(1988) 04 MAD CK 0024

In the Madras High Court

Agasthiyar Trust APPELLANT

Vs

The Govt. of Tamil Nadu RESPONDENT

Date of Decision : 18-04-1988

Acts Referred:
Income Tax Act, 1961 — Section 11
Tamil Nadu Urban Land Tax Act, 1966 — Section 11, 13, 27, 40A, 7C

Citation : (1988) 1 MLJ 336

Hon'ble Judges : Swamikkannu, J

Bench : Division Bench

Judgement

Swamikkannu, J.—Mr. Somayaji, learned Counsel for the petitioner refers to the paragraph 7 of the Government Order in G.O. Ms. No.-

2625, dated 27th December, 1976, which reads as follows:

Clause VII(a): All Institutions recognised as charitable institutions under the Indian Income Tax Act will be dealt with as such for purposes of

concessions under the Tamil Nadu Urban Land Tax Act.

According to the learned Counsel for the petitioner this aspect had been overlooked by the authority concerned, namely the Commissioner and

Secretary to Government when he had made an order on 28th January, 1982 (in letter No. 73624/U1/80-7, dated 28.1.1982) informing the

trustee, Sri Agastiyar Trust, 234, Mint Street, Madras-3, that they see no grounds to comply with the request of the trustee, and accordingly

rejected the prayer.

2. In this regard Mr. Somayaji, the learned Counsel for the petitioner stated that the following submissions were made before the Honourable

Minister for Revenue, Fort St. George, Madras-9, while praying for an exemption u/s 27 of the Tamil Nadu Urban Land Tax Act, 1966 which

reads as follows:

The following table of statements showing the income and expenditure will itself make it clear that the Trust in question is a public and charitable

Learned Counsel for the petitioner submits that over and above the net income, the petitioner herein had spent about nine lakhs of rupees for

charitable purposes during the years commencing from 31.8. 1965 to 31.8.1976.

3. In the counter affidavit that has been filed in the instant case, it is pointed out in paragraph 6 as follows:

In paragraph 2 of the affidavit, the petitioner trust has stated about the formation of the trust, and the circumstances leading to the filing of the writ

petition. These allegations are not admitted. In paragraph 3 of the affidavit, the petitioner has stated that it has been recognised as a charitable

institution entitled to exemption u/s 11 of the Income Tax Act, 1961. The exemption under Income Tax Act, 1961 has no binding force to exempt

the petitioner from levy of urban land tax under Urban Land Tax Act. The petitioner filed the return u/s 7-C of the Tamil Nadu Urban Land Tax

Act, 1966 on 27.10.75. As the particulars of land held by the Trust furnished in the return found to be incorrect and incomplete it was issued a

notice in Form 2-C u/s 10(2)(a) and with Section 40-A of the Tamil Nadu Urban Land Tax Act, 1966, Amended Act, 1975 on 8.4.76 by the

second respondent directing the petitioner trust to appear for an enquiry on 28.4.76. It is true he was served with the order of assessment on

21.11.77.

4. The point for consideration is whether the relief prayed for by the petitioner herein can be granted.

5. It is quite clear that the relevant provision of Indian Income Tax Act had been ignored in the instant case before us because what is exempted by

the Income Tax Authorities must also be exempted as per the provisions of the Urban Land Tax Act. Learned Counsel for the petitioner has also

pointed out paragraph 37 of the order of the Income Tax Appellate Tribunal regarding this petitioner as appellant which runs as follows:

Summarising the position, we hold that the assessed-trust satisfied the conditions of a charitable purpose as laid down in Section 2(15) for the

years under appeal the trust must be regarded as having applied 75% of its income or more for charitable purposes. And the claim was u/s 11 is

not defeated by the application of Section 13 of the Act. The assessee''s appeals for all the years are allowed.

A careful perusal of the respective contentions together with the observations made by the relevant Authorities during appropriate time clearly

shows that the Impugned order suffers from defect of not applying the general principle recognised by law that the bodies which have been

recognised as charitable institutions must be exempted by the Urban Land Fax Authorities as well. In this view the order of the Commissioner and

Secretary to Government, dated 28.1.1982 in Setter No. 73624/U1/80-7 is certainly not in accordance with law. Anyhow an opportunity has to

be given to the parties herein in order to apply the principles of law appropriately at appropriate situation. In this view, the order contained in letter

No.73624/U1/80-7, dated 28.1.1982 passed by the Commissioner and Secretary to Government against the petitioner, the Trustee of Sri

Agastiyar Trust, Madras-3 is set aside and the matter is remitted back to the said Commissioner and Secretary to Government who should

dispose of the matter in accordance with law in the light of the observation made above.

The Commissioner and Secretary has to take the initiative and see to it that he applies the above principle and further proceed in the matter since

the above order dated 28.1.1982 made against the petitioner is hereby set aside by allowing this writ petition. The writ petition is allowed. The

authorities concerned is directed to dispose of the matter within 2 months from the date of receipt of this order. Under these circumstances, there is

no order as to costs.

