

Form No.(J2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO.GA/2/2018
(Old No.GA/790/2018)
ITAT/84/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
NAWAL KISHORE KEJRIWAL CHARITY TRUST

IA NO.GA/2/2018
(Old No.GA/793/2018)
ITAT/85/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
ALKING CHARITY TRUST

IA NO.GA/2/2018
(Old No.GA/795/2018)
ITAT/86/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
ALWAR CHARITY TRUST

IA NO.GA/2/2018
(Old No.GA/798/2018)
ITAT/87/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
ASHOK KUMAR MEMORIAL TRUST

IA NO.GA/2/2018
(Old No.GA/799/2018)
ITAT/88/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
LAKSHMI TRUST

IA NO.GA/2/2018
(Old No.GA/801/2018)
ITAT/89/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
KRISHNA CHARITY TRUST

IA NO.GA/2/2018
(Old No.GA/803/2018)
ITAT/90/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
UDAIPUR CHARITY TRUST

IA NO.GA/2/2018
(Old No.GA/809/2018)
ITAT/93/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
HARSH VARDHAN CHARITY TRUST

IA NO.GA/2/2018
(Old No.GA/815/2018)
ITAT/94/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
KISHORE KANTI KHANDELWAL CHARITY TRUST

IA NO.GA/2/2018
(Old No.GA/822/2018)
ITAT/95/2018

COMMISSIONER OF INCOME TAX, (EXEMPTIONS), KOLKATA
-Versus-
NATIONAL AGRICULTURAL AND SCIENTIFIC RESEARCH FOUNDATION

For the Appellant: *Mr. Tilak Mitra, Adv.*
Mr. Radhamohan Roy, Adv.

For the Respondent: *Mr. J. P. Khaitan, Senior Adv.*
Ms. Swapna Das, Adv.
Mr. P. Jhunjhunwala, Adv.
Mr. Siddhartha Das, Adv.

Heard on : 08.02.2022

Judgment on : 08.02.2022

T. S. SIVAGANANAM, J. : All these appeals have been filed by revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) challenging a common order dated 30th August, 2017 passed by the Income Tax Appellate Tribunal, Kolkata "B" Bench (the 'Tribunal' in short) in ITA No.285/Kol/2016, ITA No.286/Kol/2016, ITA No.287/Kol/2016, ITA No.288/Kol/2016, ITA No.289/Kol/2016, ITA No.1156/Kol/2016, ITA No.1157/Kol/2016, ITA No.1158/Kol/2016, ITA No.1159/Kol/2016 and ITA No.1160/Kol/2016 for the assessment year 2006-07.

The revenue has raised for the following substantial questions of law for consideration:

- "(a) *Whether the Tribunal has at all considered the activities of the assessee/respondent as in genuine for the purpose of application for Sub-Section 3 of Section 11AA ?*
- (b) *Whether on the facts and in the circumstances of the case and in law the Income Tax Appellate Tribunal erred in reversing the order for cancellation of registration under Section 12AA(3) of the Income Tax Act, 1961 ?*
- (c) *Whether the finding of the Income Tax Appellate Tribunal regarding effective date of applicability of Section*

12AA(3) of the Income Tax Act, is perverse in law considering the explanatory notes of Finance Act, 2010 ?

We have heard Mr. Tilak Mitra, learned standing counsel assisted by Mr. Radhamohan Roy, learned advocate for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel assisted by Mr. P. Jhunjhunwala, Ms. Swapna Das and Mr. Siddhartha Das, learned Advocates for the respondent/assessee.

The registration granted in favour of the respondents/assessees under Section 12A of the Act stood cancelled by an order passed under Section 12AA(3) of the Act. Since the facts are all identical, it would suffice to note the facts in ITAT/84/2018 pertaining to Nawal Kishore Kejriwal Charity Trust which is taken as the lead case with the consent of the counsel on either sides.

The Commissioner of Income Tax (Exemptions), Kolkata (in short CIT(E)) issued show cause notice dated 30th October, 2014 proposing to cancel the registration granted to the assessee under Section 12A of the Act. The allegation in the show cause notice was that information has been received during the financial year 2005-06, the assessee was involved in circuitous transactions by rotating the same donation through another trust by way of donations and that the money donated by the assessee trust came back to it in the garb of donation from other trust registered under Section 12AA of the Act. Therefore, it was proposed that

the activity of the assessee was neither genuine nor in accordance to the stated objective of the Trust. The assessee submitted its reply dated 16th November, 2015 stating that the show cause notice has proposed to cancel the registration on the basis of the finding made by the assessing officer in the assessment order for the assessment year 2006-07 and in the said year the assessing officer found that there was a case of a circuitous donation by one charitable trust to another charitable trust of same group and ultimately the donated amount had come back to the donor trust. On such basis he refused to accept the donated income as application for charitable purposes as claimed in the return of income and added back the same to compute the total income at a very high figure. It was pointed out that even though the assessing officer rendered such a finding, he did not deny the status of the assessee as a charitable trust and completed the assessment on the basis of the provisions of Sections 11, 12 and 13 of the Act. Further, it was pointed out that no action has been taken for cancelling the assessment order passed for the financial year 2006-07 and the time limit for invoking the power under Section 263 of the Act had also expired. The assessee further stated that it had objected to the said order on the ground that the finding is wrong and there is no material or evidence to establish that the donated amount actually came back to the donor trust and they are in possession of material to prove

that the donee trust kept the donated amount in the corpus fund and the donee trust again issued donation to another charitable trust from its current income. Therefore, the assessee pointed out that there is no basis for holding the theory of circular donation and ultimate receipt of the donation by the donor trust. Further it was pointed out that though the assessee was not successful before the CIT(A), it had succeeded before the tribunal and the claim for benefit as given in Clause (d) of Section 11 was allowed. Therefore, the assessee contended that there was no ground to withdraw the registration under Section 12A of the Act. Further it was pointed out that the assessment for the years 2007-08 to 2014-15 had been completed accepting the assessee as a charitable trust and allowing the benefit of Section 11 of the Act. Thus, the assessee stated that there is no material or evidence before the CIT(E) to hold that the trust is not eligible for registration under Section 12AA of the Act.

We find from the order passed by the CIT(E) dated 30th March, 2016 that none of the explanation offered by the assessee was considered and in the concluding paragraph the CIT(E) reiterated the allegations in the show cause notice in the form of an order and cancelled the registration.

The assessees filed appeals before the Tribunal challenging the orders of cancellation which were separate orders for all the respondents/assessees. Before the Tribunal the

assessee contended that cancellation of registration with retrospective effect is against law and that there was no material available on record doubting the genuineness of the activities of the trust warranting cancellation. Several other grounds were also raised by the assessee. More importantly that though the benefit of exemption was denied for the assessment year 2006-07, in the other years benefits were granted by the assessing officer himself and only for one year, the benefit was not extended which can hardly be a basis for cancellation of the registration. The assessee also furnished factual details as to how the donations were given to the trust. The Tribunal after taking note of the facts held that the revenue has not disputed that all the corpus donations were given from one trust to another trust out of current year's income and in none of the cases, the corpus donation received by the assessee was given to the trust in the form of corpus donation. Further, after taking note of the amendment to Section 11 which was brought about by Finance Bill, 2017, with effect from 1st April, 2018, the tribunal pointed out that prior to 1st April, 2018, the money donated as corpus, will amount to application of income. The tribunal took note of the decision in the case of *Commissioner of Income Tax vs. Sarladevi Sarabhai Trust* reported in [1988] 172 ITR 698. The tribunal also faulted the CIT(E) for having cancelled the registration with retrospective effect as being without jurisdiction. Thereafter,

the tribunal elaborately examined the facts and pointed out that at the inception, the CIT(E) was satisfied with the genuineness of the activities and granted registration to the assessee and before the tribunal the activities of the assessee have not been doubted except by stating that corpus donation was given by the assessee to the other trust that too during only one assessment year 2006-07. It is settled legal principle that Section 12AA of the Act lays down procedure for registration and does not state that the CIT while considering the application for registration shall also see that the income derived by the trust is either not being spent for charitable purpose or such trust is earning profit. The provision requires that the activities of the trust or the institution must be genuine which would mean that they are in consonance with the object of the trust and are not mere camouflage of the proposed objects. Bearing the legal principle in mind, the tribunal once again examined the facts of the case and pointed out that the activities of the assessee have not been doubted in all these years. The activities were duly accepted to be charitable by the revenue and the revenue failed to bring anything on record to controvert the submission made by the assessee.

In *Sarladevi Sarabhai Trust (supra)*, it was pointed out that when a donor trust which is a charitable trust donates its

income to another trust, the provisions of Section 11(1) (a) can be said to have been met by such donor trust and the donor trust can be said to have applied its income for religious and charitable purposes notwithstanding the fact that the donation is subjected to any conditions that the donee trust will treat the donation as towards its corpus and can only utilise the accruing income from the donated corpus for religious and charitable purposes, and that the question whether the gifted income is to be utilised by the donee trust fully for its religious and charitable purposes or whether the donee trust had to keep intact the corpus of the donation and has to utilise only the income therefrom for its religious and charitable purposes, would not make the slightest difference so far as entitlement of the donor trust for exemption under Section 11(1) of the Act.

The Tribunal rightly took note of this decision while granting relief to the assessee. Hence, for the above reasons, we find no ground to interfere with the order passed by the Tribunal. Accordingly, the appeals are dismissed and substantial questions of law are answered against the revenue.

Consequently, the connected applications for stay also stand dismissed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

A/s./pa