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TCA No. 507 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

TCA No. 507 of 2010

Commissioner Of Income Tax
Central li, Chennai.

..Appellant(s)

Vs

Shri Ponnaiyah
Ramajeyathammal Educational And Charitable
Trust, No.33, 34, Natarajapuram South Colony,
M.C.Road, Thanjavur.

..Respondent(s)

For Appellant(s): M/s.Narayanaswamy, Senior Standing Counsel

For Respondent(s): Mr.T.Pramodkumar Chopda, Sr.Counsel for
Mr.S P.PRITHVI Chopda

JUDGMENT

(Judgment of the Court was delivered by Dr.G.Jayachandran J.)

1. This Tax Case Appeal is filed by the Revenue, aggrieved by the order, dated 10.12.2009, passed in ITA.No.647/Mds/2009, by the Tribunal, setting aside the order passed by the Commissioner of Income Tax, dated 30.03.2009, cancelling the Registration, granted to the Respondent Trust, under Section 12AA(3) of the Income Tax Act, 1961 (herein after referred to as the 'Act').



2. The Respondent Trust was granted Registration on 02.12.1998. The Respondent Trust is primarily running an Educational Institution, coupled with charitable activities. A search of the person concerned with the Respondent Trust was conducted under Section 132 of the Act on 05.10.2006 and later, a survey was also conducted. The evidence gathered disclosed the following violations of the Trust Deed:-

1. *Trust funds are invested in the Proprietorship Concerns of the Managing Trustee.*
2. *Rent advance of Rs.3,05,24,800/- has been taken from the Trust, though the total value of assets of the Managing Trustee was less than that value.*
3. *The Managing Trustee was caught with Rs.1 crore at Chennai Airport and agreed that amount is taken from corpus fund of the rent.*
4. *By touching the corpus, the Trustees maligned the sacred concept of the Trust and breached the concept of Trust (Breach of Trust) invested by the donors in the Trust and therefore, the Trust is not entitled for approval under Section 80G of the Income Tax Act.*
5. *Sale of educational Institutions at Natham for a consideration of Rs.1,82,00,000/-.*
6. *Compulsory donations such as capitation fees is collected and not accounted for. There are evidences to show that in the form of letters from students asking for refund of capitation fees as they could not join the course. So the claim of corpus donation by the assessee is incorrect and it is actually the capitation fees.*
7. *As discussed in the assessment order by the AO the Trust has violated the provisions of almost all sub sections of Section 13 of the Income Tax Act, 1961.*
8. *The supplies and services are charged heavily and no books*



maintained to that effect.

9. Assets are acquired by Trustees out of the funds.

10. Bank accounts of the Trustees are flooded with the corpus fund of the Trust.

11. The intention of the donors of corpus fund has ignored and Trustees got enriched out of the trust funds.

3. Dual system of accounting of receipts in the form of fees collected from the students came to light. As a result, after causing a show cause notice on 27.02.2009, the Order in Original was passed, cancelling the Registration granted to the Respondent Trust, invoking Section 12AA(3) of the Act, Commissioner of Income Tax. The Assessee had preferred an appeal before the Income Tax Appellate Tribunal and raised the following grounds:-

- 1. The Commissioner is not justified in cancelling the Registration granted to the Assessee-Trust in the circumstances of the case.*
- 2. The Commissioner is not correct in ignoring the fact that the Assessee-Trust has undisputedly been carrying on its prominent object of providing education genuinely.*
- 3. A settlement reached between two independent trusts, both working for advancement of education, resulting in handling over Assessee's Institution at Natham for Rs.1.82 crores, cannot be held incorrect by the Department to disentitle its Registration under Section 12A.*
- 4. The allegations made in the cancellation order have been contested against in an appeal pending before the Commissioner of Income Tax (Appeals).*
- 5. Even otherwise, irregularity if any can only lead to assess the Trust on consequent taxable income.*



6. *Provisions of Section 12AA(3) introduced with effect from 01.10.2004 are not applicable to the Assessee, registered on 02.12.1998 itself.?*

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4. The Tribunal, on considering the grounds of appeal, had held that the cancellation of the Registration, granted to the Respondent Trust, cannot be withdrawn, even after the amendment to Section 12AA of the Act and insertion of sub clause (3) to the said Section. According to the Tribunal, for cancellation of the Registration, the Authority shall record its satisfaction that the activities of the Trust are not genuine and the activities are not being carried out, in accordance with the objects of the Trust. The Tribunal, referring to the show cause notice, dated 27.02.2009, which has not spelt explicitly to the effect that the activities of the Assessee Trust are not genuine and not carried out in conformity with the objects of the Trust, has held that the action of cancellation of the Registration, pursuant to the show cause notice, which is bereft of details, cannot be sustained. The operative portion of the impugned order is extracted below, for better understanding and appreciation:-

“10. In our considered opinion, the show cause notice issued in this case is not a valid show cause notice and deserved to be quashed. Even if various irregularities were found to have been committed by the Managing Trustee, it is the duty of the Id. CIT to give show cause notice of specific proposed grounds to the Assessee Trust and only after considering the explanation given by the Trust, he could have come to any conclusion based on the facts and law in those circumstances. But, in this case, the show cause notice itself is vague and the Id. CIT has not even given proper opportunity of hearing to the Assessee. Consequently, we quash the impugned



show cause notice as well and restore the certificate granted under Section 12AA of the act.

11. In the result, the appeal of the Assessee stands allowed.”

5. Aggrieved by the same, the Revenue Department is before us, stating that the Tribunal has grossly erred in setting aside the order of the Commissioner of the Income Tax and that it has failed to apply the law in force and also to consider the documents, including the show cause notice, in a proper perspective.

6. This Appeal got admitted to decide the following substantial questions of law:-

“1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law holding that the Commissioner of Income Tax had not specified the proposed grounds for cancellation of Registration in the show cause notice issued to the Assessee Trust overlooking the fact that the show cause notice has clearly referred to the evidences gathered in the course of search under Section 132 of the Income Tax Act and survey under Section 133A of the Act, relating to gross violations of the Trust deeds and had made specific references to the completion of the assessment years 2001-02 to 2007-08 in the status of “Association of Persons” and taxation at the maximum marginal rate?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Commissioner of Income Tax had no powers to cancel the Registration under Section 12AA(3) in respect of trusts registered before 01.10.2004 and whether the Commissioner of Income Tax had the power to cancel the Registration granted to the Trust since the power of cancellation flowed from the power to grant Registration?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Trust could not be considered to be aware of the violations committed by



the Managing Trustee overlooking the fact that the Trust being only a judicial entity had to act only through its Managing Trustee and awareness of the Managing Trustee amounted to the awareness of the Trust?

4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in disregarding the various violations of the conditions for being recognised as a Charitable Trust, given in detail in the order of the Commissioner of Income Tax under Section 12AA(3)?

7. For our consideration, it is necessary to examine the show cause notice first, whether it carries necessary ingredients to initiate action for cancellation of the Registration, granted to the Respondent Trust and hence, the contents of the show cause notice are extracted below:-

“Registration under Section 12AA of the Income Tax Act, was granted to your Trust by order of the then Commissioner of Income Tax, Tiruchirappalli on 02.12.1998. A search under Section 132 of the Income Tax Act conducted on 05.10.2006 in the case of Sri.P.Murugesan, Managing Trustee and consequent survey under Section 133A conducted in your case and evidences gathered in this regard reveal various gross violations of the Trust Deed. The above violations have also led to the completion of your Income Tax assessments for the assessment years 2001-02 to 2007-08 in the status of AOP and taxation at the maximum marginal rate. Your have also not cooperated and complied with the various requisitions made following which the assessments were completed ex-parte. The findings in the assessments have clearly established that the Trust has been misused in all possible ways by the Trustees and that the Trust has violated various exemption provisions of the Income Tax Act.”

8. In response to the show cause notice, the Assessee had made a written reply, denying the allegations of non-cooperation and violation of the objects of the Trust and also referred to the pendency of the appeal in the tax case, which is



referred to in the show cause notice. From the reply and the reading of the show cause notice, it is obviously clear that the show cause notice is not bereft of information, as held by the Tribunal. Neither the Assessee was not suffered lack of information to respond to the show cause notice nor it is not an ordinary case of minor deviation of the objects of the Trust or a curable violation.

9. The Order in Original clearly shows that there has been a gross abuse of the funds of the Trust, which has been reflected in the assessment order and it was not challenged by the Assessee. The action for withdrawal of the Registration granted to the Trust was taken, consequent to the search and the survey operation, conducted by the Revenue Department. The reasoning of the Tribunal that the incriminating materials collected from the residence of the Managing Trustee are to be insulated from the activities of the Trust cannot be countenanced, when there are materials and categorical admission of the said Murugesan, the Managing Trustee, who was caught at the Chennai Airport with the hot currency of Rs.1 Crore, that the money belongs to the corpus fund of the Trust. This incident only indicates that the corpus fund of the Trust had been diverted for the personal activities.

10. Be as it may. Turning next to the materials and the reasoning given by the Commissioner of Income Tax, who had cancelled the Registration, the Tribunal has tangentially gone to appreciate the materials placed before it, to pass the impugned order. Being aware of the facts that Section 12AA had



been amended and the power to cancel the Registration has been explicitly vested with the Authority, the Tribunal has made a reference that this amendment only applies prospectively and would not apply to Registration granted prior to that date. We find that the impugned order of the Tribunal, in its entirety, bristles with infirmities and non-application of mind.

11. The learned counsel for the Respondent would submit that introduction of Section 12AA(3) with effect from 01.10.2004 will not have any adverse consequence in respect of the Respondent, when there is no specific allegation of ingenuity of the Trust, which is a primordial requirement for cancellation of the Registration of the Trust already granted.

12. Further, the learned counsel for the Respondent would contend that the subsequent amendment to the Act, particularly, pre-amended Section 12AA, read with amended Section 12AA as well as the Circulars issued by the Department would go to show that though power for cancellation of the Registration is conferred to the Authorities, certainly it cannot be exercised with retrospective effect and further, if at all, there is any violation or deviation of the funds of the Trust, only to that extent, exemption given to the Trust is to be revoked and not in entirety the certification be cancelled.

13. Though the argument of the learned counsel for the Respondent is, prima facie, impressive, if such an argument is accepted and given the seal of approval, the person, who manages any educational charitable Trust, after getting Registration for enjoying the benefit of tax concession, will violate



the purpose and objects of the Trust and abuse the income of the Trust, for personal benefit and if caught will restrict only to the extent the Trust gets exposed for abuse and misuse.

14. It is the duty of the person, who manages the Trust, to be honest and genuine and to declare their income, in the manner known to law. If they have come under adverse notice either by way of search or seizure, the benefit conferred under Section 12AA of the Act is necessarily to be stopped. In the Order in Original of the Commissioner of Income Tax, what we find as an error, is the cancellation of the Registration, with retrospective effect.

15. The learned counsel for the Revenue, referring to the judgement of the Honourable Supreme Court, reported in **2018 (90) Taxmann.Com (281) SC (Industrial Infrastructure Development Corporation (Gwalior) MP Limited Vs. Commissioner of Income Tax Gwalior**, would submit that the cancellation of Registration must be given with effect from 01.10.2004, the date, on which the Statute was amended.

16. From the date and events, furnished by the Revenue Department, it is clear that the Registration for the Trust was granted in the year 1998. The show cause notice was issued on 27.02.2009, much after the amendment. Therefore, there cannot be any quarrel regarding the competency of the Authority to issue a show cause notice for the proposed cancellation of Registration. After hearing the Assessee, the Order in Original, cancelling the Registration of the Trust was passed on 30.03.2009. It does not speak the



effect of the cancellation of the Registration. But, however, on a plain reading of the order, it is to be presumed that the Registration granted to the Trust under Section 12AA of the Act, on 02.12.1998 stands cancelled, indicating that it is to be given effect from the date of Registration itself, which is incorrect and not permissible under law. Therefore, the cancellation can be given effect only from the date of passing the order of cancellation of the Registration, i.e. 30.03.2009.

17. In so far as the contention of the learned counsel for the Respondent that the Tribunal has not considered the materials placed before it and the matter may be remanded back to the Tribunal to consider the materials placed by the Assessee and also the subsequent amendment and the circulars issued by the Department, is concerned, though we were under the impression for remitting the matter back to the Tribunal for re-appreciation, but, after going through the records and the violations mentioned by the Commissioner of Income Tax and the authoritative pronouncement of the Honourable Supreme Court reported in **2018 (90) Taxmann.Com (281) SC (Industrial Infrastructure Development Corporation (Gwalior) MP Limited Vs. Commissioner of Income Tax Gwalior)**, which has overriding effect to the other judgements rendered by the High Courts and relied on by the learned counsel for the Respondent, we are of the view that the Order in Original passed by the Commissioner of Income Tax is to be upheld. If at all the Trust wants any exemption for benefits of Section 12AA of the Act, it is open to the Trustee



to approach the Department to get a fresh certificate, after satisfying the requirements, as contemplated under the amended Act.

18. With the above observations, this Tax Case Appeals stands allowed. There is no order as to costs.

(G.J.,J.) (R.S.V.,J.)
16-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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**DR.G.JAYACHANDRAN, J.
AND
R.SAKTHIVEL, J.**

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