

(2010) 12 MAD CK 0282

Madras High Court

Case No: Tax Case (Appeal) No. 1056 of 2010

Director of Income Tax
(Exemption), Chennai

APPELLANT

Vs

Anjuman-e-Khyrkhah-e-Aam

RESPONDENT

Date of Decision: Dec. 13, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 12A, 12AA, 12AA(1)(b)(i), 12AA(2), 80G

Citation: (2011) 237 CTR 509 : (2011) 200 TAXMAN 27

Hon'ble Judges: N. Kirubakaran, J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: Patty B. Jeganathan, for the Appellant; J. Balachander and S. Sridhar, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.

The revenue has come forward with this appeal. Though two questions of law sought to be raised, we do not find any scope to entertain the second question of law which, according to the appellant, was based on the earlier orders of the Tribunal passed in ITA Nos. 1939 and 1940 of 2009 dated 25-2-2010 and ITA No. 308 of 2009 dated 8-1-2010. We perused the above referred to earlier orders of the Tribunal and as we find that there were very many distinguishing features on facts involved in those cases, there is no scope to compare the above referred to orders of the Tribunal to decide the issue raised herein. As far as the first question of law is concerned, the said question of law reads as under:

Whether on the facts and circumstances of the case, the Tribunal was right in deciding that the assessee should be deemed to have been granted the registration u/s 12AA of the Act and directed to grant registration contrary to the said provision?

The brief facts, which are required to be stated, are that the respondent filed an application in Form 10A before the appellant on 28-1-2009, seeking registration u/s

12AA of the income tax Act and in Form 10G for grant of approval u/s 80G of the Act. The application in Form 10A was processed by the appellant and based on the accounts, the appellant felt that the respondent derived rental income from properties situated at Chennai and Vaniambadi, by hiring utensils and sale of books. It therefore called upon the respondent by a letter dated 6-7-2009 to explain why the application for registration u/s 12AA of the Act, should not be rejected and to furnish additional information called for in the said letter.

2. The respondent filed their reply on 15-7-2009 furnishing the explanation. The respondent contended that the utensils are used in the students' hostel, which are being let on hire at concessional, charges to the poor at the time of marriages, that such charges are very meagre, that the hiring charges are not on daily basis and that the charges were to ensure that the hired utensils to the poor are returned back in time after the marriage function is over. According to the respondent, they wanted to ensure the return of the utensils in time, so that it could be given to other poor people for their use.

3. As far as the income derived from the sale of books are concerned, the respondent contended that it has got a reading room and a library, that every year old books and periodicals used to be sold and whatever money secured from such sale used to be reflected in the accounts under the heading "sale of books". The respondent, therefore, claimed that such selling activity is not their regular commercial activity, but was only incidental to its main activity of running its orphanage.

4. The appellant, by one line order, rejected the stand of the respondent as regards the hiring of utensils as well as sale of books and held that both the activities were purely commercial in nature and that the respondent derived huge rental income from its properties on a regular basis and therefore, its activities cannot be called as charitable one. Even after holding so, the appellant merely lodged the application of the respondent.

5. While dealing with the said order, the Tribunal held that since the application was filed by the respondent on 28-1-2009 and the order came to be passed on 31-7-2009, by virtue of section 12AA(2) of the Act, six months period expired and therefore, the application should be deemed to have been granted, recognising the status of the respondent as "Charitable Trust". It also went into the merits of the order and held that the reasoning of the appellant as regards sale of books, hiring of utensils and rental income would not make the activities of the respondent-trust as a commercial venture.

6. Having heard Mr. Patty B. Jaganathan, learned standing counsel for the appellant and Mr. J. Balachander, learned counsel for the respondent and having perused the order of the appellant as well as that of the Tribunal, in the foremost, we find that the construction placed by the Tribunal, based on section 12AA(2) of the Act, cannot

be accepted. Section 12AA(2) of the Act, reads as under:

Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) of section 12A.

7. Going by the said provision, the appellant is expected to pass the order in an application for registration either by granting or by refusing it before the expiry of six months from the end of the month, in which the application was received.

8. The application was dated 28-1-2009, which has been stated so in the very opening paragraph of the order of the appellant dated 31-7-2009. If we calculate the six months" period from the end of the said month, it can be safely held that the six months" period would expire by 31-7-2009. Therefore, the order passed by the appellant on 31-7-2009 cannot be held to have been passed in violation of section 12AA of the Act. When such a conclusion is inevitable by virtue of the relevant dates, which are not in dispute, the conclusion of the Tribunal in holding that the registration was deemed to have been granted, cannot be sustained, inasmuch as we have found that the order of the appellant was passed within a period of six months stipulated in section 12AA(2) of the Act. We are not examining the issue as to whether any order passed beyond the six months" period, should be taken as the registration is deemed to have been granted. We, therefore, leave it open to be decided in any other appropriate case. We, however, set aside the order of the Tribunal, inasmuch as we have found that the appellant has passed the order within the stipulated time limit of six months. As far as the merits of the claim of the respondent is concerned, it is a matter to be properly examined by the appellant by giving proper reasons while rejecting any stand of the respondent with reference to sale of books and periodicals, income derived from the hiring of utensils as well as the rental income. That apart, the order of the appellant was rightly set aside by the Tribunal, as the appellant should have either granted or rejected the application and is not expected to merely lodge the application, which will only leave the respondent who sought for registration as a "Charitable Trust" in a suspended animation. Such a situation cannot be created by the appellant by lodging assessee's application. Moreover, the specific provision contained in section 12AA of the Act, in particular. Section 12AA(1)(b) (i) and (ii) makes it clear that there is a statutory mandate imposed on the appellant to pass an order in writing either registering the trust/institution or refusing to register the trust/institution. There cannot be any order in between like lodging the application. Though we hold that there was no deemed registration u/s 12AA(2) of the Act, the orders of the Tribunal as well as that of the appellant dated 26-5-2010 and 31-7-2009 are set aside and the matter is remitted back to the appellant for fresh disposal on merits. The appellant is directed to take up the application for registration of the respondent, give an opportunity of hearing to the respondent and pass orders, one way or the other, within two months from the date of receipt of a copy of this order. The question of law is

answered in favour of the appellant. No costs.