s.12AA is not a pre-requisite for the denial of exemption under Section 11 of the Act.

13. Section 13 of Income Tax Act, 1961, specifies the circumstances where exemption under Sections 11 and 12 would not be available for a Trust. The reasons where Section 13 would be invoked are

Income not for the benefit of Public - Section 13 (1) (G)

1. Income from Trust for the benefit of a particular religion or caste (if trust created after 01.04.1962)
2. Any income of the Trust which benefits certain person
3. Income or property used for the benefit of a person.

14. The compliance of the following main condition is essential for claiming exemption under Section 11:

- a) Trust must have been created for any lawful purpose
- b) Such trust/institution must be for charitable/religious purposes.



15. According to Section 2(15), charitable purpose includes relief of the poor, education, yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

16. Trust/institution covered under advancement of any other object of general public utility can do commercial activities upto 20% of its total receipts [Proviso to section 2(15)]

17. The advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,—

i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year.

18. In the instant case, the Assessing Officer had first disallowed the entire exemption and subsequently scaled it down to Rs.14,94,886/- though reiterating that the Respondent/Trust had acted in violation of its own object set out in the Trust deed. If the Assessing Officer had objection regarding the entire amount of donation, then her remand report should not have accepted any of the donations with valid reasons.

19. Moreover, Charity is clearly defined as relief of the poor, education, yoga, medical relief, preservation of environment, etc., Thus public charitable trust donating to activities other than education cannot be denied exemption u/s.11 of the Act. Therefore, the conclusion of the Assessing Officer is totally unwarranted.

20. In view of the aforesaid submissions, we do not see any reason to interfere with the order of the Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal. We reject the grounds of appeal taken by the Revenue. There is no iota of perversity in their orders. Therefore, all the substantial questions of law and additional substantial question of law are answered against the Appellant/Revenue.



21. In the result, the appeal is dismissed. There shall be no order as to costs.

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Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

gv

To

1. Director of Income Tax Exemptions,
Chennai.
2. The Income Tax Appellate Tribunal, B Bench,
Chennai
3. The Commissioner of Income Tax (Appeal)-XII,
Chennai
4. The Income Tax Officer, OSD Exemption-III,
Chennai

+1CC to Mr.J.Narayanasamy, Sr.No.30686

+1CC to Mr.J.Sreevidya, Sr.No.30683

Pre-delivery Judgment
in
Tax Case Appeal No.1059 of 2014

RSV (CO)
K.RK. (20.07.2021)