IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM :

THE HON'BLE MR.JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.16 OF 2012

The Commissioner of Income Tax - II,
Madurai.

...Appellant

Versus

Shri Venkatachalapathy Education and
Charitable Trust,
20, Muthusamy Iyer Street,
Building Society, Chinnamanur,
Theni District.
(PAN AAHTS8044F)

...Respondent

Tax Case Appeal filed under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "B" Bench, Chennai dated 23.06.2011 in I.T.A.No.210/Mds/2011, preferred against the order passed by the Commissioner of Income Tax – I, Madurai – 625 002 dated 10.12.2010 made in C.No.464/52/CIT-I/2009-10.

For Appellant : Mr.J.Narayanaswamy,
Senior Standing Counsel

For Respondent : Mr.Subbaraya Aiyar

JUDGEMENT

(Judgement of the Court was delivered by R.MAHADEVAN, J.)

The present Tax Case Appeal has been preferred by the appellant/Revenue, against the order dated 23.06.2011 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai in I.T.A.No.210/Mds/2011.

2.According to the appellant/Revenue, originally, the respondent filed an application on 22.06.2009 for grant of registration under section 12AA of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), which was rejected by the Commissioner of Income-tax, Madurai, by order in C.No.464/53/CIT-1/2009-10 dated 01.12.2009. Challenging the said order, the respondent filed an appeal before the ITAT, Chennai, which by order dated 30.09.2010, set aside the said order and remanded the matter to the CIT for fresh consideration. Pursuant to the said order of the ITAT, the Commissioner of Income-tax, Madurai, reconsidered the application of the respondent seeking registration under section 12AA of the Act and ultimately, rejected the same, on the ground that there was no satisfactory materials produced by the respondent. Aggrieved by the said order of the CIT, the respondent went on further appeal before the ITAT, Chennai. The Tribunal upon consideration of the submissions made on both sides, allowed the said appeal filed by the respondent and thereby directed the appellant to grant registration under section 12AA of the Act to the respondent, by order dated 23.06.2011, which is impugned in this appeal.

3.On 27.08.2012, this court admitted this tax case appeal on the following substantial questions of law:

> "(i)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee trust is eligible to get registration under section 12AA when the trust is carrying educational activity with receipt of substantial amount of fees?
>
> (ii)Whether on the facts and in the circumstance of the case, the Tribunal was right in law in holding that the assessee trust is eligible to get registration under section 12AA, when the trust is failed to produce the name and address of person to whom the land rent of Rs.50,000/- was paid and not proved the credit worthiness of the loan creditors?"

4.The main contention of the learned senior standing counsel appearing for the appellant/Revenue is that the respondent/assessee failed to produce the requisite documents for consideration of its application seeking registration under section 12AA of the Act. According to the learned counsel, the respondent did not comply with the basic requirement for grant of registration to a public charitable trust; and they are carrying on the educational activity with receipt of fees of substantial amount, which is purely on commercial basis and they failed to produce the relevant details to the CIT for verification. However, the ITAT, merely placing reliance on the objects of the respondent trust, allowed the appeal filed by the respondent and directed the appellant to grant registration to them under section 12AA of the Act, by the order impugned herein, which is arbitrary and illegal and hence, is liable to be set aside.

5.On the other hand, the learned counsel for the respondent / assessee submitted that the objects of the respondent trust itself would speak for the activities carrying on by them and they have utilized its surplus funds only for educational purposes and not for any profit. Thus, according to the learned counsel, the Tribunal after analysing the entire facts and circumstances of the case in the light of the materials available before it, concluded that the respondent was eligible for registration under section 12AA of the Act and hence, the same need not be interfered with by this court.

6.Heard both sides and perused the materials available on record.

7.It is not in dispute that the respondent trust applied for registration under section 12AA of the Act, for the purpose of claiming exemption from the payment of tax. After thorough analysis of the legal position and the materials placed, by order dated 10.12.2010, the said application was rejected by the CIT, Madurai, based on the circular no.762 dated 18.02.1998 issued by the CBDT, New Delhi, on the ground that the respondent trust did not furnish the requisite satisfactory materials to grant such registration. The relevant findings of the CIT, Madurai are quoted below for ready reference:

> "3.8. In view of these facts and circumstances, it was clearly told to the ld.A/R that
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> (i)The basic element of charity - as discussed above is nowhere visible in any of these three years' accounts. That is, the vital question 'Where is charity'? is not explained or answered.
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> (ii)What is actually carried on is educational activity with receipt of fees of substantial amount which is purely on commercial basis.
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> (iii)Although such commercial activity is permitted under the Act u/s.11(4)/11(4A) - being incidental to attainment of its charitable object - but the statutory requirement that separate books of accounts should be maintained has not been followed.
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> (iv)The I/E Account of the trust which should reflect income of a trust as discussed in para 3.2 above and expenditure clearly showing 'application' of

such income towards charitable purpose – within the definition of section 2(15) and as per the objects of the trust deed – is also missing.

(v)The surplus for the assessment year 2009-10 and 2010-11 which are of Rs.2,89,145 and 16,98,122/- should have been utilised for genuine charitable activities. But not a single item reflecting application of either this surplus or the Misc. interest income towards charitable purposes has been shown.

3.9. It was, therefore, explained to the Ld.A/R that the basis pre-requisite for grant of registration to a public charitable trust i.e. carrying genuine charitable activities is absent in this case according to the statement of accounts filed along with the application. Besides, the claim of exemption of its income u/s.11(1)(a) of the I.T.Act will also be adversely affected in absence of utilization of at least 85% of such income in India towards genuine charitable purposes – i.e. helping the public in general those who are needy, poor and destitute without expecting or receiving anything in return. It was therefore, told to the Ld.A/R that the trust has made itself ineligible for grant of registration in terms of the provisions of section 12AA (1)(b)(ii) r.w. 12A(2) of the Income Tax Act, 1961."

8.However, it could be seen from the order impugned herein that without properly examining the activities carrying on by the respondent trust and utilisation of the surplus funds received by them, in the light of the documents furnished, the ITAT, Chennai, merely referring to the objects of the respondent trust, opined that the purpose of the respondent trust was nothing but education; construction of infrastructure for pursuing educational activity is also by its very nature a necessary expenditure for effectively pursuing the educational objects; and the Act itself contemplates exemption to income of institution imparting education. Ultimately, it was concluded by the Tribunal that the respondent trust was eligible for registration under section 12AA.

9.This court is of the view that such reasoning of the Tribunal without proper verification of the requisite materials, cannot be countenanced and on that score alone, the order impugned herein deserves to be set aside.

10.At this juncture, it is apt to refer to the decision of the Hon'ble Supreme Court in Queen's Educational Society Vs.

Commissioner of Income Tax [(2015) 372 ITR 0699 (SC)], in which, after having discussed several decisions of various High Courts, it was held that "the correct tests would apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit; the assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down; the activities of such institutions be looked at carefully and if they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn". For better appreciation, paragraphs 19 and 25 of the said decision are usefully extracted below:

> "19. It is clear, therefore, that the Uttarakhand High Court has erred by quoting a non existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to Section 10(23C) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of Section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case. It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit. In fact, in S.RM.M.CT.M. Tiruppani Trust v. Commissioner of Income Tax, (1998) 2 SCC 584, this Court in the context of benefit claimed under Section 11 of the Act held:
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> > "9. In the present case, the assessee is not claiming any benefit under Section 11 (2) as it cannot; because in respect of this assessment year, the assessee has not complied with the conditions laid down in Section 11(2). The assessee, however, is entitled to claim the benefit of Section 11 (1)(a). In the present case, the assessee

has applied Rs 8 lakhs for charitable purposes in India by purchasing a building which is to be utilised as a hospital. This income, therefore, is entitled to an exemption under Section 11(1). In addition, under Section 11(1)(a), the assessee can accumulate 25% of its total income pertaining to the relevant assessment year and claim exemption in respect thereof. Section 11(1)(a) does not require investment of this limited accumulation in government securities. The balance income of Rs.1,64,210.03 constitutes less than 25% of the income for Assessment Year 1970-71.

> Therefore, the assessee is entitled to accumulate this income and claim exemption from income tax under Section 11(1)(a)."

We set aside the judgment of the Uttarakhand High Court dated 24th September, 2007. The reasoning of the ITAT (set aside by the High Court) is more in consonance with the law laid down by this Court, and we approve its decision."

"25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully.

If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act."

11.In the light of the discussions held above, we set aside the order of the Tribunal and remand the matter to it for fresh consideration. The respondent trust is at liberty to submit all the requisite documentary evidence available to them to substantiate its claim for registration under Section 12AA of the Act, to the Tribunal, within a period of two weeks from the date of receipt of a copy of this judgment. Thereafter, the Tribunal shall consider the matter in the light of the documents furnished by the respondent trust and pass orders afresh, on merits and in accordance with law, after affording due opportunity of hearing to the respondent trust, within a period of six weeks.

12.Accordingly, this Tax Case Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Income Tax Appellate Tribunal,
   Madras "B" Bench, Chennai.

2. The Commissioner of Income Tax-II,
   Madurai.

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.19652

T.C.A.No.16 of 2012

PM(CO)
RLP(19/04/2022)