(2007) 08 MAD CK 0226

In the Madras High Court

Case No : T.C. (R) . No''s. 107 and 108 of 2004 and TCMP No''s. 54 and 55 of 2004

St. Joseph's Estate — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Income Tax Act, 1961 — Section 11, 12A
Tamil Nadu Agricultural Income Tax Act, 1955 — Section 34, 4

Citation : (2009) 310 ITR 451

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : P.J. Rishikesh, for Subbaraya Aiyar, for the Appellant; Haja Nazuruddin, for the Respondent

Judgement

Chitra Venkataraman, J.—The above tax case revisions are filed against the order of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Chennai. The assessment years relating to 2000-01 and 1999-2000.

2. The assessee claimed exemption u/s 4(b) of the Tamil Nadu Agricultural Income Tax Act, 1955. By order dated July 31, 2000, in respect of the assessment year 2000-01, the assessing authority noted that the assessee is registered as a charitable institution under the provisions of Section 12A(a) of the Central Income Tax Act, 1961. On the inspection conducted on July 28, 2000, the assessing authority pointed out that the petitioner herein runs the society for educational and charitable purposes for all persons irrespective of religion, race, caste, community or social status. It is also stated that a large portion of the society''s income is spent on the training of young priests all over India. In the circumstances, the assessing authority granted the exemption.

3. On the proceedings initiated u/s 34 of the Tamil Nadu Agricultural Income Tax Act, 1955, a show-cause notice was issued to revise the assessment order by cancelling the relief granted u/s 4(b) of the Tamil Nadu Agricultural Income Tax

Act on the ground that no trust deed had been produced by the assessee to verify the following items:

(1) declaration of trust which is binding on the settlor;

(2) setting apart definite property and the settlor depriving himself of the ownership thereof; and

(3) a statement of the objects for which the property is thereafter to be held, i.e., the beneficiaries has also not been produced by the institutions.

4. The petitioner filed his reply stating that the institution was registered under the provisions of the Indian Income Tax Act and that the Indian Trusts Act is not applicable to the case herein. As to the non-production of the trust deed, the petitioner referred to Clause 4 of the Rules and Regulations which deals with property and income and submitted that the property and the income of the petitioner were applied solely towards the promotion of the object of the society. Consequently, the assessee prayed for dropping of the proceedings.

5. By order dated May 2, 2003, the Special Commissioner and the Commissioner of Agricultural Income Tax, Chennai, referred a decision of this court in the case in TC(R) No. 140 of 1994 dated January 9, 1998, reported in State of Tamil Nadu Vs. Ezhumeswaramudayar Temple, , and held that the assessee had only agricultural income and there was no composite income. In the circumstances, exemption granted under the Income Tax Act could not be of relevance for considering the plea of exemption under the Tamil Nadu Agricultural Income Tax Act. The Commissioner also pointed out that the trust deed had not been produced.

6. Learned Counsel appearing for the petitioner submitted that on production of copy of the certificate issued by the Income Tax Officer, Ooty, the assessee was exempted from the tax u/s 11 of the Income Tax Act for the assessment year 2001-02. Learned Counsel also pointed out that the certificate issued u/s 12A(a) of the Income Tax was only to substantiate its status as a trust entitling for exemption as an educational institution. Hence, going by the acceptance of the status of the assessee as a trust eligible for exemption, the same ratio deserved to be accepted for the purpose of granting relief under the Tamil Nadu Agricultural Income Tax Act.

7. Learned Counsel appearing for the Revenue, however, pointed out that considering the reasoning given by this court in paragraph 20 of the decision in State of Tamil Nadu Vs. Ezhumeswaramudayar Temple, , in the absence of production of trust deed, the Commissioner had rightly passed an order.

8. A perusal of the order of the Commissioner shows that the exemption was granted for the assessment years 1999-2000 and 2000-01 on production of a certificate issued by the Income Tax Officer u/s 11 of the Income Tax Act. Admittedly, no trust deed was produced before the Commissioner except for the certificate issued by the Income Tax Officer, Ooty, as regards the grant of

exemption under the Income Tax Act up to 2001-02. The assessee did not produce the certificate u/s 12A(a) of the Income Tax Act, 1961.

9. It may be noted that the Commissioner initiated suo motu proceedings on the ground that the trust deed had not been produced before the authorities concerned for the purpose of verifying the status of the institution as a charitable institution. In the circumstances, the Commissioner passed an order negativing the claim of the assessee on the ground that the exemption granted under the Income Tax Act, per se, does not enure to the benefit to the assessee entitling for an exemption under the Tamil Nadu Agricultural Income Tax Act.

10. As far as the exemption under the provisions of the charge under the Tamil Nadu Agricultural Income Tax Act is concerned, Section 4(b) is the relevant section. The same reads as follows:

4. Total agricultural income.-Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within the State which is received by him or which accrues to him within or without the State, but does not include-....

(b) any agricultural income derived from property held under trust, wholly or partly for charitable or religious purposes, to the same extent to which income derived from property under trust wholly or partly for charitable or religious purposes, is not included in the total income for purposes of the Income Tax Act, 1961 (Central Act XLIII of 1961).

11. This provision came up for consideration in the decision reported in State of Tamil Nadu Vs. Ezhumeswaramudayar Temple, . While considering the scope of this section, this court held that for the purpose of exemption under the Agricultural Income Tax Act, a religious or a charitable institution receiving income from agricultural lands need not get registered under the provisions of the Central Income Tax Act. It is only these trusts having income from non-agricultural sources need to get them registered under the relevant provisions of the Income Tax Act. Interpreting the phrase (page 527): "to the same extent to which the income derived from the property held under trust wholly or partly for charitable or religious purposes is not included in the total income for the purposes of the Income Tax Act, 1961", occurring in the said Clause it was pointed out that (page 527): "no meaning can be ascribed except as to how under the Income Tax Act, the income derived from non-agricultural property held by a charitable and religious trust is taxable and to the same extent, the agricultural income would be taxable under the said Clause of the Act. If any other meaning is given to the said phraseology, it would lead to absurd results. In the process of interpretation of the phraseology as extracted above, we have to accredit wisdom and knowledge to the Legislature in enacting such a Clause to the relevant provisions of the Income Tax Act and the provisions of the Constitution we have earlier referred to; and that perhaps was the reason they have introduced Clause (b) of Section 4 to the tax "agricultural income" from

property held under trust for religious or charitable purposes in the same manner, as had been enacted in the Income Tax Act, as relatable to non-agricultural income from property held under trust for religious and charitable purposes for the purpose of Income Tax. Certain consequences are to flow from what has been stated above. There is no need for a religious or charitable trust, receiving income on agriculture from the lands held by him, to get the trust registered under the relevant provisions of the Income Tax Act for claiming a little bit of exemption of tax, as had been granted in Clause (b) of Section 4 of the Act.

12. In the context of the said decision, the claim of the assessee for exemption must rest on the proof that the assessee adduces as to its status as a charitable institution. As already seen, since admittedly the petitioner had not produced the trust deed before the revisional authority, the matter merits to be remitted back to the revisional authority concerned to verify the trust deed to consider the claim for exemption. The petitioner herein shall produce the trust deed before the revisional authority who shall pass orders thereupon in accordance with law.

13. T.C. No. 108 of 2004 relates to the assessment year 1999-2000, wherein the facts are also similar. The order passed by the Commissioner is common and in identical set of circumstances.

Considering the above facts and circumstances, the above cases are disposed of by setting aside the orders passed by the Tamilnadu Agricultural Income Tax Appellate Tribunal, Chennai. The matters are remitted back to the Tamilnadu Agricultural Income Tax Appellate Tribunal, Chennai, to consider the trust deed and pass orders on the merits. Consequently, connected TCMP are closed. No costs.