IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6384 of 2015

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Imarat Shariah Educational And Welfare Trust, an educational and welfare trust having its office at Imarat Complex, Phulwarisharif, P.O. Phulwarisharif, P.S. Phulwarisharif, District- Patna through its Secretary General, Sohail Ahmad Nadvi, Son of Late Shakil Ahmad, resident of Ahmad Store, FCI Road, Phulwari Sharif, P.O. and P.S. Phulwari Sharif, District- Patna

.... Petitioner/s

Versus

Commissioner of Income Tax- 1 having its office at Central Revenue Building, 2nd Floor, Birchand Patel Marg, Patna- 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V. Pathy, Advocate
Mr. Sadashiv Tiwari, Advocate

For the Respondent/s : Mrs. Archana Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 21-08-2017

Challenging the order,Annexure-8, dated 29.09.2014, passed by the Commissioner of Income Tax, Patna, cancelling registration and exemption granted to the petitioner-trust under Section 12AA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and refusing to register their establishment as a trust under the aforesaid provision, this writ petition has been filed.

Even though various grounds are raised in the writ petition and the learned counsel appearing for the Revenue raised a preliminary objection to say that against the order impugned passed, statutory remedy of appeal is available, we find that the issue with regard to grant of benefit to the petitioner-trust under Section 12AA of the Act arose for consideration on an earlier occasion in CWJC No.2634 of 2011 wherein with regard to the same petitioner, an order passed on 28.09.211 cancelling registration granted to them under Section 12AA of the Act was under challenge and in the said case after considering various submissions, identical in nature, that were made and after taking note of the law laid down by the Hon'ble Supreme Court in the case of **Commissioner of Income-tax, Ujjain Vs. M/s Dawoodi Bohra Jamat**, [(2014) 364 ITR 31], the issue has been decided by a co-ordinate Bench of this Court by a detailed judgment rendered on 23.11.2016 and the said judgment rendered reads as under:

> "Learned counsel for the respondents, on the other hand, submits that the show cause in the case of Nyas Samiti and the cancellation of registration under Section 12AA of the Act with regard to the Imarat Shariah Trust are justified in terms of Section 13 (1) (b) of the Act as they indulged in religious activities and therefore not entitled to the benefit of such registration which is available to a charitable trust. It is submitted that the decision in Dawoodi Bohra"s case is not applicable to the facts of the present matter.
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> It is further submitted that even providing relief and rehabilitation of poor widows, women empowerment and also help of different types, is for the purpose of encouraging them to come to their religion and is not a

purely charitable activity.

In our view the decision in Dawoodi Bohra‟s case squarely applies to the case of the petitioners, rather their case stands on a higher footing as they have established institutions which are created for the benefit of all sections of society and the religious activities carried out by them are minuscule in comparison to their main activity. Even the rule of 5% would apply only with regard to exemption under Section 80G and not with regard to the registration under Section 12AA or the cancellation thereof.

This Court is, therefore, of the view that the order dated 28.11.2012 of the CIT-1, Patna cancelling the registration of Imarat Shariah Trust under Section 12AA is contrary to law."

Once it has been held by a Co-ordinate Bench of this Court that the petitioner-trust is entitled to registration under Section 12AA of the Act and the cancellation on the grounds as mentioned therein and reproduced hereinabove are not correct, we find that the order passed on 29.09.2014 impugned in this writ petition, which was prior to the decision rendered by this Court in CWJC No.2634 of 2011, is liable to be quashed and the writ petition allowed for the grounds and reasons already considered and decided by the Co-ordinate Bench of this Court in the judgment on 23.11.2016 rendered in CWJC No.2634 of 2011.

Accordingly, we are not inclined to relegate the petitioner to take recourse to the statutory remedy available as the issue in question stands decided in favour of the petitioner in their own writ petition filed, as indicated hereinabove, for the grounds and reasons considered and decided in CWJC No.2634 of 2011.

Accordingly, we allow this writ petition and quash the impugned order.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.08.2017
Transmission Date	