IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.438 of 2015

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St. Michaels Educational Association St. Michaels High School, a Society registered under the Societies Act, 1860, having its office at Digha Ghat P.O. Digha Ghat, P.S. Digha, Dist. Patna through its Treasurer, brother Hilary goveas

... ... Appellant/s

Versus

Commissioner Of Income Tax I,Patna having its office Revenue Building, Beer Chand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.D.V.Pathy, Advocate
		Ms. Manju Jha, Advocate
For the Respondent/s	:	Ms. Archana Sinha, Sr. SC
		Mr. Alok Kumar, Jr. S.C
		Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 13-08-2019

This Miscellaneous Appeal filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is directed against the order dated 22.07.2015 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in Appeal Case No. ITA No. 141/Pat/2012, whereby the appeal of the appellant has been dismissed and the order passed by the Commissioner of Income Tax I, Patna dated 28.06.2012 whereby the registration of the appellant under Section 12AA of 'the Act' has been cancelled, has been confirmed.

Facts of the case leading to the impugned orders briefly stated is that the appellant is an educational institution registered under the Societies Registration Act 1860 running in the name and style of St. Michael's High School. The educational activities of the appellant are regulated under the memorandum of association as well as the rules and regulations framed there under and it is bearing consideration of the avowed object for which the institution was set up that the appellant was granted registration under Section 12AA of 'the Act' bearing registration no. 7/84-85 on 26.04.1985 by the respondent Commissioner. The copies of the memorandum of association as well as the rules and regulations framed by the institution together with the registration so granted under Section 12AA of 'the Act' are enclosed at Annexures 1 and 2 respectively to the appeal. It is after a lapse of more than 26 years that the appellant institution was served with a show cause notice issued from the office of the Commissioner of Income Tax I, Patna which is dated 09.08.2011 putting the appellant on show cause as to why his registration under section 12AA be not cancelled. The notice dated 09.08.2011 is issued by the Commissioner of Income Tax I, Patna in purported exercise of powers vested under Section 12AA (3) of 'the Act' and is impugned at Annexure 3. The appellant filed an exhaustive reply to the notice, a copy of which is at Annexure 4 and which has been met by the order impugned dated 28.06.2012 of the Commissioner of Income Tax I, Patna whereby the registration of the appellant under Section 12AA has been cancelled in purported exercise of powers vested in the Commissioner of Income Tax under Section 12AA(3) of 'the Act' and which has been confirmed by the Tribunal when the appeal of the appellant bearing ITA no. 141/Pat/2012 was dismissed on 22.04.2015. It is feeling aggrieved by the said orders that the appellant is before this Court.

Mr. D.V. Pathy, learned counsel has appeared for the appellant while the department is represented by their Sr. Standing Counsel, Ms. Archana Sinha.

Mr. Pathy after taking this Court through the sequence of events which we have already taken note above has submitted that the order of cancellation of registration granted to the appellant under Section 12AA of 'the Act' is *per se* illegal and the order passed by the Commissioner of Income Tax as confirmed by the Tribunal in purported exercise of powers vested under Section 12AA(3) lacks foundation as the facts accompanying the present case do not satisfy the prerequisites for such exercise. According to Mr. Pathy the registration to the appellant was granted by the Commissioner of Income Tax after recording satisfaction as to the eligibility of the appellant for grant of such registration and there has been no change in circumstances in between the date on which such registration was granted i.e., 26.04.1985 and the date on which it had been cancelled i.e. 28.06.2012 inasmuch as the petitioner continues to abide by the prescription present in the memorandum of association and the rules and regulations governing the school which was taken into consideration by the Commissioner of Income Tax at the stage of grant of such registration. He further submits that the power vested in the Commissioner of Income Tax to cancel such registration can be found in the provisions of Section 12AA(3) but it is only where the Principal Commissioner or Commissioner is satisfed that the activities of such trust or the institution are not genuine or are not being carried out in accordance with the objects of the trust or institution that such an order can be passed and not in any other circumstance. In reference to the orders put to challenge it is submitted by Mr. Pathy that no such instance has been laid down in the orders impugned of the appellant either of the activities of the institution being not genuine or not being carried out in accordance with the objects for which it had been set up rather it is bearing note of certain decisions taken in the board meeting and forming an opinion as to the eligibility of the appellant to the exceptions present in Section 13 (1) (b) that the registration itself has been canceled.

According, to Mr. Pathy, the foundation for the exercise under Section 12AA (3) of 'the Act' is entirely distinct with the scope and extent of exercise under Section 13(1) (b) of 'the act' inasmuch as even if any part of the income of the institution enjoying the registration under Section 12AA of 'the act' is not found eligible from exemption, such instance *ipso facto* is not sufficient to warrant a cancellation of the registration itself until there is a satisfaction recorded by the Commissioner or the Principal Commissioner of Income Tax that the activities of the institution are not genuine or are not being carried out in accordance with the objects for which it had been established, which is not the case in hand.

Learned counsel in support has relied upon a judgment of the Bombay High Court in Income Tax Appeal no. 43 of 2015 (Commissioner of Income Tax II vs. The Mumbai Metropolitan Regional Iron and steel Market Committee).

It is after hearing Mr. Pathy on the issue raised that this Court by order dated 25.07.2019 has recorded the substantial questions of law which arises in the present appeal and which runs as follows :

> "(A) Whether the registration granted to the appellant under Section 12AA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') could be cancelled by the Commissioner in purported exercise of power vested in him under Section 12AA(3) of the Act for alleged violation of the provisions of Section 13(1)(b) of the act?
>
> (B) Whether the purported action satisfies the conditions precedent for such cancellation as present in Section 12AA(3), in absence of satisfaction recorded by the Commissioner on such violation.
>
> (C) Whether the dis-allowance of any income from exemption for reasons present in Section 13(1) (b) of the Act, can be a circumstance to invite a cancellation of registration under Section 12AA(3) of the Act."

Since the respondent department was represented by their Sr. Standing Counsel that we posted the matter for final hearing and disposal on 01.08.2019 and while Mr. Pathy reiterated the submissions which we have already taken note above, the issue was contested by Ms. Sinha to canvass in defence of the impugned action by submitting that the action impugned is in accordance with the statutory provisions and that there is no infirmity attached to it. According to Ms. Sinha, sufficient power is vested in the Commissioner of Income Tax to cancel a registration granted to any trust or any institution under Section 12AA of ‘the Act’ in case, the activities are found not in accordance with the objects for which it had been set up and since the decision of the governing body of the institution which has been taken note of by the Commissioner in his order reflected that the appellant institution was in fact espousing the cause of a religion in particular and not open for the benefit of the other communities that the Commissioner bearing note of the resolutions so present, has canceled the registration which order suffers no infirmity.

Learned counsel has made reference to the provision of Section 2(15) of ‘the Act’ to submit that it explains the term ‘charitable purpose’ and it is every activity which is to the benefit of the public in general which comes within its fold. In reference to the show cause notice at Annexure 3 it is submitted by learned counsel for the department that since it was noted that the appellant was espousing the cause of a religion in particular and was using its income for benefit of a particular religious community that in view of the provisions so present in Section 13(1) (b) of ‘the Act’ the appellant was put on notice and since the reply present at Annexure 4 failed to satisfy the Commissioner of Income Tax, the impugned order was passed which has been confirmed by the Tribunal. According to Ms. Sinha even if the appellant institution was set up with a benevolent object, in case it deviates from its object, there is sufficient power vested in the Commissioner of Income Tax under Section 12AA (3) to cancel such registration and it is bearing note of the deviation in the activities of the appellant institution to espouse the cause of a religious community in particular which has pursueded the Commissioner of Income Tax to pass the order impugned.

Learned counsel for the Department has in support of her submission that where an institution or trust would fail in its object for which it was set up or is found to be espousing the cause of a particular religious community, the institution/trust would lose the eligibility for exemption of its income and consequently invite cancellation of registration to derive such benefit, relied on the following judgments:

1. (2001) 248 ITR 587 (Ghulam Mohidin Trust vs. Commissioner of Income Tax) (J& K)
2. (2002) 254 ITR 2012 (Commissioner of Income Tax v. Palghat Shadi Mahal Trust) (SC)
3. Civil Appeal No. 1381 of 2019 (Commissioner of Income Tax (Exemption) vs. Jagannath Gupta Family Trust)

Mr. Pathy in his short reply has submitted that in the entire order passed by the Commissioner of Income Tax as affirmed by the Tribunal, there is no whisper regarding the affairs of the appellant institution not being genuine or that the institution is failing on its object for which it was set up rather it is hiding behind the provisions of section 13 (1) (b) of 'the Act' that the registration is being canceled which is not one of the prerequisites present in Section 12AA(3) of 'the Act' to invite such cancellation even if this objection may be a matter for consideration at the time of assessment.

We have heard learned counsel for the parties and we have perused the record.

Ms. Sinha is absolutely correct when she submits that a registration under Section 12AA is not so sacrosanct that once granted it can never be interfered. In fact the parliament has been conscious to vest jurisdiction in the Commissioner of Income Tax under Section 12AA (3) to exercise such jurisdiction as canvassed by Ms. Sinha provided the prerequisites to such exercise is present.

We would straight away advert our attention to the show cause served on the appellant which lies at the foundation of the exercise and a copy of which is at Annexure 3 to the appeal. The Commissioner of Income Tax I, Patna after taking note of the registration granted to the appellant more than 26 years ago back has after taking notice of certain decisions taken in the governing body meeting which in the opinion of the Commissioner of Income Tax was taken was for the benefit of a particular religious community, and which in turn made the appellant institution ineligible for exclusion of his total income under sections 11 and 12 of 'the Act' in view of the provisions present in Section 13(1) (b) of 'the Act'. It is drawing such premise that the notice was served on the appellant on the proposed action for cancellation of registration granted under Section 12AA of 'the Act'.

Although exhaustive arguments have been advanced by Mr. Pathy, for the petitioner as well as Ms. Sinha, learned counsel appearing for the Income Tax Department but in our opinion the entire issue revolves around the question, whether or not, the power has been exercised by the Commissioner, Income Tax in accordance with the provisions of Section 12AA(3) of the Act or he has overstepped his jurisdiction in the process and which illegality, if any, has been perpetuated in the confirmation order passed by the tribunal.

The show cause notice issued under Section 12AA(3) of 'the Act' as noted above, takes notice of the resolutions passed by the governing body in its meeting held from time to time and there is nothing left for speculating that some of the resolutions do canvass the interest of a community in particular. It is finding infirmity in the resolutions so passed by the general body which according to the Commissioner professed the cause of a particular religious community i.e. Christians that he put the petitioner on notice as according to him the petitioner was not eligible for exclusion of the total income under Sections 11 and 12 of ‘the Act’ in view of the provisions of Section 13(1)(b) of ‘the Act’ thus sufficient to invite a cancellation of the registration of the petitioner granted under Section 12AA of ‘the Act’. The exhaustive explanation given by the petitioner to the show cause at Annexure 4 series is met with the order impugned dated 28.06. 2012 Annexure 5, which in fact is a reiteration of the observations present in the show cause notice to conclude at paragraph 4 that since the activities of the petitioner-institution is for furthering the interest of a religious community in particular i.e. Christians, it was not entitiled to a registration under Section 12AA of ‘the Act’. Surprisingly, even when the Commissioner has noted that more than 95 % of the students admitted in the school are non Christians yet, according to him it does not change the situation. In fact simply because in the

Board's meeting the association reiterated its emphasis on the undisputed fact that being a catholic school run by the assessee association, the members of which are Christians, it has concern towards the Christians of Patna, according to the Commissioner these aspects were sufficient to make the school ineligible for the benefit under Sections 11 & 12 of 'the Act' in view of the provisions of Section 13(1) (b) of 'the Act' and resultantly has led to the cancellation of the registration which order has been affirmed by the Tribunal vide its order dated 22.07.2015.

While Section 11 deals with income from property held for charitable or religious purpose which would not be included in the total income of the previous year of the person in receipt of such income, Section 12 deals with the voluntarily contributions received by a trust created wholly for charitable or religious purpose to be dealt in a like manner. Section 12A of 'the Act' lays down the condition for applicability of Sections 11 and 12. Annexure 2 to the appeal is a confirmation of the fact that the Commissioner of Income Tax on being satisfied that the petitioner was entitled to a registration for exemption under Sections 11 and 12 of 'the Act' was granted registration under the existing provisions of Section 12A(a) of 'the Act' on

26.04.1985 as a charitable institution thus, eligible for exemptions so provided under 'the Act'. Section 12AA was incorporated in the Act by the Finance (2) Act, 1996 laying down the procedure for registration and Section 12AA (3) *inter-alia* laid down the procedure for cancellation of such registration granted to any charitable institution under Section 12A of 'the Act' as it stood before the amendment, under certain conditions which are eloquent from the provisions itself and is reproduced herein below for ready reference :

> "(3) Where a trust or an institution has been granted registration under Clause (b) of Sub-Section 1 or has obtained a registration at any time under Section 12A as it stood before its amendment by the Finance (No. 2) Act, (33 of 1996) and subsequently the Principal <u>Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution,</u> as the case may be, he shall pass an order in writing canceling the registration of such trust or institution;
>
> Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."
>
> (Emphasis is supplied)

It is in purported exercise under this provision that the show cause notice was issued to the petitioner and the order of cancellation of registration has been passed.

A plain reading of the enabling power vested in the Commissioner as present in sub-section 3 of Section 12AA would confirm that it is only in two circumstances that such power can be exercised by the Principal Commissioner or the Commissioner and i.e (a) if the activities of such trust or institution are not found genuine ; or (b) the activities of such trust or institution are not being carried out in accordance with the objects of the trust or institution. The legislative intent of the provision of sub-section 3 of Section 12AA is loud and clear and it is if and only if, the institution in question is found violating either of the two conditions that the Principal Commissioner or the Commissioner can exercise such power to cancel the registration and in no other circumstance.

In so far as the case in hand is concerned, it is bearing note of the aims and objects as present in the memorandum of association which also contains the rules and regulations to regulate the activities of the institution that the then Commissioner, on being satisfied, had granted registration to the petitioner institution under the then existing provisions of

Section 12 A (a) of ‘the Act’ on 26.04.1985, which entitled the institution to the benefits of such registration including those present in Section 11 and 12 of ‘the Act’.

What we find from the show cause notice and the order of cancellation impugned in this appeal is that it is the very same memorandum of association and the objects present therein which has laid the foundation for the cancellation proceedings and since in some of the subsequent governing body meetings some resolutions were passed in benefit of the Christian community, which has been found sufficient for cancellation of the registration itself, without even a whisper on the mandatory recording of satisfaction on the two essential prerequisites for such an order of cancellation i.e. whether or not the resolution so passed demonstrated that the activities of the institution was not genuine ; or whether the institution had violated its object. The show cause notice as well as the order is absolutely silent on this score for there is no finding of any such violation by the petitioner institution.

Law in this regard is too well settled and where a statute provides an act to be done in a particular manner it has to be done in that manner alone and every other mode of discharge is clearly forbidden. It is unfortunate that the statutory authorities, performing quasi judicial functions have kept themselves oblivious of such settled legal position. Applying the doctrine to the case in hand, it is seen that it is on being swayed by the resolution of the governing body that the order of cancellation has been passed by the Commissioner without recording any satisfaction, either on the issue that, the activities of the school are not genuine and /or that it is not being carried out in accordance with the objects for which the institution had been set up. In such eloquent circumstances we are in no confusion to hold that it is only on fulfillment of such condition and on recording of satisfaction that an order of cancellation could have been passed but which discharge is completely missing either in the show cause notice or in the final order passed which has also got the confirmation by the tribunal.

A plain reading of the order impugned would confirm that the Commissioner has got mixed up in between the stipulations warranting exercise under Section 12AA(3) and Section 13(1)(b) in so far as it dis-entitles a trust or a charitable institution to the exclusion from the total income of the previous year, any income, if the same is used for benefit of any particular religious community or caste. It is correctly canvassed by Mr. Pathy that any such issue can be a subject matter of assessment proceeding but certainly cannot lay a foundation for cancellation of registration of the institution altogether unless the two prerequisites as present in sub-Section 3 of Section 12AA are satisfied.

Having considered the matter in its entirety we are in no doubt to hold that the order dated 22.07.2015 of the Tribunal in confirming the order dated 28.06.2012 of the Commissioner, Income Tax to cancel the registration of the petitioner granted under Section 12AA of 'the Act' is an order passed de-hors, the statutory provisions of Section 12AA(3) and since there is no satisfaction recorded by the Commissioner Income Tax either that the activities of the petitioner was not genuine or that it was not being carried in accordance with the objects for which it was set up, the conclusion drawn by the authorities in the order impugned in reference to the provision of Section 13(1) (b), is a confirmation of perversity.

The substantial questions of law so framed, are answerred accordingly.

In result, the order dated 22.07.2015 of the Income Tax Appellate Tribunal in ITA No. 141/Pat/ 2012 together with the order dated 28.06.2012 of the Commissioner, Income Tax in so far as it purports to cancel the registration of the petitioner under

Section 12 AA of ‘the Act’ is quashed and set aside.

The Miscellaneous Appeal is allowed but with no order as to costs.

(Jyoti Saran, J)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.08.2019
Transmission Date	NA