

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 2351/CHNY/2015
निर्धारण वर्ष /Assessment year : 12AA

Hosanna Ministries,
6-7, Vadakkanadu,
Chengody Post,
Kanyakumari Dist. 629 177.

Vs. The Income Tax Officer,
(Exemptions),
Tirunelveli.

[PAN AAATH 8004R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. D. Prabhu Mukunth Arun
Kumar, Jr. Standing Counsel
सुनवाई की तारीख/Date of Hearing : 10-05-2018
घोषणा की तारीख /Date of Pronouncement : 11-05-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

This is an appeal filed by the assessee directed against an order dated 16.08.2010 of Id. Commissioner of Income Tax-I, Madurai, denying registration sought by it u/s.12AA of the Income Tax Act, 1961 (in short "the Act").

2. The appeal was filed with a delay of 1902 days. This Tribunal had earlier through its order dated 12.04.2016 declined to condone the delay and dismissed the appeal. Assessee had thereupon moved the Hon'ble Jurisdictional High Court. Their lordships in T.C (Appeal) No.3 of 2017 through judgment dated 07.03.2017 held as under :-

"25. In view of these reasons, the order impugned of the Tribunal rejecting the appeal of the assessee mainly on the ground of delay, is liable to be interfered with. In addition, we also feel that the further reason given by the Tribunal for arriving at such a conclusion that the assessee was not engaging in activities in accordance with the objects specified in the trust deed also is not supported by materials as we are satisfied that the assessee has been functioning after proper registration with the authorities concerned under the Juvenile Act and a recent certification issued dated 14.12.2016 of the authorities concerned as referred to above would be valid for next five years. Therefore, the genuineness or otherwise of the functioning of the assessee cannot be easily doubted, in view of the certification issued by the Directorate of Social Defence, Government of Tamil Nadu as stated supra.

26. Therefore, even that reason given by the Tribunal for its conclusion in the order impugned cannot stand in the legal scrutiny. Therefore in our view, both the reasons cited in the impugned order of the Tribunal are liable to be interfered with and accordingly, the impugned Judgment is set aside.

27. In the result, we allow the appeal remitting the matter to the Tribunal for taking decision on merits on the issue raised by the assessee. There shall be no order as to costs".

Accordingly the appeal is taken up for a decision on merits.

3. Ld. CIT had denied registration sought by the assessee observing that activities carried out by the assessee were religious in nature and not genuine. As per the Id. CIT, assessee had received donation aggregating to ₹21,29,036/- from one Shri. Selvarajan and Dharmaraj Selvi which was included in the corpus funds, when there was no written consent or permission for earmarking their contribution towards corpus. Ld. CIT also observed that assessee was constructing a building in Dharmapuri and contract was entrusted to M/s. J.P. Builders through one Shri. Jerryyn Raj who was the Managing Trustee of the assessee. Further, as per the Id. CIT, trust was actively doing religious activities with one of the its object as under:-

“To build places for the worship of God and to conduct regular meetings and to teach and progagate by all lawful means the teachings of the Lord Jesus Christ based upon the Holy Bible”.

Again as per the Id. CIT, though the trust was running an orphanage at Dharmapurai, there was no permission or approval from the competent authorities like certificate of recognition from Board of Control, Orphanages & Other Charitable Homes (Supervision and Control) Act, 1960, Chennai or a fitness institution certificate from the child welfare committee.

4. Now before, the Id. Authorised Representative, strongly challenging the order the Id. CIT, submitted that the reasons cited by the Id. CIT for denying the registration were either wrong or not relevant. According to him, the question whether donations given to the trust were towards corpus or there was any misuse of funds by awarding contract to M/s. J.P. Builders were matters to be considered at the time of assessment and not at the time of adjudication of an application for registration u/s.12AA of the Act. Further, as per the Id. Authorised Representative, object clause cited by the Id. CIT did not in any way disentitle the assessee from seeking a registration u/s.12AA of the Act. As for absence of certification from various Government departments for running an orphanage, was concerned, submission of the Id. Authorised Representative was that assessee had obtained such certificate of registration from Directorate of Social Welfare on 15.12.2010. This as per the Id. Authorised Representative established genuineness of orphanage run by the assessee. Id. Authorised Representative also placed on record copies of renewal of registration issued on 27.03.2014 and provisional registration issued by Directorate of Social Defence on 25.05.2016.

5. Per contra, Id. Departmental Representative strongly supported the order of the Id. Commissioner of Income Tax.

6. We have considered the rival contentions and perused the orders of the authorities below. A reading of the observation of Hon'ble Jurisdictional High Court reproduced by us at para 2 above, clearly indicate that their lordships were satisfied with regard to the genuineness of the assessee running the orphanage. Their lordships also took note of a certificate dated 14.12.2016 of Directorate of Social Defence, Government of Tamil Nadu substantiating its contention that it was running an orphanage. That apart, one of the object clause cited by the Id. CIT, for holding that the assessee was a religious trust, in our opinion cannot be interpreted so. Propagation by lawful means teachings as per Holy Bible will not ipso facto convert a charitable trust to a religious one, when it was predominantly carrying on a charitable activity. Certificates issue by the Directorate of Social Welfare and Directorate of Social Defence clearly show that assessee was running a charitable institution in the nature of orphanage at Dharmapuri. As for observation of the Id. CIT that assessee had not obtained the consent of the donors for treating certain donations as corpus and had awarded a contract to M/s. J.P. Builders through its managing trustee, these are all matters to be considered at the time of assessment and not at the time of adjudicating an application for registration u/s.12AA of the Act. Assessee having proved its genuineness and also the charitable nature

of its activity ought not have been denied the registration sought by it. Order of the Id. CIT is set aside. Id. CIT is directed to grant the registration sought by the assessee u/s.12AA of the Act.

7. In the result, the appeal of the assessee stands allowed.

Order pronounced on Friday, the 11th day of May, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 11th May, 2018

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |