IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
*****

I.T.T.A. No.56 of 2017

Between

The Commissioner of Income-tax (Exemptions),
Hyderabad

... Appellant

and

Water and Land Management Training
and Research Institute, H.No.1-8-121/3,
Rajendranagar, Himayatsagar,
Hyderabad-500 030

... Respondent

Date of Judgment pronounced: 15-3-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

\+ I.T.T.A. No.56 of 2017

% 15-3-2017

The Commissioner of Income-tax (Exemptions),
Hyderabad

... Petitioner

Vs.

$ Water and Land Management Training
and Research Institute, H.No.1-8-121/3,
Rajendranagar, Himayatsagar,
Hyderabad-500 030

... Respondent

! Counsel for the Petitioner: Mr. J.V. Prasad,
Senior Standing Counsel

Counsel for Respondent: Mr. K.Vasantkumar

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> Head Note:

? Cases referred:
1. [2013] 356 ITR 360 (AP)
2. [2010] 329 ITR 404 (Ker)

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

I.T.T.A.No.56 of 2017

Judgment:

This appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961, raising the following reframed substantial question of law:

> Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the assessee is entitled to registration under Section 12A of the Act, when some of the activities of the assessee are found to be commercial in nature and its gross receipts from such activities exceed, year on year, the limit set out in the proviso to Section 2(15) of the Income Tax Act, 1961?

2. Heard Mr. J.V. Prasad, learned Senior Standing Counsel for Revenue and Mr. K.Vasantkumar, learned counsel appearing for the respondent.

3. Even according to the Revenue, the respondent/ assessee is an institution established in the year 1983 under the control of the Irrigation Department of the Government of Andhra Pradesh. The assessee filed an application in Form No.10A on 19-01-2012 seeking registration under Section 12AA of the Income Tax Act, 1961.

4. The Director of Income Tax (Exemptions) issued a questionnaire and the assessee submitted its response. The assessee claimed that the Government of Andhra Pradesh started the institute through grant-in-aid and that a sizeable portion of its income is earned through capacity building

service and through consultancies. The Director of Income Tax observed that though the institute was mainly functioning as a training institute, for the purpose of training Government officials in the field of water and land management, the institute was also providing guidance to the farmers and rendering consultancy services to various organizations for a fee. With this view, the Director of Income Tax (Exemptions) rejected the application for registration.

5. As against the order of the Director, the assessee filed a statutory appeal before the Tribunal. The Tribunal allowed the application and directed registration, on the basis of the decision of the Delhi High Court in *India Trade Promotion Organisation v. Director of Income Tax (Exemptions) [2015] 371 ITR 333 (Del)*]. Aggrieved by the said order, the Revenue is before us.

6. The main grievance of the appellant/department is that the Tribunal did not take note of a judgment of the jurisdictional High Court, namely, this Court rendered in *A.P. State Seed Certification Agency v. Chief CIT*[1] and a decision of the Kerala High Court in *Infoparks Kerala v. Deputy CIT*[2], but chose to follow the decision of the Delhi High Court, which arose out of a challenge to the 1st proviso to Section 2(15) of the Act. In other words, the contention of the department is that the Hyderabad Bench of the Tribunal was bound by the decision of the jurisdictional High Court and that when the

[1] [2013] 356 ITR 360 (AP)
[2] [2010] 329 ITR 404 (Ker)

gross receipts made by the assessee from out of the activities found to be commercial in nature, exceeded the limit set out in the proviso to Section 2(15), the assessee was not entitled to seek registration under Section 12A.

7. We have carefully considered the contentions of the learned counsel for the department.

8. In order to test the veracity of the contentions, we shall first take a look at the definition of the expression "charitable purpose" appearing in Section 2(15) of the Act, which reads as follows:

> " "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including water-sheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:
>
> **Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—
>
> (i) such activity is undertaken in the course of carrying out of such advancement of any other object of general public utility; and
>
> (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;"

9. It must be pointed out that the definition of the expression "charitable purpose", as inserted by Finance Act, 1983 with effect from 01-4-1984 read as follows:

> " "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility."

But the said definition was completely changed by Finance Act, 2008 with effect from 01-4-2009. Thereafter, by an amendment under Finance Act, 2010, two provisos were inserted. These two provisos were substituted by new provisos under the Finance Act, 2015 with effect from 01-4-2016.

10. In the case on hand, the application for registration was made on 19-01-2012. At the time when the application for registration was made, the provisos that were available to Section 2(15) read as follows:

> "**Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:
>
> **Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year."

11. Therefore, for the purpose of answering the question of law raised in this appeal, we will have to take note of the definition contained in Section 2(15) together with the two

provisos that were in the Statute from 01-4-2012 up to 01-4-2016.

12. A careful look at the definition of the expression "charitable purpose" appearing in Section 2(15) would show that it is an inclusive definition and not an exhaustive definition. This is clear from the usage of the word "includes". The definition "includes" within its ambit, (1) relief of the poor, (2) education, (3) yoga, (4) medical relief, (5) preservation of environment including water-sheds, forests and wildlife, (6) preservation of monuments or places or objects of artistic or historic interest and (7) the advancement of any other object of general public utility. Interestingly, the first proviso does not deal with anyone of the first 6 items, namely, relief of the poor, education, yoga, medical relief, preservation of environment and preservation of monuments or places. The first proviso as it stood before 01-4-2016 or even as it stands after 01-4-2016 deals only with one of the 7 items covered by the substantive part of the definition, namely, "advancement of any other object of general public utility".

13. The second proviso takes away from the ambit of the first proviso, even an activity relating to the advancement of any other object of general public utility, if the aggregate value of the receipts from the activities referred to in the first proviso is Rs.25 lakhs or less in the previous year.

14. In other words, the scope and ambit of Section 2(15) should be understood in simple terms as follows:

(i) that 7 items of activities indicated in the substantive part of Section 2(15) would come within the meaning of the expression "charitable purpose"

(ii) that in respect of the last item, namely, advancement of any other object of general public utility, the activity will come within the purview of Section 2(15) only if it satisfies the conditions prescribed in the first proviso and

(iii) that even those activities relating to advancement of any other object of general public utility which go out of the purview of the substantive part of Section 2(15) on account of the first proviso, may come back within the ambit of the substantive provision, if the aggregate value of the receipts is Rs.25 lakhs or less in the previous year.

15. Keeping the scope of Section 2(15) in mind, if we come back to the facts of the present case as admitted by the department, it could be seen that the assessee is admittedly an institute functioning mainly as a training institute for the purpose of training various Government officials in the field of water and land management. The factual finding recorded in paragraph-3.0 of the order of the Director of Income Tax (Exemptions) may be usefully extracted as follows:

> "From such submissions made during the course of proceedings, though it is noticed that the above institute was mainly functioning as a training institute for the purpose of training of various government officials in the

> field of water and land management and was also providing guidance occasionally to the farmers, at the same time, it is noticed that the assessee was also rendering consultancy services to various organizations, from which it has earned substantial amount of income during the accounting years ended on 31.03.2009, 31.03.2010 and 31.03.2011. Providing of consultancy services is one main objective of the assessee-society, as may be noticed from the objects of the society referred to by the assessee, reproduced above. Such services in the matter of Water and Land management for the benefit of the farmers and other organizations fall under the ambit of advancing of an object of general public utility. ... ..."

16. Even without disputing the findings recorded by the Original Authority, it could be easily seen that the main fallacy in the conclusion reached by the Director, lay in the fact that all the activities of the assessee were linked by the Director only to the last of the 7 items that form part of Section 2(15). In other words, both the Director as well as the Tribunal thought that the activities of the assessee would fall within the ambit of the words "advancement of any other object of general public utility". By doing so, the Original Authority as well as the Tribunal omitted to take note of the activity, namely, "preservation of environment including water-sheds, forests and wildlife". If these authorities had understood the activity carried out by the respondent to have a direct causal connection to the activity of preservation of environment, they would not have invoked the first proviso to Section 2(15). This is where the respondents appear to have gone wrong.

17. In *Infoparks Kerala*, the question that arose before a single Judge of the Kerala High Court was as to whether the refusal of the department to issue an exemption certificate under Section 197 of the Income Tax Act, 1961, after the incorporation of the proviso to Section 2(15) was justified or not. The refusal to register an institution under Section 12A was not the issue before the single Judge of the Kerala High Court. Therefore, the said decision cannot be taken to have been rendered in the context of the question whether an assessee would be entitled to registration and if so under what circumstances. Therefore, the decision of the Kerala High Court is not helpful to the department.

18. In *A.P. State Seed Certification Agency*, the question that arose before a Division Bench of this Court was as to whether the rejection of an application for approval under Section 10(23C) of the Act for a particular assessment year was correct or not. In the said case, the appellant/assessee already had a registration under Section 12AA of the Act. There was no issue before this Court as to whether the grant of registration to the assessee in that case under Section 12AA was correct or not. Section 10(23C) deals with incomes not included in total income. Therefore, the question that was examined by the Division Bench of this Court in *A.P. State Seed Certification Agency* was with respect to the inclusion of a particular income while computing the total income of the previous year. It did not relate to the entitlement of the

institution to registration under Section 12AA. This Court never found fault with the grant of registration to the assessee in that case. Therefore, the question as to whether the respondent is entitled to registration under Section 12AA cannot be examined on the strength of the decision in *A.P. State Seed Certification Agency*.

19. Insofar as the decision of the Delhi High Court in *India Trade Promotion Organisation* is concerned, we have already indicated that what was under challenge before the Delhi High Court was the vires of the first proviso to Section 2(15). Interestingly, the case before the Delhi High Court also arose, as in the case of *A.P. State Seed Certification Agency*, on account of the refusal under Section 10(23C). Eventually, the Delhi High Court, granted relief to the assessee, but upheld the constitutional validity of the first proviso. The Delhi High Court did not agree with the view taken by a Bench of this Court in *A.P. State Seed Certification Agency*.

20. The fact that the question raised in the present writ petition is not the one that was decided by a Bench of this Court in *A.P. State Seed Certification Agency*, is beyond any pale of doubt. Therefore, the refusal of the Tribunal to follow the decision of this Court in *A.P. State Seed Certification Agency* cannot be found fault with. It is only in cases where the very same question of law had been raised and decided by the jurisdictional Court that the Bench of the Tribunal

located within the jurisdiction of the said High Court is bound to follow the same. But that is not the case with *A.P. State Seed Certification Agency*. At the cost of repetition, it should be pointed out that we are concerned in this case with the refusal of registration to the assessee under Section 12AA, in contrast to *A.P. State Seed Certification Agency* which admittedly had registration under Section 12AA and which was not in dispute.

21. As rightly pointed out by Mr. K.Vasantkumar, learned counsel for the respondent, Section 13(8) of the Income Tax Act, 1961, inserted by the Finance Act, 2012 with effect from 01-4-2009 makes it clear that nothing contained in Section 11 or 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof, if the provisions of the first proviso to Section 2(15) become applicable in the case of such person in the said previous year. Therefore, at the stage of grant of exemption, the question of looking at the gross receipts does not arise. To understand it in simple terms, we must look at the provisions as providing 2 gate passes. The 1st gate pass is in Section 12AA. The 2nd is under various provisions which deal with exemptions or exclusion of income. The respondent/assessee is actually at the outer gate. The very 1st entry pass is denied to the respondent, on a wrong application and understanding of the scope of Section 2(15). It is only after an institution is granted

registration under Section 12AA that the examination of the gross receipts year after year for the purpose of finding out the eligibility for exemption would arise. This has also been clarified by a Circular issued by the Central Board of Direct Taxes in Circular No.21/2016, dated 27-5-2016. Paragraph-2 of the said Circular reads as follows:

> "2. Section 2(15) of the Act provides definition of "charitable purpose". It includes "advancement of any other object of general public utility" provided it does not involve carrying on of any activity in the nature of trade, commerce or business etc. for financial consideration. The 2nd proviso to said section, introduced w.e.f. 01-04-2009 vide Finance Act 2010, provides that in case where the activities of any trust or institution is of the nature of advancement of any other object of general public utility and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from such commercial activities does not exceed Rs.25,00,000/- in the previous year, the purpose of such trust/institution shall be deemed as "charitable" despite it deriving consideration from such activities. However, if the aggregate value of these receipts exceeds the specified cut-off, the activity would no longer be considered as charitable and the income of the trust/ institution would not be eligible for tax exemption in that year. Thus an entity, pursuing advancement of object of general public utility, could be treated as a charitable institution in one year and not a charitable institution in the other year depending on the aggregate value of receipts from commercial activities. The position remains similar when the first and second provisos of section 2(15) get substituted by the new proviso introduced w.e.f. 01-4-2016 vide Finance Act, 2015, changing the cut-off benchmark as 20% of the total receipts instead of the fixed limit of Rs.25,00,000/- as it existed earlier."

22. Therefore, we are of the considered view that the Director of Income Tax (Exemptions) as well as the Tribunal

committed 2 mistakes, namely, (a) that of overlooking the first 6 activities covered by Section 2(15) and focusing on the 7th activity which has a correlation to the first proviso and (b) that of looking at the gross receipts even before the grant of registration.

23. Hence, the question of law raised by the department is answered against the department and the appeal is dismissed. The miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

15th March, 2017.
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Note:-
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

I.T.T.A.No.56 of 2017

15th March, 2017.
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