IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1094 OF 2015

The Commissioner of Income Tax
(Exemption) .. Appellant

v/s.

Sadguru Narendra Maharaj Sansthan .. Respondent

Mr. Tejveer Singh for the appellant
Mr. Sanjiv M. Shah for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 28th FEBRUARY, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 16th September, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal).

2. The impugned order of the Tribunal dated 16th September, 2014 has allowed the respondent assessee's appeal against the order dated 21st March, 2012 of the Commissioner of Income Tax cancelling the registration of the respondent assessee's Trust under Section 12AA(3) of the Act.

3. Mr. Tejveer Singh, learned Counsel for the Revenue urges only the following re-framed questions of law for our consideration :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in restoring the registration under section 12A of the Act?*
>
> *(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in restoring the registration under section 12A without appreciating the fact that as a result of amendment to the trust deed dated 04.04.2005, the absolute control over the management and conducting the activities of applicant trust was with the Chief Trustee, for all times to come, thereby barring the public from access to the properties / funds of the applicant trust?*

4. **Regarding question no.(i)** :-

(a) Mr. Tejveer Singh, learned Counsel appearing for the Revenue very fairly states that this issue stand concluded against the Revenue and in favour of the respondent assessee by the order of this Court in ***Commissioner of Income Tax Vs. The Mumbai Metropolitan Regional Iron and Steel Market Committee*** (Income Tax Appeal No.43 of 2015) decided on 17th July, 2017 and ***Director of Income Tax (Exemptions) Vs. Khar Gymkhana 385 ITR 162***.

(b) In the above view, question no.(i) as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. **<u>Regarding question no.(ii) :-</u>**

(a) The respondent assessee had amended its Trust Deed. The Commissioner of Income Tax in his order records that the amendment to the Trust Deed devised a system by which the Chief Trustee will alone define his heir for the post of Chief Trustee and "*Adhishtata*" and that heir cannot take part in the management of the Trust during the lifetime of the Chief Trustee. The Commissioner of Income Tax while exercising his power to cancel the registration made a reference to the above amendment to conclude that the aforesaid amendment violates the provision of Section 13(1)(c) of the Act goes against the spirit of the term 'Charitable Trust' . Thus, cancelled the registration.

(b) In appeal, the Tribunal in the impugned order while dealing with the cancellation of the registration on the basis of the amendment to the Trust Deed noted the fact that the Commissioner has not appreciated the difference between the objects of the Trust and powers / management of the Trust. The amendment according to the Tribunal dealt with the powers of the management of the Trust rather than the objects of the Trust. Thus, set aside the order of the

Commissioner cancelling the registration.

(c) Mr. Tejveer Singh, learned Counsel appearing for the Revenue placed reliance upon an order dated 22nd January, 2018 passed in the ***Principal Commissioner of Income Tax Vs. Maharashtra Cricket Association*** (Income Tax Appeal No.748 of 2015) wherein the following question has been admitted for consideration :-

> *(iii) Whether on the facts and circumstances of the case and in law, the Tribunal did not err in holding that even after addition to the objects clauses made without intimation to the department, the registration cannot be ipso facto cancelled in terms of Sec. 12AA(3) of the Act, without appreciating the fact that registration granted under Section 12A and the benefits flowing therefrom, cannot continue after amending the objects without the approval of the competent authority as the registration granted is to be objects prior to such amendment?*

It is submitted that question arising herein is similar to the question which arose in the above case and, therefore, would warrant admission. Besides, he submits that cancellation of registration of the Trust was not only for breach of Section 13(1)(c) of the Act but also as it goes against the spirit of Charitable Trust.

(d) We note that the admission of question no.(iii) (produced hereinabove) in *Maharashtra Cricket Association* (supra) was on a completely different question. In that case, as is evident from the question itself, the issue was an addition to the object clause without intimation to the Department. In this case the question itself is not about amendment to the object clause of the Trust Deed but amendment in respect of management. Thus, the admission of the question as urged in Maharashtra Cricket Association (supra) will not warrant admission of the question as raised herein. We further note that cancellation of registration of Trust under Section 12AA(3) of the Act is only in two contingencies, one the activities of the Trust are not genuine or the trust is not being carried out in accordance with the objects of the Trust. In this case, undisputedly, the cancellation is not on the above two grounds but on the basis of breach of Section 13(1)(c) of the Act and against the spirit of Charitable Trust. None of these would justify cancellation. As is evident from the Section 13 of the Act itself, it comes into play while applying Section 11 of the Act. It is in domain of the Assessing Officer during the assessment proceedings and not a basis for cancellation of registration. Besides, the amendment not being in the spirit of Charitable Trust, cannot be the basis of cancellation under Section 12AA(3) of the Act. This is as vague as vague could be. The term “spirit of a Charitable Trust” is not defined in the Act nor elaborated in the order of Commissioner of Income Tax. In the above facts, the impugned order of the Tribunal correctly holds that the Commissioner has focused on change in the future management of the Trust rather than the object of the Trust to cancel the Registration.

(e) Moreover, as held by the Apex Court in *Thiagarajar Charities Vs. ACIT, 225 ITR 1010* as submitted by Mr. Shah, there is distinction between objects and the power to carry out those objects. The amendment made in the Trust Deed which the Commissioner relies upon to cancel the Registration does not even remotely suggest any change / addition to the objects of the Trust. It has only to do with the appointment of the Chief Trustee and the manner of managing the Trust.

(f) In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

6. Accordingly, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**