

IN THE HIGH COURT OF MADRAS

Tax Case (Appeal) Nos.809 to 813 of 2010

M/s RAMALINGAM CHARITIES, SALEM

Vs

THE COMMISSIONER OF INCOME TAX, SALEM

Chitra Venkataraman and P P S Janarthana Raja, JJ

Dated: March 11, 2011

JUDGEMENT

Per : Chitra Venkataraman:

The assessee has come on appeal as against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai, dated 03.03.2004 made in ITA Nos.847 to 851/Mds/2003 for the assessment years 1995-1996 to 1999-2000 by raising the following substantial questions of law.

"1. Whether in the facts and circumstances of the case, the Tribunal erred in law in upholding the reassessment when no case was made out for invoking the provisions of Section 147 and Section 148 of the Income Tax Act, 1961?"

2. Whether in the facts and circumstances of the case, the Tribunal was justified in denying exemption under Section 11 even though corpus donations were received which are capital receipts not liable for taxation?"

3. Whether the Tribunal was justified in denying exemption under Section 10(22) without directing the lower authorities to go into the facts of the case?"

4. Whether the Tribunal was justified in considering the applicability of Section 10(22) when the departmental appeal merely disputed the action of CIT (Appeals) in setting aside the assessment without giving a finding himself?"

5. Whether the Tribunal was justified in law in overlooking the fact that the deposits in Ramalingam Investments were received by the Trust as bequest as per the Wills executed by the wife and the brother of the testator?"

2. Having regard to the common issue involves, common judgment is passed.

3. The assessee herein is a Trust created under the Trust Deed dated 07.06.1989 and the rectification deed dated 18.09.1989. A perusal of the Trust deed shows that apart from providing education, the Trust has objects to construct, renovate, revive or contribute or help in any manner places of education, public halls, choultries, Thirumana mandapams, schools and Colleges etc, to establish, run and maintain the

educational institutions, orphanages and to do all activities of advancement of education.

4. A perusal of the Trust Deed further shows that the object is not just restricted to advancement of education alone. It is stated that during the relevant assessment years, the Trust was running two schools for primary and for higher education in Salem. The Trust has also received corpus donations as per the Will executed by R.Susila, wife of Ramalingam, the author of the Trust. The Trust received donations to the tune of Rs.8,81,500/-, which is lying in deposit with M/s Ramalingam Investments, a sister concern of the Trust. These deposits were made in the sister concern by the testators and not by the Trust. It is stated that the Trust enjoyed exemption under Section 11 of the Act. As regards the assessment years in question viz., 1995-1996 to 1999-2000, the 'nil' returns filed were processed under Section 143(1)(a) and the same were accepted. However, the assessments were sought to be re-opened under Section 147 of the Act on the ground that the Trust had made deposits in a sister concern in which the Trustees were interested and hence, there was violation of the provisions of Section 11(5) of the Act, thereby, attracting the provisions of Section 13(1)(d) of the Act. The assessee, however, pleaded that the Trust received contributions to the corpus only and as per Section 12, such capital receipts should not be brought to tax. The objection taken by the assessee was however rejected, which has resulted in the assessee filing the appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) remanded the matter back to the assessing authority to consider the case of the assessee with reference to the object clause contained in the Trust deed to examine the claim of exemption under Section 10(22) of the Act.

5. Aggrieved by the same, the assessee as well as the revenue came on appeal before the Tribunal. By a common order, the Tribunal considered the claim of the revenue as well as the assessee and pointed out that having regard to the fact that the Trust deed was not existing solely for the educational purposes and that the trust had engaged itself in other activities by running orphanages, Kalyana mandapam, money lending business, etc., it cannot be held that the Trust was one solely carrying on the activities of educational institutions. The Tribunal further pointed out that having regard to the fact that the assessee had not fulfilled the conditions laid down under Section 11(5) of the Act and had diverted the funds to its sister concern, the assessee was not entitled to the exemption under Section 11 and 12 of the Act. To claim exemption under Section 10(22) or 10(23c), the assessee has to carry on the activities solely of educational institutions. In the case on hand, the assessee is existing not only for educational activities but also carrying other activities like construction of kalyana mandapam, running orphanages etc., Hence the assessee is not eligible for the benefit of Section 10(22) or 10(23) of the Act. Thus the Tribunal came to the conclusion that the assessee was not solely engaged in the educational institutions, but also other activities, which is of composite character.

6. However, as regards the finding of the Tribunal that the Trust was constructing Kalyana mandapam and running orphanage, the assessee filed a petition under Section 254(2) to set right the factual errors in the order in M.P.No.110/Mds/2004 in ITA Nos.847 to 851/Mds/2003 & Co. Nos.85 to 89/Mds/2003. After the disposal of the appeal, by order dated 23.08.2004, the Tribunal held that having regard to the terms of the Trust deed and the facts and circumstances case, it was clearly established that the assessee was not engaged in the educational activities alone but engaged in other activities also.

7. Learned Senior counsel for the assessee pointed out that the Tribunal committed a serious error in not considering the claim of the assessee under Section 10(22) of the Act. That apart, he further pointed out that the amount that was given to the assessee under the testamentary disposition, held in deposit in the sister concern was only as per the directions in the Will and that was not an independent deposit made by the Trust so as to attract the compliance of provisions of 11(5) of the Act. Consequently, the question of rejecting the claim of the assessee herein is not correct, in any event, he pointed that the deposit made under Section 10(22) cannot be rejected outrightly by the Tribunal.

8. As far as the issue raised as to the correctness of the reassessment proceedings are concerned, learned Senior counsel pointed out that the assessee has not made any serious dispute. Consequently, the issues now raised before this Court have to be considered only with reference to the applicability of Section 11(5) and 12 of the Act and in the event of the assessee failing to satisfy the Court with reference to the above Sections, the question has to be considered as regards the availability of exemption under Section 10(22) of the Act.

9. Learned Senior Standing counsel for the revenue took us through the order of the Tribunal only to point out the findings as regards the violation of requirement under Section 11(5) of the Act to reject the claim for benefit under Section 12 of the Act as well as to the order, the order of the Tribunal in M.P. as regards the findings of fact that the assessee-Trust was not solely engaged for the educational purpose. Having regard to the above said facts, the learned Senior Standing counsel submitted that no questions of law arise for consideration of this Court.

10. Heard the learned counsel appearing on either side.

11. A perusal of the order of the Tribunal, particularly, paragraph 8 shows that the Tribunal found as a matter of fact that the assessee could not be considered as one existing solely for educational purpose. Quite apart from what has been stated in the order of the Tribunal regarding the activities explained in the Trust deed, the order passed in the miscellaneous petition further reaffirmed the findings of the Tribunal that the assessee has not been carrying on its activities solely on educational front. Thus, having arrived at the finding, the Tribunal found that the assessee has not fulfilled the conditions laid down under Section 11 of the Act. Consequently going by the facts, the question of any benefit to be given under Section 11(5) and 12 does not arise.

12. As regards the finding in terms of Section 12 of the Act that the amount received under investment be treated as part of corpus of the Trust, the Tribunal gave a finding in favour of the assessee that the voluntary contributions received by the assessee Trust shall form part of the corpus of the Trust. The receipts could not be treated as income under Section 12 of the Act. A perusal of the order of the Tribunal shows that both on the aspect of Section 11(5) as well as Section 12, particularly, the factual issues, could not be in any manner challenged before this Court. Consequently, the findings thus remained unassailed and binding on the assessee. We do not find any necessity to remand the matter for consideration by the assessing authority. Having regard to the above said fact, the assessee is not entitled to any priority under Section 11(5) of the Act as it had been failed to satisfy the conditions laid down therein.

13. The only other position remains is entitlement of the assessee to fall under Section 10(22) of the Act. As far as this question is concerned, it is for the assessee to canvass before the assessing authority by producing necessary materials to substantiate his claim in the context of the provisions of Section 10(22) of the Act. The Tribunal had not adverted to in the order as to the applicability of provisions of Section 10(22) and Section 11(5) on the claim of the assessee. In the background of the findings of the Tribunal and upholding the order of the Tribunal on this aspect, the proper course herein would be to leave this question open for the assessee to canvass before the authority. If any question is raised as regards the applicability of Section 10(22) or any other provisions under the Act to claim exemption, it is open to the assessee to approach the authority to consider the claim in accordance with law. For the present, we do not agree with the assessee's contention in this aspect to grant the benefit under Section 11(5) of the Act. Accordingly in the above said conclusion is on question No.1 and as regards the correctness of the reopening having regard to the fact that there is no serious dispute raised except for raising the question of law it does not survive for consideration. Therefore, the second question has to be answered against the assessee, having regard to the fact that the assessee has not satisfied the requirement under Section 11(5) to claim benefit under Section 12 of the Act.

14. As regards question No.3, the question is left open since the matter has gone into by the assessee by producing materials before the assessing authority. Consequently, these appeals are disposed of with the directions stated above. No costs.