IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2022

CORAM :

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR. JUSTICE C.SARAVANAN

T.C.A.No.906 of 2009

The Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

The Madras Medical Mission
4A Dr.J.Jayalalitha Nagar
Muggappair, Chennai 600 037. ... Respondent

Prayer: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 12.12.2008 passed in I.T.A.No.1851/Mds/2008.

For Appellant : Mr.J.Narayanaswamy

For Respondent : Mr.M.P.Senthil Kumar

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J U D G M E N T

S.VAIDYANATHAN,J.,
and
C.SARAVANAN,J.,

The Appellant has filed this Appeal against the Order dated 12.12.2008, passed by the Income Tax Appellate Tribunal (in short 'the Tribunal'), 'D' Bench, Chennai in I.T.A.No.1851/Mds/2008. By the Impugned Order the Tribunal has allowed the Appeal filed by the Respondent against the order dated 04.09.2008 in its proceedings bearing Reference No.C.No.80-G/2008-09/C.III rejecting the request of the Respondent filed under Section 80 G of the Income Tax Act, 1961 (for brevity 'the Act') on 11.03.2008. The reason for rejecting the application of the Respondent is that the Respondent was collecting capitation fees for allotment of medical seat etc., and was not properly accounting it and that later after a search proceedings was conducted, offered to pay tax.

2. The facts on record indicates that during interregnum on 27.01.2008, notice was issued to the Respondent vide proceedings in C.No.80.G/2009-10/C.III to show cause as to why recognition granted under Section 12 (A) (a) of the Income Tax, 1961 should not be

cancelled. The Respondent challenged the same and the consequential order which appears to have passed on 03.02.2010 vide Proceedings in C.C.No.80.G/2007-08/C.III dated 21.07.2008 in W.P.No.4071 of 2010. The said Writ Petition was disposed with the following observation:

> *"2. The petitioner was granted time to file a written reply till 31.07.2008. Pursuant to the notice, the petitioner had given a representation dated 20.08.2008, seeking for various details and information, which according to the petitioner was the basis for which the Show Cause Notice was issued. Since such information was not furnished to the petitioner, the present writ petition has been filed.*
>
> *3. In normal circumstances, a writ petition of this nature, challenging the Show Cause Notice, cannot be maintained, since it would be incumbent on the part of the petitioner to only give a reply to the Show Cause Notice and await for the final orders. However, in the instant case, though the petitioner has sought for information way back in the year 2008, such a representation was not considered till the year 2010, which had prompted the petitioner to file the present writ petition. As such, it would be justifiable for this Court to interfere into the Show Cause Notice and grant further time for the respondent to act on such a request made by the petitioner pursuant to the Show Cause notice.*

4. The learned Junior Standing Counsel appearing for the respondent submitted that if the details and information sought for by the petitioner touches upon confidential matters of investigation or the like, it may not be permissible under law for them to furnish such documents. Nevertheless, such information and documents which are permissible in law will be considered, if the petitioner approaches the respondent.

5. In the light of the above observations and submissions of the learned Junior Standing Counsel appearing for the respondent, the petitioner is granted liberty to file an additional reply to the Show Cause Notice dated 21.07.2008, seeking for details and information required by them and on receipt of such an information, the respondent shall consider the same on its own merits and take necessary action. Such an exercise shall be made within a period of 30 days from the date of receipt of such additional reply of the petitioner."

3. On 05.10.2009, this Appeal was admitted on the following substantial questions of law:

"*1. Whether on the facts and circumstances of the case, the Tribunal was right in entertaining the appeal against the order of rejection u/s 80G read with Rule 11AA?*

2. Whether the Tribunal was right in holding that the assessee society is entitled for approval u/s 80G with effect from 1.4.2008?

3. Whether the Tribunal was right in holding that the assessee society is entitled for approval u/s 80G with effect from 1.4.2008 forthwith when the assessee itself had claimed extension of approval for a period of 3 years?"

4. The learned counsel appearing for the Appellant submitted that the Appeal filed by the Respondent before the Tribunal was without jurisdiction, as the Appeal under Section 253 (1)(c) is confined only against an order covered under Sub clause (vi) of Sub Section 5 of Section 80 G and that the order passed by the Commissioner of Income Tax on 04.09.2008 was not an order passed under aforesaid Section and therefore the Appeal was without jurisdiction. That apart, it is submitted that the Tribunal had committed grave error in granting the relief to the Respondent.

5. The Present Appeal is opposed by the Respondent assessee stating that pursuant to the impugned Order of the Tribunal, the

respondent has complied with the order on 12.01.2009 and therefore the Appeal is liable to be dismissed as infructuous.

6. Though the present Appeal was admitted to answer the aforesaid substantial questions of law, we are of the view that the fundamental issue which goes to the root of the issue as to whether the Respondent was eligible for deduction under Section 80 G of the Act, will depend on the continuance of registration granted to the respondent Assessee under Section 12(A) (a) of the Income Tax Act,1961 which is now subject matter of a show cause proceeding and is pending before the Appellant herein in terms of order dated 12.07.2019 in W.P.No.4071 of 2010.

7. We are therefore inclined to dispose of this Appeal without answering the aforesaid substantial questions of law raised as a decision has to be taken on facts and law and by the Appellant whether the respondent assessee is entitled to regularisation under Section 12(A) (a) of the Income Tax Act 1961. We are therefore inclined to quash the

impugned order passed by the Tribunal and remit the case to the Appellant for passing a fresh order on the application filed by the Respondent under Section 80 G of the Act after further order is passed in the show cause notice dated 21.07.2008 seeking to cancel registration granted to the petitioner under Section 12(A) (a) of the Income Tax Act, 1961.

8. Accordingly, the order passed by the Tribunal dated 12.12.2008 is set aside and the case is remitted back to the Appellant to pass a fresh orders on the application filed by the Respondent assessee dated 11.03.2008, after affording an opportunity of hearing to the Respondent assessee preferably, within a period of three months from the date of receipt of a copy of this order or under Section 12(A) (a) of the Income Tax Act, 1961 which ever is later. No costs.

9. This Tax Case Appeal is disposed of accordingly. No costs.

[S.V.N., J.] **[C.S.N., J.]**

20.09.2022

Index : Yes / No
Internet : Yes/No
arr/kkd

S.VAIDYANATHAN, J.
and
C.SARAVANAN, J.

arr/kkd

To:

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

2. The Madras Medical Mission,
   4A Dr.J.Jayalalitha Nagar,
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