IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 12.04.2022
DELIVERED ON: 26.04.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

ITAT/46/2018

IA NO: GA/1/2018 (OLD NO. GA/631/2018)

COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA

VERSUS

SANSKRITI SAGAR

Appearance:-
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.

.....For the Appellant.

Mr. Ashim Choudhury, Adv.
Mr. Soham Sen, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This appeal filed by the revenue under Section 260 A of the Income Tax Act 1961(the Act for brevity), is directed against the order dated 15.09.2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal), in ITA No. 96/Kol/2017 for the assessment year 2011-12. The revenue has raised the following substantial questions of law for consideration:-

   1) *"Whether on the facts and circumstances of the case and in law, the Learned Tribunal is right in quashing the order for cancellation of registration under Section 12AA(3) of the Income Tax Act, 1961 based on money laundering activities carried out by the assessee trust with Herbicure Health Care Bio Herbal Research Foundation ignoring that such activities have been established in other similar basis"?*
   2) *"Whether on the facts and circumstances of the case and in law, the Learned Tribunal is perverse in law in holding that there is no allegations in the order of the Commissioner of Income Tax (Exemption), that the activities of the trust are not genuine or that activities are not carried out in accordance with the Commissioner of Income Tax (Exemption) has already given a finding that the activities of the trust are non-genuine"?*

2. We have heard Mr. Vipul Kundalia, Learned Senior Standing Counsel for the appellant assisted by Mr. Anurag Roy, Learned Advocate and Mr. Ashim Chowdhury and Mr. Soham Sen, Learned Advocates for the respondent.

3. The respondent assessee is a society registered under Section 12A of the Act, such registration having been granted on 20.02.1989. Survey

operation under Section 133A of the Act was conducted on M/s. Herbicure Health Care Bio-Herbal Research Foundation (Herbicure) and during the course of survey, it came to light that Herbicure was engaged in money laundering and providing accommodation entries to different individuals and organizations, by way of accepting donations and returning the same to the donors through web of financial transactions after retaining the commission and by accepting money by cash or through web of financial transaction and giving donations after retaining the commission. A sworn statement was recorded from the founder Director of Herbicure. By relying upon the said sworn statement and certain answers given by the Director of Herbicure, the Commissioner of Income Tax, (Exemptions), Kolkata [CIT(E)] was of the opinion that from the records in the financial year 2010-2011, the assessee received donations amounting to Rs. 85,000/- from Herbicure, which led to issuance of show cause notice dated 02.12.2015 calling upon the assessee to show cause as to why the registration granted under Section 12A should not be withdrawn/cancelled under Section 12AA(3) of the Act for alleged fake activities and indulging in money laundering. The respondent assessee by reply dated 21.12.2015 stated that the donations of Rs. 85,000/- from Herbicure was received by cheque, it was credited to their bank account and it was applied for the objects of the trust. Further it was stated that the activities of the trust and application of income to the charities are genuine and they are in accordance with the objects of the trust. The assessee emphatically denied the allegations that they have made payment in cash to Herbicure. After receipt of the reply, the CIT(E) by order dated 06.01.2017 cancelled the registration granted to the assessee under

Section 12A of the Act. Aggrieved by such order, the assessee preferred appeal before the Tribunal, contending that the cancellation of the registration by order dated 06.01.2017 with retrospective effect from 01.04.2010 is bad in law; the reasons given by the CIT(E) for cancellation of the registration are contrary to law and on facts. Further it was contended that the registration was cancelled without examining the genuineness of the activities of the assessee and without any evidence whatsoever, the CIT erred in holding that the activities of the assessee are not being carried out in accordance with the objects of the assessee. Further it was contended that the CIT(E) erred in cancelling the registration even though the genuineness of the donations was confirmed by herbicure subsequently. Further it was contended that the CIT(E) cancelled the registration without affording an opportunity to the assessee to cross examine the Director of Herbicure and therefore the order is in violation of the principles of natural justice. Further, the CIT(E) failed to record any satisfaction with regard to the conditions prescribed in Section 12AA (3) of the Act and therefore exceeded its jurisdiction. Further the CIT ignored the fact that there is no iota of evidence that the activities of the assessees are not genuine and the cancellation of the registration based upon a non-verified statement of the third party is illegal. Retrospective cancellation of the registration with effect from 01.04.2010 is not provided under the provisions of the Act. The tribunal considered the contentions raised by the assessee, examined the entire facts, took note of the statement recorded from the Director of Herbicure, kept in mind the parameters to be fulfilled under Section 12AA (3) of the Act and found that the donations received by the assessee from

Herbicure for a sum of Rs. 85,000/- was duly accounted for in the profit and loss account as Corpus Donation and there was no evidence on record to show that cash was paid by the assessee which in turn reached the hands of the Herbicure which was returned in the form of donation to the assessee after retaining the commission. The tribunal also analysed the answers given by the Director of Herbicure to various questions which were posed to him when the statement was recorded from him and found that there is absolutely no evidence to show any connection between the brokers and the assessee and there was nothing to indicate that the assessee indulged in money laundering. The assessee placed reliance on the decision of the Kolkata Tribunal in ***Shri Mayapur Dham Pilgrim and Visitors Trust, Nadia Versus Commissioner of Income Tax (Exemption), Kolkata*** in ITA No. 1165/Kol/2016 dated 03.05.2017. The tribunal after taking note of the decisions observed that the facts in the case of ***Shri Mayapur Dham Pilgrim and Visitors Trust*** was also identical but observed that the facts of the assessee's case stand on a much better footing than the case of the assessee in Shri Mayapur. Further the tribunal held that there is neither any allegation in the order passed by the CIT nor any findings that any of the conditions as stipulated under Section 12AA (3) of the Act were attracted and consequently the cancellation of the registration was held to be bad in law and accordingly quashed. Aggrieved by such order, the revenue is before us by way of this appeal.

4. The Learned Senior Standing Counsel for the appellant would vehemently contend that the tribunal committed an error in quashing the order passed by the CIT(E) which was taking note of the fact money

laundering was being carried out by the assessee trust with Herbicure and this fact was not properly taken note of by the tribunal. Further the tribunal ignored the findings rendered by the CIT that the activities of the assessee are not genuine. It is further submitted that the case has to be viewed in its entirety and the nexus has been established which will go to show that the assessee was indeed engaged in money laundering and the order of the Commissioner cancelling the registration was fully justified. The Learned Senior Standing Counsel placed reliance on the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax (Exemptions), Kolkata Versus Batanagar Education and Research Trust* [1].** We have heard the Learned Advocates appearing for the respondents on the above submissions.

5. In order to invoke the power under Section 12 AA (3) of the Act a statutory duty has been cast upon the CIT(E) to examine as to whether the activities of the Trust or Institution are not genuine or are not being carried out in accordance with the objects of the Trust or Institution. Thus, we are required to see as to whether any finding of fact has been recorded by the CIT(E) on these two aspects which are primordial for the exercise of power under Section 12AA(3) of the Act. As noted above, the show-cause notice proposing cancellation was solely based upon a statement recorded from the Director of Herbicure. The CIT(E) in its order has quoted the various questions posed to the said Director and the answers given by him. Thereafter, the CIT(E) proceeds to state that the assessee has received Rs. 85,000/- as donation from Herbicure and Herbicure was involved in money laundering and therefore, the assessee was directed to show cause as to

[1] (2021) 9 SCC 439

why their registration should not be cancelled as they were also engaged in money laundering. The assessee submitted his reply denying the allegations and stating as to how the donation was received by cheque and was credited in the bank account of the assessee and the donation was applied for the objects of the assessee. Further, the assessee categorically stated that their activities are in accordance with the objects of the Trust and are genuine. In spite of such reply having been given by the assessee, we find that the CIT(E) has not considered the reply, nor brought on record anything to show that the activities of the assessee are not genuine or the activities are not being carried out in accordance with the objects of the Trust. In fact, the order passed by the CIT(E) narrates certain facts about Herbicure, extracts Section 12AA(3) of the Act and holds that the activities of the assessee are not genuine and are not being carried out in accordance with the objects of the society and, therefore, the registration has been cancelled. Mere use of the words and sentences as contained in Section 12AA(3) of the Act, would not be sufficient. The CIT(E) has to record a finding on fact as to how the activities of the assessee are not genuine and how the activities of the assessee are not being carried out in accordance with the objects of the Trust. In the absence of any such factual conclusion, we find that the Tribunal was right in setting aside the order of cancellation. In fact, the Tribunal after elaborately going through the facts, taking note of the answers given by the Director of Herbicure to the various questions posed to him found that there is nothing on record to indicate that the assessee was in contact with the brokers, nor there was any evidence brought on record to show that the assessee was engaged in money laundering as it may be a case of the department that Herbicure was indulging in money laundering. That by itself would not be sufficient to hold that the assessee was also indulging in money laundering in the absence of any evidence to connect the assessee with the money laundering activities of Herbicure. Thus, after examining the facts, the Tribunal found that there is no evidence to show that the two conditions required to be fulfilled under Section 12AA(3) of the Act, stand attracted warranting cancellation of the registration. Thus, in the absence of any incriminating material to connect the assessee with the money laundering activities of the third party, there was absolutely no justification for cancellation of the registration granted in favour of the assessee that too with retrospective effect. The decision in ***Batanagar Educational Research Trust*** is clearly distinguishable on facts as in the said case the Hon'ble Supreme Court took note of the answers given to various questions posed to the managing trustee of the Batanagar Trust. It was held that the Trust therein misused the status enjoyed by them by virtue of registration under Section 12AA(3) of the Act. Further, there was material to indicate that the assessee therein received donation by way of cheques out of which certain money was brought back or returned to the donors in cash and on facts it was established by the revenue that they were all bogus donations. As pointed out above, there is no iota of evidence brought on record by the CIT(E) to connect the assessee with the money laundering activities of Herbicure. Furthermore, there is no specific reference to the assessee in the answers given by the Director of Herbicure to the various questions posed to him during the course of the survey operations. Precisely, for such reason the Tribunal has recorded that there is no evidence to conclude that the assessee was also engaged in money laundering activities. A bare perusal of the order passed By the CIT(E) dated 06.01.2017 will clearly show that the cancellation is solely based upon the money laundering activities of Herbicure. The CIT(E) did not consider the explanation offered by the assessee as to how the donation was received by cheque and it was credited to the bank account of the assessee and the donation was applied to the objects of the assessee in Trust, were recorded any factual finding on the submissions made by the assessee. Thus, the order passed by the CIT(E) was wholly unsustainable. If the CIT(E) proposed to rely upon the statement of a third party to form an opinion that the assessee is also involved in money laundering activities, the basic principle of natural justice would require that the entire documents based on which the CIT(E) formed such prima facie opinion, should have been made available to the assessee and if third party statement is to be relied on then the third party should have been made available for a cross-examination by the assessee. In fact, a specific ground was canvassed by the assessee by contending that no opportunity of cross-examination was allowed to them and therefore, the order was in violation of the principle of natural justice. The contention advanced by the assessee was perfectly right and justified and the Tribunal after taking note of the entire facts has found that there is no iota of evidence against the assessee to justify the allegation of money laundering. Therefore, in our considered view, the Tribunal rightly set aside the order of the CIT(E) and allowed the appeal filed by the assessee. We find no ground to interfere with the said order. Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J)

I agree

(HIRANMAY BHATTACHARYYA, J)

(P.A.- PRAMITA/ SACHIN)