

In the High Court of Judicature at Madras

Dated: 05.11.2014

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The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) No.688 of 2014

Commissioner of Income Tax
Salem.

.... Appellant

Vs.

M/s.Hare Krishna Movement,
Dharmapuri
Radhae Krishna Brindavanam,
No.1-367, Hoggenakal Road,
Attukaranpatti Village,
Dharmapuri - 636 809.

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Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 04.02.2014 made in I.T.A.No.2056/Mds/2013 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai.

For Appellant : Mr.J.Narayanasamy
Standing counsel for Income Tax

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled for registration under Section 12AA?"

2. The respondent - trust, which was formed by a trust deed executed on 18.01.2010, filed an application under Section 10A of the Income Tax Act for registration under Section 12AA of the Income Tax Act on 11.03.2013. The application for registration was processed on the basis of the materials enclosed. On intimation by the Department by letter dated 01.04.2013, the applicant - trust filed a letter dated 25.6.2013 furnishing certain details. One of the details contained in the response is that the trust received a land as gift from donors, the property donated was registered in favour of the trust on 04.02.2010 and that is recorded in the books of accounts for the year ending 31.3.2010. It appears that the property has been actually handed over to the trust on 26.5.2011. On the subsequent hearing dates, the applicant - trust filed another letter dated 22.9.2013 filed on 25.9.2013 enclosing certain details of the property gifted to the trust along with the relevant particulars including income and expenditure statement, balance sheet etc.

3. The Original Authority was of the view that though the gift deed was registered on 04.02.2010, the property was handed over to the corpus of the trust only on 26.5.2011 and the trust has not shown any diligence in taking over the property. Having brought the asset in the

books of accounts of the trust for the year ending 31.3.2010 itself and taking over of the asset subsequently on 26.5.2011 would show that the accounts and the activities of the trust were not at all clear. The further ground is that the trust had not shown any material evidence to show that they are carrying on charitable activity. On this premise and on the basis of the report of the Inspector, who stated that except conducting pooja to the Presiding deity and distributing Prasadam to the devotees, no charitable activity has been effectively taken. Hence, the application was rejected. As against the said order of rejection, the assessee filed an appeal before the Income Tax Appellate Tribunal, which allowed the appeal directing the Original Authority to grant registration. Aggrieved by the same, the Revenue has filed the present Tax Case (Appeal).

4. Heard Mr.J.Narayanasamy, learned standing counsel appearing for the Revenue and perused the materials placed before this Court.

5. We find that the reasons given by the Original Authority to decline registration is trivial and does not sub-serve the cause of a charitable trust, which seeks registration under Section 12AA of the Income Tax Act. There is no doubt that the Trust got registered the property, which was gifted to it, on 04.02.2010 itself. On execution of the registered deed, they had primarily recorded in their books of accounts as on 31.3.2010. Hence, no fault could be attributed to the trust, when the donor does not physically handed over the possession of

the property. A donee cannot insist the donor as to how his donation should be made. The Trust is started with an avowed object of conducting religious as well as charitable activities. It is in the nascent stage as we could see from the date of formation and seeking registration under Section 12AA. Therefore, the Department was not correct in coming to the conclusion that the genuineness of the trust is in doubt. Primarily the reason as we could see from the order of the original authority is not on account of the nature of the activity of the trust, but on a ground that the property donated was registered on 04.2.2010, but taken over physical possession only on 26.5.2011. We find that such a reasoning is totally misconceived. As we have already observed, the donee cannot make conditions or call upon the donor that he should deliver possession immediately. What has been given as gift by a registered document has been entered into the books of accounts promptly. The delay in handing over possession cannot be attributed to the fault of the trust and as a consequence the interference drawn by the Original Authority that there is an error in maintaining the accounts appears to be hyper-technical. The Tribunal was correct in rectifying the error and allowing the appeal. It is not as if that the Original Authority did not have power to check the activities of the trust, as Section 12AA of the Income Tax Act provides for appropriate action to be taken, if the objects of the trust and its activities are not in consonance with the provisions of law. That stage has not yet come and therefore, the Department is at error in declining to grant registration.

6. In the light of the above, we see no error in the order of the Tribunal. We find no question of law much less any substantial question of law arises for consideration in this appeal. Accordingly, the order of the Tribunal stands confirmed and this Tax Case (Appeal) stands dismissed. No costs.

Index :Yes/No
Internet:Yes/No
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(R.S.,J) (R.K.,J)
05.11.2014

To

1. The Income Tax Appellate Tribunal 'B' Bench, Chennai.
2. The Commissioner of Income Tax, Salem.

**R.SUDHAKAR,J.
AND**

R.KARUPPIAH,J.

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