



## **MAD HC: Confirms Trust's Registration Cancellation For Abuse Of Funds, But Clarifies Retrospective Effect Impermissible**

### **Facts And Issue**

The appeal before the Madras High Court was against the order of the Tribunal setting aside the order of the Commissioner of Income tax (Commissioner) cancelling the registration granted to the respondent-trust invoking the provisions of section 12AA (3) of the Income tax Act, 1961.

The show cause notice issued in this regard stated that a search was carried out in the case of the Managing trustee and subsequent survey was conducted u/s 133A and evidence gathered in this regard revealed various gross violations by the trustees. It also referred to the non-cooperation of the assessee during the course of assessment proceedings which were completed in the status of AOP and income was taxed at the maximum marginal rate. The show cause notice also stated that the findings in the assessment have clearly established that the trust had been misused, in all possible ways, by the trustees and that the trust had violated various exemption provisions of the Income tax Act.

Evidence gathered during the course of search, would show that trust funds had been misused; compulsory donations were taken as capitation fees; the managing trustee was caught with ₹1,00,00,000 at the Chennai airport and he agreed that this amount had been taken from the corpus of the trust. It was also found that supplies and services were charged heavily and no proper books of accounts were maintained in this regard; assets were acquired by the trustees out of funds of the trust and bank accounts of the trustees were flooded with corpus funds of the trust.

The Tribunal set aside the cancellation of registration holding that the show cause notice issued by the Commissioner was not a valid show cause notice. It held that if various irregularities were found to have been committed by the Managing trustee, it was the duty of the Commissioner to give show cause notice of the specific proposed grounds and, only after considering the explanation given by the trust, could the registration be cancelled. Tribunal held that the show cause notice issued by the Commissioner was vague and that the Commissioner had not given proper opportunity of hearing to the assessee.

### **Observations and Ruling of the High Court.**

The High Court, after examining the material on record and after hearing the arguments of the counsel for both sides, came to the conclusion that the show cause notice issued by the Commissioner was not bereft of information and that the assessee did not suffer lack of information to respond to the show cause notice.

The High Court also observed that this is not a case of a minor deviation from the objects of the trust or a curable violation. The High Court observed that there had been gross abuse of the funds of the trust and that the corpus funds of the trust had been diverted for personal activities and that therefore it was a fit case for invoking the powers vested in s 12AA (3).



However, the High Court while upholding the order of the Commissioner cancelling the registration of the assessee-trust, directed that this cancellation should be effective only from the date of the order passed by the Commissioner cancelling the registration, namely 30 March 2009 and not from the date on which registration was granted to the trust. The High Court that held that such cancellation could be only prospective in operation. For this purpose, the High Court relied upon the decision of the Supreme Court in the case of Industrial Infrastructure Development Corporation (Gwalior) MP Limited <sup>1</sup>.

**Citation:**

Ponnaiyah Ramajeyathammal Educational And Charitable Trust [TS-581-HC-2026(MAD)]

**Our Comments**

12AA(3) empowers a Commissioner to pass an order cancelling the registration of a trust or institution if he is satisfied that the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust. In the facts as found by the High Court it is amazing that the tribunal set aside the order of the Commissioner thereby leading the High Court to observe that the order of the Tribunal bristled with infirmities and non-application of mind. In this regard one must not forget that the Tribunal is, in law, the final fact-finding authority under the Income tax Act.

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<sup>1</sup> 90 Taxmann.com 281(SC)