

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.02.2021

CORAM:

**THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

T.C.A.No.799 of 2010

The Commissioner of Income Tax,
Madurai. ... Appellant

Vs.

Tuticorin Port Trust,
Harbour Estate, Tuticorin. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, Bench "B" Chennai, dated 30.10.2009 in I.T.A.No.238/Mds/2008.

For Appellant : Mr.J.Narayanasamy, Senior Standing Counsel

For Respondent : Mr.Devanathan

JUDGMENT

(Judgment was delivered by M.DURAI SWAMY, J.)

Challenging the order passed in I.T.A.No.238/Mds/2008 on the file of the Income Tax Appellate Tribunal, Madras, Bench "B" Chennai, the Department has filed the above appeal.

2.It is the case of the assessee that they filed an application for

registration under Section 12AA of the Income Tax Act, 1961 on 02.04.2007 claiming it as a Charitable Institution on the ground that the object and service rendered by the assessee are in the nature of general public utility. The Commissioner of Income Tax rejected the application on 22.10.2007 on the ground that the assessee is not involved in any charitable activity to qualify for registration under Section 12AA of the Income Tax. Aggrieved over the same, the assessee preferred an appeal before the Income Tax Appellate Tribunal and the Tribunal held that all the requisite conditions are satisfied and directed the Commissioner to grant registration under Section 12AA to the assessee following the decision of the Gujarat High Court and allowed the assessee's appeal. Aggrieved over the order passed by the Tribunal, the Department has filed the above appeal.

3.The above 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 law in setting aside the order of the Commissioner of Income Tax

and direct the Commissioner of Income Tax to grant registration under Section 12AA of the Income Tax Act to the assessee valid in law?

2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in directing the Commissioner of Income Tax to grant registration under Section 12AA of the Act, from the date 01.04.2002, even though disregard to the provisions of Section 12A(a) proviso (ii) of the Income Tax Act, according to which registration cannot be granted from a date earlier than first of the financial year in which application was made?”

4.The main contention of the appellant/Department is that the assessee – Trust has not established that they are involved in charitable activities. Further, the contention of the appellant that the claim of the assessee that registration under Section 12AA may be granted with effect from 01.04.2000, is not sustainable in view of the provisions of Section 12Aa proviso 2 of the Income Tax Act and that the registration cannot be

granted from a date earlier than the first day of the financial year in which the application was made.

5.Countering the submissions made by the learned senior standing counsel appearing for the appellant, the learned counsel appearing for the assessee submitted that the Tribunal, following the decision of the Hon'ble Gujarat High Court, rightly decided the issue in favour of the assessee. The learned counsel relied upon the judgment of the Hon'ble Gujarat High Court dated **31.07.2006** made in **Tax Appeal No.1433 of 2005 [CIT Vs.Gujarat Maritime Board]**, which reads as follows:

“...

Maintenance and Development of Ports is necessary for transport of goods and persons by sea. In the present scenario of globalisation of the trade and industry, the transport of goods from one country to other which is mostly through sea has become essential. Therefore, the development and maintenance of ports is certainly the object of general public utility. While taking this view, we derive support from the decision of the Hon'ble Apex Court in the case of CIT Vs. AP State Road Transport Corporation 159 ITR 1. It is also not in dispute that the assessee institution is genuinely engaged in the activities of

development and maintenance of Ports in the State of Gujarat. Therefore, in our opinion, the assessee duly fulfills both the conditions of sec.12AA which are necessary for the registration of the institution u/s 12A. We therefore, direct the CIT to register the trust u/s 12A w.e.f. 1.4.02.

35.The status of the assessee is parallel to the Gujarat Maritime Board. So similar treatment will have to be given to the assessee.

36.Moreover, there is hardly any country today in which the Government is not engaged actively and directly in the setting up and management of economic and industrial enterprises. State participation in industry is an established feature of the state economy in many countries of the world. In India, prior to independence, the administration of two of the biggest commercial undertakings, namely the Railways and the Post and Telegraphs, have been exclusive State control as key sectors of the industry.

37.In the present scenario of globalization of trade and industry, the transport of goods from one country to another, which is mostly by sea, has become essential. Therefore, development and maintenance of Ports are of 'general public utility'. It is also not in dispute that the assessee institution is genuinely engaged in the activities of development and maintenance of Mormugao Port.

Therefore, the assessee duly fulfills both the conditions u/s.12AA which are necessary for the registration of the institution u/s.12A. The predominant objectives of MPT being charitable in nature, we are unable to agree with the view taken by the CIT Panaji that the assessee is not eligible to be registered as an institution within the meaning of Sec.12A of the Act. Since all the requisite conditions are satisfied, we direct the CIT to register the Mormugao Port Trust as an institution u/s.12A from the first day of Financial Year in which the application was made i.e. from 1st April, 2005.”

In the above judgment, the Hon'ble Gujarat High Court held that the development and maintenance of Ports is certainly the object of general public utility. While taking this view, the Gujarat High Court derived support from the decision of the Hon'ble Apex Court in the case of **CIT Vs. AP State Road Transport Corporation** reported in **159 ITR 1**.

Further, the learned counsel relied upon the judgment reported in **295 ITR 561 (SC) [Commissioner of Income Tax Vs. Gujarat Maritime**

Board] wherein the Hon'ble Supreme Court held as follows:

“ ...

We have perused number of decisions of this Court which have interpreted the words, in Section 11(15), namely, "any other object of generally public utility". From the said decisions it emerges that the said expression is of the widest connotation. The word "general" in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose [Commissioner of Income-tax, Gujarat-III, Ahmedabad v. Ahmedabad Rana Caste association, (1983) 140 ITR 1 SC]. The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry [Commissioner of Income-tax Madras v. Andhra Chamber of Commerce, - (1965) 55 ITR 722 SC]. If the primary or predominant object of an institution is charitable, any other

object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity- [Addl. Commissioner of Income-tax, Gujarat v. Surat Art Silk Cloth Manufacture Association, (1980) ITR SC].

The present case in our view is squarely covered by the judgment of this Court in the case of Commissioner of Income-tax, A.P. v. Andhra Pradesh State Road Transport Corporation, (1986) 159 ITR 1 SC in which it has been held that since the Corporation was established for the purpose of providing efficient transport system, having no profit motive, though it earns income in the process (sic), it is not liable to income-tax.

Applying the ratio of the said judgment in the case of Andhra Pradesh State Road Transport Corporation (supra), we find that, in the present case, Gujarat Maritime Board is established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive, as indicated by the provisions of Sections 73, 74 and 75 of the 1981 Act. The income earned by the Board is deployed for the development of minor ports in India. In the circumstances, in our view the judgment of this court in Andhra Pradesh State road

Transport Corporation (supra) squarely applies to the facts of the present case.

Before concluding we may mention that under the scheme of Section 11(1) of the 1961 Act, the source of income must be held under trust or under other legal obligation. Applying the said test it is clear, that Gujarat Maritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor port in the State of Gujarat. Therefore, they are entitled to be registered as "Charitable Trust" under Section 12A of the 1961 Act.”

In the above judgment, the Hon'ble Supreme Court interpreted the words in Section 11(15) namely “any other object of generally public utility” and held that advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose. Further, the Apex Court held that the said expression would *prima facie* include all objects which promote the welfare of the general public. The Apex Court also held that when an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the

said trade or industry. The Apex Court applying the ratio laid down in Commissioner of Income Tax Vs. Andhra Pradesh State Road Transport Corporation reported in (1986) 159 ITR 1 (SC) held that when the control of the Board is essentially with the State Government and there is no profit motive, would come within the meaning of “any other object of generally public utility”. In these circumstances, the Hon'ble Supreme Court found that the Gujarat Maritime Board is entitled to be registered as charitable trust under Section 12A of the Act.

6.The learned Senior Standing Counsel for the Department has not produced any contra judgments on this aspect before us.

7.From a reading of the judgments cited supra, it is clear that even if the assessee is engaged in the category of activity of “object of general public utility”, they are entitled for registration under Section 12A. Therefore, we are of the considered view that the assessee can claim registration under Section 12A by categorising the activity of the assessee as “object of general public utility”. In these circumstances, we do not find any error or irregularity in the order passed by the Income

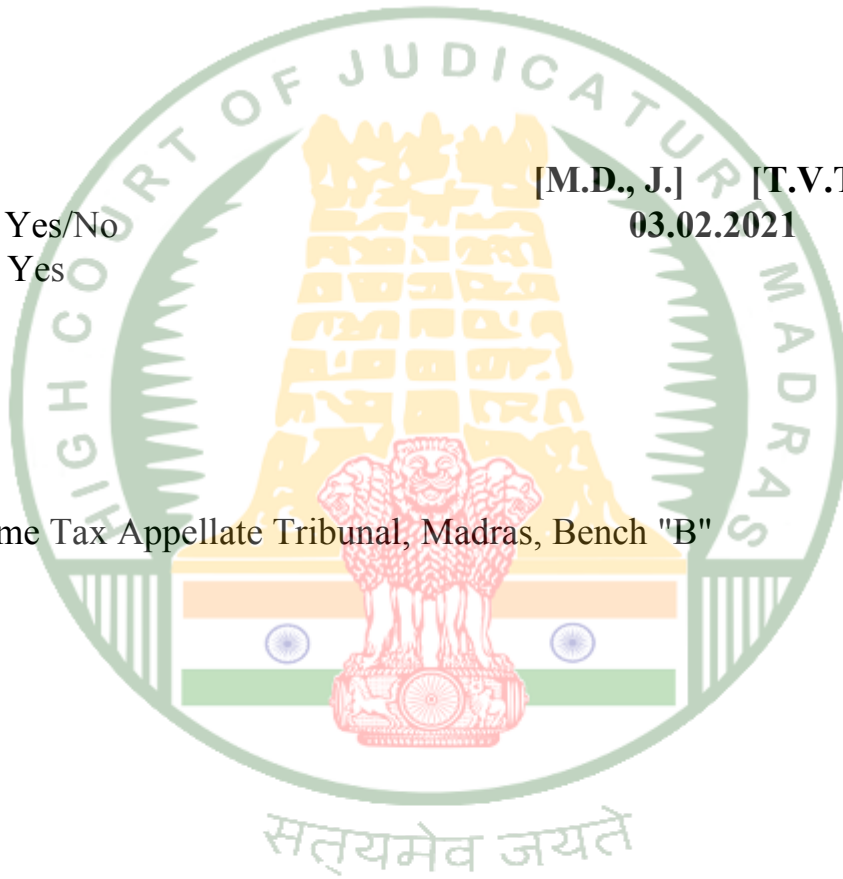
Tax Appellate Tribunal. We find no ground much less any substantial question of law to interfere with the order passed by the Income Tax Appellate Tribunal. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Index : Yes/No
Internet : Yes
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To

The Income Tax Appellate Tribunal, Madras, Bench "B"

[M.D., J.] [T.V.T.S., J.]
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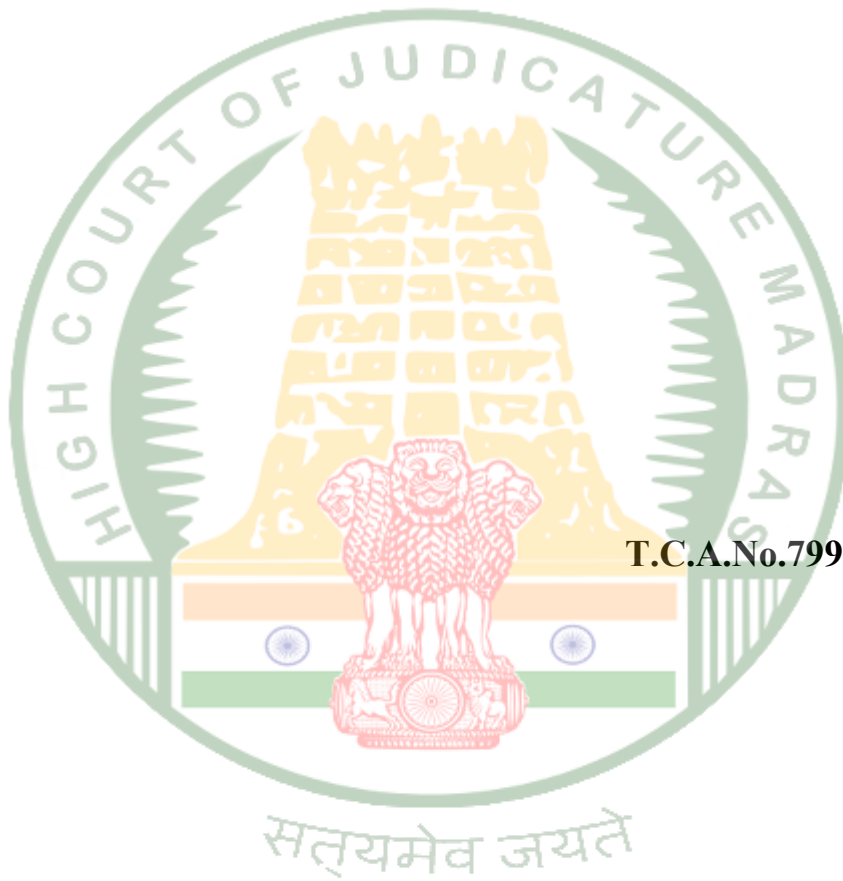
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