THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.18065 of 2004

O R D E R: (per Hon'ble Sri Justice Dilip B.Bhosale)

This writ petition under Article 226 of the Constitution of India takes an exception to the order dated 27.07.2004 passed by the Director of Income Tax (Exemptions), Hyderabad, whereby an application filed by the petitioner-Association seeking renewal of approval under Section 80G(5)(vi) of the Income Tax Act, 1961 (for short 'I.T. Act') read with Rule 11AA(5) of the Income Tax Rules, 1962 (for short 'the Rules') had been rejected.

Petitioners are the Bar Association, registered under the Societies Registration Act, 1860, of the lawyers practicing on the taxation side. They had obtained an exemption under Section 80G of I.T. Act in respect of donations received by them during the period from 01.04.1999 to 31.03.2003. The order under Section 80G was issued by the Commissioner of Income Tax on 26.09.2000. After expiry of the period for which the exemption was granted, the petitioner-Association filed an application in Form No.10G on 19.02.2004 for its renewal/continuation. That application had been rejected by the impugned order dated 27.07.2004 passed by the Director of Income Tax (Exemptions).

Before we proceed further, it would be advantageous to re-produce the relevant observations made in the impugned order, which read thus:

> "..... Thus, **neither any charitable activities are substantiated to have been undertaken nor they are borne out by the accounts of the applicant**. The culmination of applicant's endeavour in the benefit to the public in general is not perceptible. On the contrary, benefit to the professional interest of the group of individuals, constituting the association in as much as substantial funds could be mobilised for construction of a building is most prominent and exclusive. The association had a distinct advantage in the

mobilisation of these funds since all its members were tax practitioners and tax consultant by profession. This advantage is clearly discernible from the fact that during the accounting year 2001-02, the entire corpus donations amounting to Rs.4,71,177/- during the year 2001-02 and Rs.8,500/- during the year 2002-03 were collected from outsiders and not even a single rupee was donated by any member of the association. **The association appears to have obtained and used the approval u/s.80G(5) only to mobilize substantial funds for construction of a building of its own and no charity to public in general was either intended or really undertaken. The income of the association in the form of membership fee, annual subscriptions, bank interest, etc. was utilised only to meet the expenses of advertisement, electricity, printing & stationery, salaries to staff, and travelling charges.** For the accounting year 2002-03, an amount of Rs.27,478.10 was also incurred on account of 'functions & celebrations', the particulars of which were never made available through specifically and repeatedly requisitioned. The nature of these expenses as apparent from the caption does not denote any application for charitable objects.

6. The applicant contended that its Memorandum of Association included certain objects which were charitable in nature in as much as these objects were of general public utility and accordingly sought to strengthen its entitlement for continuance of approval u/s.80G(5)(vi). The contention of the applicant is however, misplaced. **Enumeration of certain objects, which could be validly interpreted to constitute general public utility, may be more appropriate and relevant in the matter of grant of registration u/s.12A, whereas for grant of continuance of approval u/s.80G(5) (vi), the test does not always lie in the Memorandum of Association**. Continuance of approval in terms of the provisions of section 80G(5) (vi), on the basis of grant of registration u/s.12A as charitable institution, were to operate indefinitely entirely on the basis of objects originally enumerated in the memorandum, the legislation would not have provided for periodical renewals of such approval and that too, only after an appraisal of the activities. **In the instant case, an appraisal of the affairs of the applicant reveals that all its efforts were aimed at mobilising substantial funds for construction of building which went to the sole benefit of the fluctuating body of individuals who have common professional interests, whereas the selection of community claimed to have benefited by its activities has not even been sufficiently and identifiably defined by any common quality of a public or impersonal nature**."

(emphasis supplied)

It appears that the petitioner-Association during the accounting years ending on 31.03.2001 and 31.03.2002 had undertaken construction of building for their Association. By the end of year 2002-03, land and building under construction were shown cumulatively of Rs.13,77,390/- out of which construction of building was accounted for Rs.10,37,150/-. It has come on record that during the accounting years, ending on 31.03.2001, 31.03.2002 and 31.03.2003, the expenses debited to Income & Expenditure Accounts were in the nature of fixed overheads, such as travelling charges, electricity charges, miscellaneous expenses, printing and stationery, salaries to staff, travelling charges, etc. Similarly, the Director of Income-Tax (Exemptions) has quoted certain incidents of mis-utilisation of corpus fund such as dinner expenses at Citizen Club, extraordinary general meetings expenses at Hotel Ratna and some other expenses which could not be linked to construction of building. All these expenditure was made from the corpus fund.

Though the petitioner-Association was given ample opportunity to adduce necessary evidence to substantiate that the activities, as claimed by them, were really undertaken and to identify from its accounts that the funds were utilised for those activities, no such materials/evidence was produced on record. As a matter of fact, the authorized representative of the Bar Association urged before the Director of Income Tax that the expenses in connection with such activities were incurred separately by the members individually and were not incorporated in its accounts. While dealing with this contention/claim, the Director of Income-Tax has observed that the Association as an entity carried out certain activities, which were later attributed to individuals. Similarly, though counsel for the petitioner-Association, after inviting our attention to the Aims and Objects of the Association, submitted that the entire corpus fund of the Association was utilized to pursue charitable activities, he could not point out from the record any material in support of his contention. Even before this

Court, the petitioner-Association could not and did not furnish any particulars in support of its contention. The petitioner-Association has neither substantiated their claim that the charitable activities were undertaken during the relevant period nor did it borne out from the accounts submitted by them before the Director of Income Tax.

From perusal of sub-rule (5) of Rule 11AA of Income Tax Rules, it is clear that where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he is empowered to reject the application for approval, after recording the reasons for such rejection in writing. Apart from the fact that the reasons are satisfactory, they seem to have been recorded after granting an opportunity of being heard to the petitioner-Association. From the admitted facts it is apparent that the conditions laid down in clauses (i) to (v) of sub-section (5) of Section 80G were not fulfilled.

We do not find any error of law or jurisdiction having been committed by the Director of Income Tax (Exemptions) in passing the impugned order.

Hence, the Writ Petition is dismissed. In view of the peculiar facts and circumstances of the case, there shall be no order as to costs.

Miscellaneous petitions pending in the writ petition, if any, also stand disposed of.

Dilip B.Bhosale, J

A.Ramalingeswara Rao, J

19th January, 2015.
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