आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 2314/Mds/2015**

Development of Education and Environment Trust, No.50/1-B-13, K.K.Nagar, Thirumangalam, Madurai	v.	The Commissioner of Income Tax (Exemptions), Madurai
PAN : AAATD4294K (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकर अपील सं./**ITA No. 2315/Mds/2015**

Development of Education and Environment Trust, No.50/1-B-13, K.K.Nagar, Thirumangalam, Madurai	v.	The Commissioner of Income Tax-I, Madurai
PAN : AAATD4294K (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri G.M. Das, CIT

सुनवाई की तारीख/Date of Hearing	:	01.02.2017
घोषणा की तारीख/Date of Pronouncement	:	28.02.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the assessee are directed against the respective order of the Commissioner of Income Tax (Exemptions), Chennai and the Commissioner of Income Tax-I, Chennai. Let us first take ITA No.2314 of 2015.

2. Shri T. Vasudevan, the Ld. counsel for the assessee submitted that the CIT (Exemptions) dismissed the application on the ground that one Shri V. Francis, the authorized representative of the assessee withdrew the application filed for registration under Section 12AA of the Income Tax Act, 1961 (in short 'the Act'). The Ld. counsel clarified that the assessee never authorized anybody either to appear before the CIT (Exemptions) or to withdraw the application filed. The assessee has also filed an affidavit to that effect before this Tribunal. On the basis of the affidavit filed by the assessee, this Tribunal called for the records of the CIT (Exemptions). When the appeal was taken up for hearing, Shri G.M. Das, the Ld. Departmental Representative produced the original file for verification. In the original file, it is clearly stated that the Managing Trustee Ms. B. Premalatha and another trustee appeared

before the Commissioner and they agreed for withdrawal of the application. Both of them signed the orders sheet entry. After verification, the original file of the CIT (Exemptions) was returned back to the Ld. D.R., Shri G.M. Das.

3. On a query from the bench, how the assessee goes on filing application after application under Section 12AA of the Act, for registration without prosecuting the original application filed by the assessee, the Ld. counsel very fairly submitted that this is the second application filed by the assessee which is not maintainable. An application was initially filed in the year 1993 and the result of the same is not known to the assessee. Therefore, a second application was filed on 27.09.2013. The Commissioner of Income Tax, Madurai granted registration w.e.f. 01.04.2013. The Ld. counsel submitted that a direction may be given to the Commissioner to pass order on the application filed in the year 1993.

4. On the contrary, Shri G.M. Das, the Ld. Departmental Representative submitted that on the basis of the application filed by the assessee on 27.09.2013, the CIT-1, Madurai granted registration w.e.f. 01.04.2013 by an order dated 26.03.2014. The present appeal is

against the order passed by the Commissioner on the second application filed for registration. According to the Ld. D.R., successive application cannot be filed since the registration was already granted. Therefore this application is not maintainable.

5. We have considered the rival submissions on either side and perused the material available on record. Admittedly, the Commissioner of Income Tax (Exemptions) dismissed the application of the assessee on the ground that the same was withdrawn by the assessee's representative Shri V. Francis. Now, it is demonstrated before this Tribunal that the assessee in fact engaged nobody to represent before the Commissioner. In fact the Managing Trustee and the another trustee appeared before the Commissioner and they agreed for withdrawal of the application since the reasons for withdrawal of the second application filed by the assessee is not maintainable before the Commissioner. Therefore, the Commissioner has rightly rejected the application filed by the assessee. This Tribunal do not find any reason to interfere with the order of the Commissioner.

6. Now coming to ITA No.2315 of 2015, Shri T. Vasudevan, the Ld. counsel for the assessee submitted that the application was filed for

registration on 27.09.2013 and the registration was in fact granted w.e.f., 01.04.2013. According to the Ld. counsel, there was a huge tax liability for the assessment year 2009-10 and 2010-11. Unless the registration was granted retrospectively, the assessee has to pay huge liability. Therefore, the registration may be granted retrospectively. On a query from the bench, whether there is any power for the Commissioner to condone the delay in filing the application for registration under Section 12AA of the Act and grant registration with retrospective operation, the Ld. counsel submitted that the Commissioner has no such power to condone the delay in filing the application. The Ld. counsel explained that there is a real difficulty for the assessee in meeting the liability. Therefore, to meet the ends of justice registration may be granted with retrospective operation.

7. We have considered the rival submissions on either side and perused the material available on record. Admittedly, the assessee filed the application on 27.09.2013, even though the assessee's trust was established by a trust deed on 20.09.1993. Section 12A(1)(a) of the Act clearly says that the assessee has to file the application for registration before the expiry of a period of one year from the date of creation of the trust or the establishment of the institution. The Commissioner was

empowered to grant registration even though the application was filed beyond the period of one year with effect from the date of its establishment provided the Commissioner satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period of one year for sufficient reasons. However, such power was not available in respect of the application made on or after first day of June 2007 which is obvious from the second proviso to Section 12(1)(a) of the Act. In this case, the application was filed on 27.09.2013. Therefore, at the best, the CIT(Exemptions) could grant registration under Section 12AA of the Act from the first day of the financial year in which the application was filed. It is not in dispute that registration was granted from 01.04.2013, as per the existing provisions of law. Since, the application was filed after 1st of June 2007, the Commissioner of Exemption has no power to condone the delay or grant registration from the date of its establishment. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority.

8. The assessee also claims that an application was filed for registration under Section 12AA of the Act, in the year 1993. However, no material is available on record to substantiate this claim. It is made clear that in case such an application was filed either in the year 1993 or

in any of the earlier years it is open to the assessee to take such steps as it may necessary in accordance with law for disposal of that application.

9. With the above observation, both the appeals of the assessee stands dismissed.

Order pronounced on 28th February, 2017 at Chennai.

Sd/-	Sd/-
(डि.एस. सुन्दर सिंह)	(एन.आर.एस. गणेशन)
(D.S. Sunder Singh)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 28th February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondents
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.