(2014) 08 MAD CK 0077

In the Madras High Court

Case No : Tax Case (Appeal) No. 975 of 2013

Commissioner of Income Tax APPELLANT

Vs

R.K. Deivendra Nadar Trust RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:
Income Tax Act, 1961 — Section 12A, 12AA, 12AA(3), 2(15)

Citation : (2014) 271 CTR 694

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Judgement

G.M. Akbar Ali, J.—This tax appeal is preferred against the order of the Income-tax Appellate Tribunal, Madras ''C'' Bench, dt. 11th July, 2013 in ITA No. 969/Mad/2012. The respondent, R.K. Deivendra Nadar Trust, which was formed on 3rd Aug., 2011, filed an application for registration under s. 12A of the IT Act stating that the trust was formed to promote education among the poor, especially economically backward people in general and for the benefit of people in particular and for the purpose of running schools, colleges, including professional colleges, etc.

2. The CIT processed the application under s. 12AA of the Act and found the trust has not done any charitable acts, rejected the application vide order dt. 30th March, 2012. Aggrieved by the said order of the CIT, the trust preferred an appeal before the Tribunal and relied on the judgment reported in DIT (Exemptions) Vs. Meenakshi Amma Endowment Trust . According to the trust, the application was filed within three months of the formation of the trust and the charitable activities cannot be assessed in the early stage; and the CIT has not considered the objects of the trust. The Tribunal found that the objects of the trust are charitable and placed reliance on the decision in Meenakshi Amma Endowment Trust''s case (supra), allowed the appeal filed by the trust for registration under s. 12A of the Act. Aggrieved against the same, the Revenue has preferred the present appeal.

3. Heard Mr. Senthilkumar, learned standing counsel appearing for the appellant and perused the documents placed in the typed set of documents and also the judgment relied on by the Tribunal.

4. Learned standing counsel for the appellant points out that the trust has not done any charitable activities and, therefore, the CIT has rightly rejected the registration as no independent activities of charitable nature were shown. The learned counsel submitted that the trust was relying only upon the charitable activities carried on by one Late R.K. Deivandra Nadar, in whose name the trust was started and, therefore, there is nothing on record to show that the objects of the trust are for charitable purpose.

5. A perusal of the order would show that the object of the trust, as extracted by the Tribunal, is to promote education among the poor, especially economically backward people and also promote and run colleges, schools, professional colleges and also to establish hospitals for the poor. It is admitted that one Deivandra Nadar, a philanthropist was doing the charitable activities and only in order to continue such charitable activities, the trust has been created in his name and within a month of its formation, applied for registration under s. 12A of the Act, which provides that the registration should be done within one year from the formation of the trust.

6. It is also relevant to point out that in Meenakshi Endowments'' case (supra), the Karnataka High Court has held that "when the trust itself was formed in January, 2008, with the money available with the trust, one cannot expect them to do activity of charity immediately and because of that situation the authority cannot come to the conclusion that the trust was not intending to do any activity of charity." We respectfully agree with the view taken by the Karnataka High Court, which is squarely applicable to the respondent/trust in the present case. The Tribunal has rightly followed the said judgment in arriving at its conclusion.

7. The apprehension of the CIT whether the objects are genuine and the intentions of the trust are doubtful, cannot be decided at the threshold. The answer to the same lies in s. 12AA(3) of the Act, which is extracted hereunder:

"12AA. ....

(3) Where a trust or an institution has been granted registration under cl. (b) of sub-s. (1) and subsequently the CIT is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing canceling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."

8. ''Charitable purpose'' is defined under s. 2(15) of the Act and the same is extracted hereinbelow for easy reference:

"2. ....

(15) ''Charitable purpose'' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity."

9. From a reading of the above provisions, it is clear that the authority has got power to subsequently satisfy itself about the activities of such trust or institution as to whether it is genuine or not and whether the trust is being conducted in accordance with the objects of the trust and the authority has got the power to pass an order cancelling the registration of the trust or the institution. We find that the above provision enables the authority to monitor the activities of the charitable trust and if it finds that its activities are not in the best interest of the trust and to subserve the interest of the trust, then it is open to the authority to cancel the registration of the trust or the institution.

10. In the present case, we find no reason as to why the CIT had rejected the registration of the trust when there is ample power under law to rectify any error to cancel the registration of the trust or institution if there is breach of the objects of the trust in the discharge of its charitable objects as propounded in the trust deed. The reasons given by the original authority, we find, to reject the registration, cannot be held against the respondent at this stage and the Tribunal has rightly exercised its discretion in setting aside the said order.

11. It is also brought to the notice of this Court that in Tax Case (Appeal) Nos. 975 of 2014 (sic) and 729 of 2013 [reported as Director of IT (Exemptions) vs. R.J.B.V. Vasudevan Educational & Charitable Trust (2014) 271 CTR (Mad.) 688 : (2014) 110 DTR (Mad.) 197--ED.], similar view has been taken by this Court.

12. Accordingly, there is no question of law, much less substantial question of law arising for considering in this appeal and there being no merits, this appeal is dismissed. However, before parting with the case, we hope that the Director of Exemptions/CIT concerned will endeavour to scrutinise the working of all the existing trusts and find out whether the funds of the trust are utilised towards the charitable objects propounded in the trust deed and not for the personal interest of any particular person or individual. We fervently hope and trust, that considering the number of charitable trusts that are being registered, the appropriate authority will scrupulously verify the individual charitable trust and take action whenever there is a breach of the objects of the trust and the authority empowered shall take action against such charitable trusts if there is any violation of the objects of the trust.