

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 27.02.2013  
CORAM:  
THE HON'BLE MRS.JUSTICE R.BANUMATHI  
AND  
THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU  
T.C.(A) No. 315 of 2010

Commissioner of Income Tax I,  
Salem. .... Appellant

Vs.

Sheela Christian Charitable Trust,  
12-3/34, South Car street,  
New 12th Ward, Taramangalam P.O.,  
Omalar Taluk, Salem District. .... Respondent

Prayer: Tax Case Appeal is filed under Section 260A of the Income Tax Act, 1961 against the Order dated 24.07.2009 made in I.T.A. No. 339/Mds/09 on the file of Income Tax Appellate Tribunal Chennai Bench !!B¶, Chennai.

For Appellant: Mr.J.Narayanasamy

For Respondent: Mr.S.Sridhar

## **JUDGMENT**

1. Being aggrieved by the order of the Tribunal holding that there was 'assumed registration for the Respondent Trust', the Revenue has preferred this appeal. The appeal was admitted on the following substantial questions of law:-

*1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in holding that it could be assumed that the registration had been granted to the Trust if the application was not either accepted or rejected within a period of six months from the end of the month in which such application was filed by the applicant Trust?*

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in adjudicating on the issue that has not been raised by the applicant Trust either in the grounds of appeal filed by the Trust in Form 36 or at the time of hearing by filing additional grounds?

2. Respondent Trust was created on 04.08.2003. It had made an application for registration under Section 12AA of Income Tax Act on

31.8.2005. As per Section 12AA of the Act, application for registration of the Trust or Institution in the prescribed form and in the prescribed manner shall be made to the Commissioner before 1.7.1973 or before the expiry of a period of one year from the date of creation of the Trust or establishment of the Institution. Application for registration of Respondent Trust was not accompanied by any request for condonation of delay. The Trust claimed that the delay was attributed due to the death of A. Palaniappa Devasagayam, who expired on 07.01.2004. Since the Respondent Trust did not file the details of activities and copy of accounts since its inception, the then Commissioner of Income Tax (for short 'CIT') lodged the application.

3. Appellant filed another application dated 25.4.2007 in Form 10A for registration under Section 12AA of the Act and Appellant requested for granting of registration with retrospective effect from 01.04.2005. By order dated 24.10.2007, the said application was dismissed by the Commissioner of Income Tax, Salem. As against the said order, Respondent preferred appeal before the Income Tax Appellate Tribunal, Chennai in I.T.A. No. 2498 of 2007. By the order dated 30.10.2008, the Tribunal set aside the order of CIT, Salem and remitted the matter back to CIT, Salem to decide the matter afresh, after giving opportunity to the Respondent.

4. After the matter was remitted back to the CIT, Salem, the CIT, Salem gave opportunity to the Respondent and considered the matter afresh. After referring to the number of decisions, by the order dated 03.02.2009, the CIT rejected the request of the Respondent to grant registration with effect from 01.04.2005 and held that there was no just and reasonable cause for the delay in filing the application.

5. In the appeal preferred by the Respondent, Tribunal held that in the matter of condonation of delay, a pragmatic approach should be adopted and substantial cause or justice should not be deviated merely on pedantic reasons. Tribunal further held that the original application dated 31.8.2005 was to be treated as accepted and registration under Section 12AA was to be assumed to have been granted to the Trust. Tribunal also held that as per Section 12AA(2) of the Act, when the application for registration is filed, the order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application was received. Observing that CIT kept the application for registration pending beyond the permitted time under Section 12AA(2) of the Act, the Tribunal held that it could be assumed that registration had been granted to the Trust if the same was not either accepted or rejected within the period of six months. Reliance was placed on (*Society for the Promotion of Education, Adventure Sport and Conservation of Environment v. CIT* [2008] 171 Taxman 113 (All.).

6. Learned counsel for Appellant submitted that Tribunal erred in holding that the original application filed before the CIT ought to be treated as having been accepted as per the decision in *Society for the Promotion of Education Adventure Sport and Conservation of Environment* (supra). It was submitted that the Tribunal ought to have held that Respondent could not agitate its earlier application in a subsequent application filed by the Trust for registration under Section 12AA of the Act and that Tribunal erred in holding that there was an 'assumed registration'. Placing reliance upon [*Srikhetra, A.C. Bhakti-Vedanta Swami Charitable Trust v. Asst. CIT* [2006] 20 LR 75, *DIT (Exemption) v. Anjuman-E-Khyrkah-E-Aam*], [2011] 200 Taxman 27 (Mad.) (Mag.), it was submitted that there was no deemed registration under Section 12AA(2) of the Act.

7. We have heard Mr. S. Sridhar, learned counsel appearing for the Respondent.

8. Section 12AA(2) of Income Tax Act reads as under:-

"Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) of sub-section (1)] of Section 12A."

As per the above provision, the Authority is expected to pass an order in the application for registration either by granting or by refusing before the expiry of six month from the end of the month in which application was received.

9. *Srikhetra, A.C. Bhakti-Vedanta Swami Charitable Trust* (supra), the Orissa High Court took the view that period of six months as provided under sub-section (2) of Section 12AA of Income Tax Act is not mandatory and held as follows:-

"5. We are unable to uphold such contention. In our view the period of six months as provided in Sub-section (2) of Section 12AA is not mandatory. Though the word 'shall' has been used but it is well known that to ascertain whether a provision is mandatory or not, the expression 'shall' is not always decisive. It is also well known that whether a statutory provision is mandatory or directory has to be ascertained not only from the wording of the statute but also from nature and design of the Statute and the purpose which it seeks to achieve. Herein the time frame under Sub-section (2) of Section 12AA of the Act has been so provided to exclude any delay or lethargic approach in the matter of dealing with such application. Since the consequence for non-compliance with the said time frame has not been spelt out in the statute, this Court cannot hold that the said time limit is mandatory in nature nor the period of six months has been couched in negative words. Most of the time negative words indicate a mandatory intent.

This Court is also of the opinion that when public duty is to be performed by the public authorities, the time-limit which is granted by the Statute is normally not mandatory but is directory in the absence of any clear statutory intent to the contrary. See *Montreal Street Railway Co. v. Normandin* AIR 1917 Privy Council 142. Here there is no such express statutory intent, nor does it follow from necessary implication."

10. We are also of the view that the time frame under sub-section (2) of Section 12AA of Income Tax Act is only directory. Tribunal was not right in holding that not passing order in the application within the stipulated period of six months would automatically result in granting assumed registration to the Trust.

11. While considering the case of lodging assessee's application for registration of Trust, in *Anjuman-E-Khyrkah-E-Aam* (supra), this Court held that Section 12AA (1)(b)(i) and (ii) of Income Tax Act makes it clear that there is a statutory mandate imposed on the Department to pass an order in writing either registering the Trust/Institution or refusing to register the Trust/Institution. This Court further held that the conclusion of the Tribunal in holding that registration was deemed to have been granted cannot be sustained and remitted the matter back to the Director of Income Tax (Exemption) to afford an opportunity of hearing to the assessee- Trust and hearing the matter afresh.

12. Learned counsel for Respondent also fairly submitted that there is no question of "deemed registration" and that the matter be remitted back to the Commissioner of Income Tax, Salem for consideration of the matter afresh. Non-consideration of the registration application would not amount to "deemed registration" and therefore, the order of the Tribunal directing "deemed registration" cannot be sustained and the matter is to be remitted back to CIT, Salem for consideration of the matter afresh.

13. In the result, the order of the Tribunal in I.T.A. No. 2498/Mds/2007 dated 30.10.2008 is set aside the matter is remitted back to Commissioner of Income Tax, Salem for consideration of the matter afresh and the appeal is allowed. The Commissioner of Income Tax, Salem shall afford sufficient opportunity to the Respondent and pass orders. The questions of law are answered accordingly. No costs.

(R.B.I.,J)

(K.R.C.B.,J)

27.02.2013

Index :Yes/No

Internet : Yes/No

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To

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

R.BANUMATHI,J

and

K.RAVICHANDRABAABU,J  
Bbr

Judgment in

T.C.(A)

No. 315 of 2010

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