

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2012

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

and

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Tax Case (Appeal) Nos.1566 and 1567 of 2005

Commissioner of Income Tax

Madurai. .. Appellant

versus

M/s.Janakiammal Ayyanadar

Charitable Trust

12 A, Chairman Shanmugham Road

Sivakasi. .. Respondent

PRAYER: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 as against the order of the Income Tax Appellate Tribunal 'A' Bench, dated 28.07.2004 in ITA Nos.1640/Mds/98 and 1641/Mds/98.

For appellant in both TCs : Mr.T.R.Senthil Kumar

Standing Counsel for Income Tax

For respondent in both TCs : Mr.C.V.Rajan

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The Revenue is on appeal as against the order of the Tribunal relating to the assessment years 1990-91 and 1991-92.

2. It is seen from the narration of facts herein that the assessee Trust herein was created on 30.04.1957 mainly for educational and charitable purposes. The founders gifted the land and the business run in the name of "The National Papercaps Factory" with a stipulation that the said business shall be run by the trustees and the income therefrom shall be utilised for charitable objects.

3. During the relevant previous year, the trustees were stated to have carried on the business and claimed exemption under Section 11 of the Income Tax Act, in respect of the income earned therefrom. The claim for exemption under Section 11 made by the assessee was negated by the Assessing Officer on the ground that the same was hit by Section 11(4A), that there was no evidence to hold that the business of manufacture and sale of paper caps carried on by the assessee Trust was in the course of actual carrying on of the primary objects. In so holding, the Assessing Officer relied on the decision reported in [1996] 219 ITR 303 (Commissioner of Income Tax Vs. Virudhunagar Hindu Nadars Abiviruthi Panchakadai Mahamai). Aggrieved by the same, the assessee went on appeal before the Commissioner of Income Tax (Appeals). Following the decision of the Apex Court reported in [1997] 225 ITR 1010 (Thiagarajar Charities Vs Additional CIT) and the order in the assessee's own case in respect of the assessment year 1994-95, the the assessee's appeal was allowed. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal. Following the decision reported in [2001] 245 ITR 242 (CIT Vs. Samyuktha Gowda Saraswatha Sabha (Mad)) and [1995] 213 ITR 639 (Thanthi Trust Vs. Central Board of Direct Taxes), the Tribunal rejected the Revenue's appeal. Aggrieved by the same, the Revenue has preferred this appeal raising the following substantial questions of law:

" 1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee trust is eligible for the exemption of the income arising out of the business carried on by National Paper Caps and rental income, under Section 11?

2. Whether in the facts and circumstances of the case, the income received by the assessee charitable trust is hit by the provision of Section 11(4A) and

3. Whether the ratio of the Supreme Court's judgment in the case of Thanthi Trust (246 ITR 785) is not squarely applicable to the facts and circumstances of the case? "

4. Even though the Tribunal had not given any finding as regards the primary purpose, yet, a reading of the order of the Income Tax Officer shows that the Officer had considered the clauses in the trust deed to arrive at the finding that the primary object of the Trust are charitable in nature and that the property given was impressed with the character of trust property. Having held so, the Officer, nevertheless, pointed out that there was no evidence to hold that the business of manufacture and sale of papercaps, carried on by the trust in the name of The National Papercaps Factory, was in the course of the actual carrying on of the primary objects; hence, the Trust was not entitled to claim exemption under Section 11 of the Income Tax Act. The Officer rejected the assessee's reliance on the decision reported in [1997] 225 ITR 1010 (Thiagarajar Charities Vs Additional CIT). With the finding of fact arrived at by the Officer that the primary purpose of the Trust was charitable in nature, in the face of Section 2(15) and Section 11(4A) read with Section 13(1)(bb) of the Income Tax Act, we have no hesitation in confirming the order of the Tribunal.

5. We have already considered the issues raised herein in a similar order in Tax Case (Appeal) Nos.259 to 261 of 2004, 987 to 991 of 2005, 1547 to 1549 of 2005 and 675 of 2008 (Commissioner of Income Tax, Madurai Vs. M/s.P.Iya Nadar Charitable Trust Sivakasi) by order dated 18.09.2012 and rejected the Revenue's Tax Cases by applying the law declared by the Apex Court in the decision reported in [1980] 121 ITR 1 (Addl. Commissioner of Income-tax v. Surat Art Silk Cloth Manufacturers Association) and [1997] 225 ITR 1010 (Thiagarajar Charities Vs Additional CIT) and we have distinguished the said case from the decision reported in [2001] 247 ITR 785 (Assistant Commissioner of Income Tax Vs. Thanthi Trust).

6. Even though the Tribunal had not considered the issue as a final fact finding authority, with no disputes raised by the Revenue on the facts and on the facts admitted by the Assessing Officer, we have no hesitation in rejecting the Tax Cases preferred by the Revenue and confirming the order of the Tribunal.

In the result, these Tax Cases (Appeals) stand dismissed. No costs.

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To

1. The Income Tax Appellate Tribunal, 'B' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals), Madurai.
3. The Income Tax Officer, Ward I(1),

Virudhunagar