BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.488 of 2022
and
C.M.P.(MD)No.4509 of 2022

Muvendar Trust,
Rep. by its Managing Trustee,
V.A.T.Samiyappan. ... Appellant / Petitioner

Vs.

1.The Income Tax Officer,
Exemption Ward,
Trichy Main Building,
Williams Road,
Cantonment,
Trichy - 620 015.

2.Additional / Joint / Deputy / Assistant
Commissioner of Income Tax /
Income Tax Officer,
National Faceless Assessment Centre,
Delhi. ... Respondents / Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal and set aside the order dated 16.12.2021 passed in W.P.(MD).No.22287 of 2021 on the file of this Court.

For Appellant : Mr.N.V.Balaji,
For Mr.T.Bashyam

For Respondents : Mr.N.Dilip Kumar,
Standing Counsel.

JUDGMENT
(Judgment of the court was delivered by G.R.Swaminathan, J.)

The case on hand pertains to the assessment year 2019 – 2020. Muvendar Trust is the assessee. They had submitted their returns in Form ITR-7 declaring nil total income. The case was selected for compulsory scrutiny assessment on the ground that registration of the trust under Section 12AA of the Income Tax, 1961 had been cancelled. There was exchange of correspondence between the department on the one hand and the assessee on the other. Finally, the impugned order dated 23.09.2021 came to be passed assessing the income of the assessee at Rs.5,75,93,708/-. It was further proposed that penalty proceedings will be initiated separately. Challenging the same, assessee filed W.P.(MD)No.22287 of 2021. The writ petition was dismissed vide order dated 16.12.2021. The learned Single Judge noted that for the previous assessment year when the assessee had suffered a more or less similar order, he chose to avail the appeal remedy. In that view of the matter, the writ petition suffered a dismissal. Questioning the same, the assessee filed this writ appeal.

2.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of the writ appeal and called upon this Court to set aside the impugned order and grant relief as prayed for. He also filed written submission.

3.Per contra, the learned standing counsel for the department submitted that the impugned order is well reasoned and that it does not warrant interference. He also filed detail notes of submission and took us through the same.

4.We carefully considered the rival contentions and went through the materials on record. The primary question that has arisen for consideration is whether the appellant trust should be treated as a registered trust under Section 12A of the Income Tax Act (Now Section 12AA of the Income Tax Act). If the appellant is treated as a registered body, then certainly, they would be entitled to certain deductions.

5.Even though the respondents repeatedly called upon the appellant to produce the certificate of registration under Section 12A of the Income Tax act, the appellant failed to do so.

6.The appellant has enclosed the order bearing C.No.2039(43)/87 dated 29.09.1992 whereby exemption under section 80G of the Income Tax Act, 1961 had been renewed for the period upto 31.03.1994. Vide order bearing C.No.6162-E(300)/97-98/TRY, dated 03.03.1999, this exemption was made available upto 31.03.2000. For getting exemption under Section 80G of the Income Tax Act, the applicant must either be a body registered under Section 12A of the Income Tax Act or any an exempted body under Section 10(23C) of the Act.

7.The specific stand of the assessee is that the trust was registered on 15.07.1985 and that subsequently, they obtained registration under Section 12A of the Income Tax Act and that only based thereon, they secured exemption under Section 80G of the Act and that they are presently not having the original registration certificate.

8.The learned counsel for the appellant categorically asserted that even if they are given one more opportunity, they will not be able to produce the original or xerox copy of the registration certificate made under Section 12A of the Act.

9.It cannot be in dispute that an order granting exemption under Section 80G of the Act is a permanent record. Likewise, an order granting registration under Section 12A of the Act is also a permanent record. The department cannot be heard to argue before us that they are not able to trace these permanent records. In fact, when this writ appeal was admitted on 08.06.2022, the following direction was issued:-

> *"Post the matter after two weeks.*
>
> *In the meanwhile, Mr.N.Dilipkumar, learned standing counsel appearing for the respondents is directed to get instructions as to whether the appellant had registered and whether cancellation of registration had been communicated to the appellant properly."*

Even though more than 2 ½ years have lapsed, the department is unable to take any categorical stand in the matter.

10.The department had not proceeded on the footing that the assessee had been exempted under Section 10(23C). Instead, the case for scrutiny was that the registration of the trust had been cancelled. The department in our view could not have cast the entire onus on the assessee. This is particularly because, the assessee had produced at least two years granting renewable of exemption under Section 80G of the Act. The appellant also stated that original orders are very much available. The photocopies have been enclosed and they have been certified to be true copies of the original. The department has not so far made any allegation that these are forged documents.

11.It is true that the appellant had availed the appeal remedy in respect of the assessment made for the year 2018 – 2019. Merely because for a particular assessment year, the assessee had chosen a particular remedy would not mean that he should continue to tread the same path during the subsequent years also. There is no estoppel in these matters. The learned counsel for the appellant pointed out that during the relevant time, Section 144B(1)(xii) of the Act was in operation. The said provision reads as follows:-

*"**Faceless Assessment.***

144B.(1)(xii) *the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing,—*

(a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre; or

(b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;"

12.The order impugned in these proceedings was passed on 23.09.2021. During the relevant time, the aforesaid provision very much held the field. It is not in dispute that the assessing officer did not follow the procedure laid down in the aforesaid sub-section.

13.As per Sub-Section 9 of Section 144B, the order has to be necessarily declared as non-est. That is the statutory effect of the provision itself. It is true that the aforesaid sub-section was subsequently deleted from the statute book with retrospective effect from 01.04.2021. However, as rightly contended by the learned counsel for the appellant, something that was non-est at the very inception cannot be given life by a subsequent statutory development.

14.The learned Single Judge had non-suited the appellant and relegated him to avail the alternative remedy principally for the reason that he has not been able to demonstrate that there was any violation of principles of natural justice or breach of any mandatory statutory provision. In this case, the appellant had shown before us that there was a breach of a mandatory statutory provision.

15.In that view of the matter, we have no hesitation to set aside the assessment order impugned in these proceedings. We remand the matter to the file of the assessing officer. As on date, Section 143B(1) had undergone a drastic change. Section 144B(1) had been substituted in full. Therefore, the assessing officer will have to follow from the stage from where the defect set in.

16.The assessing officer will once again revisit the issue of registration. As already held by us, the entire onus will not be cast on the assessee. It is for the assessing officer to re-trace the earlier records and accord an appropriate treatment to the assessee.

17.We have no doubt in our minds that the assessee should either have been a registered trust under Section 12A of the Act or an exempted body under Section 10(23C) of the Act. Under which of the category, the assessee would fall is a matter for determination, that is left to the assessing officer in the light of their own records.

18.The learned counsel for the appellant has drawn our attention to the re-registration of the trust on 14.10.2021. Copy of the order made in Form 10AC has been enclosed in the typed set of papers. Admittedly, this order of re-registration has not been rescinded or cancelled till date. Re-registration presupposes earlier registration. Therefore, so long as the order dated 14.10.2021 is holding good, the assessee will have to be treated only as a body registered under Section 12A of the Act.

19.It is true that the assessee during the previous assessment years had informed the department that they do not have any registration under Section 12A of the Income Tax Act and that they are only an exempted body under Section 10(23C) of the Income Tax Act. We may not approve the conduct of the assessee. But then, the department cannot take advantage of such lapses on the part of the assessee.

20.The learned standing counsel for the respondent drew our attention to the fact that the assessee had described themselves as a body exempted only under Section 10(23C) of the Income Tax Act. It is obvious that a person enjoying exemption under Section 10(23C) of the Act could not have been registered under Section 12A of the Act. They are mutually exclusive. Therefore, the assessee will have to explain before the authority as to why they took such a stand during the previous assessment years. If the explanation given by the assessee is not convincing, it may be open to the assessing officer to re-visit the assessments earlier made.

21.With the aforesaid liberty to the assessing officer, the order of the learned Single Judge is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (M.J.R. J.,)
17.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias
Note: This order was dictated in the open Court in the presence of the counsel on both sides.

G.R.SWAMINATHAN, J.
and
M.JOTHIRAMAN, J.

ias/skm

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