

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/1/2017
(Old No.GA/2864/2017)
ITAT/312/2017

COMMISSIONER OF INCOME TAX (EXEMPTION) KOLKATA
-Versus-
MAYAPUR DHAM PILGRIM AND VISITORS TRUST

For the Appellant: Mr. P. K. Bhowmick, Adv.

*For the Respondent: Mr. J. P. Khaitan, Sr. Adv.
Mr. Ananda Sen, Adv.*

Heard on : 16.02.2022

Judgment on : 16.02.2022

T. S. SIVAGANANAM, J. : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 3rd May, 2017 passed by the Income Tax Appellate Tribunal, Kolkata "C" Bench (the 'Tribunal' in short) in ITA No.1165/Kol/2016.

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

- "(1) *Whether on the facts and in the circumstances of the case, the Learned Tribunal is justified in law in quashing the order of cancellation of registration under section 12AA(3) of the Income Tax Act, 1961 ignoring the money laundering activities conducted by the assessee trust with school of Human Genetics and Population Health and such activities has been established in other instances?*
- (2) *Whether on the facts and in the circumstances of the case, the Learned Tribunal is justified in law in quashing the order of the commissioner of Income Tax (Exemption) on the basis of perceived procedural lapses ignoring the truthfulness of facts?*
- (3) *Whether on the facts and circumstances of the case, the Learned Tribunal is justified in law to pronounce an order to be quashed whereas orders have been set aside for fresh adjudication in several cases by the higher Courts including apex court in similar instances.?"*

We have heard Mr. P.K. Bhowmick, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel assisted by Mr. Ananda Sen, learned advocate appearing for the respondent/assessee.

The assessee is a trust registered under Section 12A of the Act, by order dated 23rd March, 1991 an approval under Section 80G(VI) was also granted by order dated 31st August, 2010. The objects of the trust were charitable in nature and in particular

to build, maintain and operate guest house for the comfortable stay of pilgrims and visitors to Sreedham Mayapur amongst other objects. The Commissioner of Income Tax (Exemptions), Kolkata (CIT(E)) issued show cause notice dated 4th December, 2015 based upon a survey conducted under Section 133A of the Act on School of Human Genetics & Population Health, Kolkata during January, 2015. It was stated that during the survey, statement of the treasurer of the said school was recorded and in that statement they had admitted that they have been providing entries to different individuals and organisations. The entries were provided in two ways: (i) accepting donations and returning the same through web of financial transactions after retaining the commission; and, (ii) accepting money by cash or through web of financial transactions and making donations after retaining the commission. The show cause notice further stated that the assessee had received donation amounting to Rs.18,00,000/- in the assessment year 2013-14 from the said organisation and therefore, it was evident that by accepting donation and then returning the money the assessee had indulged in money laundering which is illegal, not genuine or not in accordance with the objects of the assessee trust. With this allegation, the assessee was requested to explain why the registration granted under Section 12A should not be cancelled by invoking Section 12AA(3) of the Act. The assessee submitted their reply dated 4th December, 2015 stating that they

are a public charitable trust engaged in providing accommodation facilities to the visitors and pilgrims at Sreedham Mayapur that they had sent a letter to the organisation on 5th December, 2012 seeking their help and support for expansion of the accommodation facilities at Sreedham Mayapur and they received donation of Rs.18,00,000/- on 22nd December, 2012 by way of bank transfer. The assessee specifically denied the allegation that they had given cash to the donor and subsequently received donation by RTGS as being false, incorrect, malicious and vexatious.

The CIT(E) by order dated 17th March, 2016 cancelled the registration granted in favour of the assessee. Aggrieved by the same, the assessee filed appeal before the Tribunal. The tribunal by the impugned order has allowed the appeal and aggrieved by such order the revenue is before us by way of this appeal raising the above-mentioned substantial questions of law.

After elaborately hearing learned counsel for the parties and carefully perusing the materials placed on record, we are of the considered view that the tribunal was fully justified in allowing the assessee's appeal. We support such conclusion with the following reasons.

At the first instance, we note that the allegation in the show cause notice was that the assessee was accepting bogus donation and returning the money to the organisation (donor) by cash thereby indulging in money laundering. However, while

passing the order dated 17th March, 2016, the CIT(E) has rendered a totally different finding from that of the allegation contained in the show cause notice. The CIT(E) held that the assessee paid cash and took donation from the said organisation. Such was not the allegation made against the assessee in the show cause notice. Apart from that, there was no material available with the CIT(E) to come to such conclusion. The CIT(E) heavily placed reliance on the statements which were recorded during investigation made pursuant to the survey operations conducted on the School of Human Genetics & Population Health. The CIT(E) has also extensively referred to the statement given by the treasurer of the said organisation before the Investigation Wing and also referred to the post survey developments noting that the said organisation had filed an application before the Income Tax Settlement Commission and accepted that they had been indulging in certain activities by which certain entries were made in the books of accounts and they were returning the donations so received from third parties by way of cash. The CIT(E) would place reliance on the order passed in proceedings before the Settlement Commission to come to the conclusion that the said organisation had accepted the allegations against them and offered the entire income to tax and also agreed before the Commission that they will, in future, continue various research and welfare activities and they will not indulge in any such activity for which proceedings have been initiated against

them. It could be seen that in the statements recorded from the Treasurer and Secretary of the said organisation before the Settlement Commission there is no whisper about the assessee trust and that the assessee trust either received donation and returned the same in cash or the assessee trust paid cash and received donation from the said organisation. In paragraph 5.2 the CIT(E) mentions the list of donations which were paid by the said organisation during the financial year 2012-13 to 2014-15 in which the name of the assessee figures and the amount of donation is shown as Rs.18,00,000/-. It is not clear as to wherefrom such details were culled out by the CIT(E) because we find that the said details do not form part of the application filed by the organisation before the Settlement Commission though during the course of argument before the Tribunal, the revenue took such a stand. Be that as it may, the fact that the assessee trust received donation of Rs.18,00,000/- from the organisation is not in dispute. No illegality can be attributed on the part of the assessee towards receiving a donation from a third party especially when their activities have been found to be charitable.

As mentioned earlier, the initial allegation in the show cause notice is that donation was received by the assessee and the same was returned in cash to the organisation. However, in the order of adjudication passed by the CIT(E) the allegation was totally different in the sense that the assessee paid cash to

receive donation from the organisation. Even assuming that the name of the assessee trust figures in the list of donations given by the organisation, that by itself would not establish the allegation that the assessee was engaged in money laundering activities. The CIT(E) has used the expression 'money laundering' without noting the serious implications which flow from use of such expression. On a perusal of Section 3 of the Prevention of Money Laundering Act, 2002 assuming that such activity was being done by a person, it is rather doubtful to bring it under the definition of "money laundering". Apart from that, the CIT(E) in paragraph 6.1 of the order dated 17th March, 2016 mentioned that the Treasurer and Secretary of the organisation were permitted to be cross-examined but the assessee trust did not avail the opportunity but merely filed their declaration on 13th January, 2016. The correctness of this finding was considered by the Tribunal and on going through the order-sheet maintained by the CIT(E) it was found that such finding was factually incorrect. Furthermore, the Treasurer and Secretary of the organisation were never presented for cross-examination and the assessee has clearly brought out that none were available in the office of the CIT(E) on 13th January, 2016 and the assessee was directed to come on 14th January, 2016 and it is on the said date the declaration was filed. Therefore, the finding rendered by the CIT(E) in paragraph 6.1 is false. The CIT(E) in its order has relied upon two letters

alleged to have been written by the Secretary of the said organisation and would state that there is certain imputation against the assessee. The tribunal found that copies of those two letters were not furnished to the assessee and the Secretary of the organisation was not made available for cross-examination. When the revenue was confronted with these facts, the learned department-representative submitted before the Tribunal that the case should be remanded to the CIT(E) for fresh consideration. This aspect was also taken note of by the Tribunal and after noting the decision of the Hon'ble Supreme Court in the case of *Kishinchand Chellaram -vs- Commissioner of Income-Tax, Bombay City-II* reported in (1980)125 ITR 713(SC) and the decision in the case of *Andaman Timber Industries -vs- Commissioner of Central Excise, Kolkata-II* reported in (2015) 62 taxmann.com 3(SC) rejected such a prayer made on behalf of the revenue. That apart, the tribunal upon re-examination of the facts found that there is nothing incriminating as against the assessee and except for a statement recorded at the time of survey from the Treasurer of the organisation in which also there is no specific allegation against the assessee, could not have been the basis for cancellation of the registration enjoyed by the assessee ever since 1991. Further, the tribunal also faulted the CIT(E) by mentioning that the question as to whose money was being laundered and by whom has not been spelt out by the CIT(E) in its order. Above all, we find

that the CIT(E) has not doubted the genuineness of the activities of the trust nor there is any allegation that the activities are not in accordance with the objects of the trust. Unless and until such finding is rendered, cancellation of registration by invoking the power under Section 12AA(3) of the Act cannot be made. Thus, if the alleged two letters which were referred to by the CIT(E) and not furnished to the assessee are eschewed, there is nothing on record to indicate that the assessee's activities were amounting to money laundering. This conclusion is duly supported by the decision of the Hon'ble Supreme Court in *Andaman Timber Industries (supra)* before us.

The learned senior standing counsel for the revenue submitted that the matter may be remanded to the CIT(E) for fresh consideration. We are not inclined to do so for more than one reason. Firstly, the documents which were the basis of the finding of the CIT(E) were not furnished to the assessee/trust. Secondly, the persons from whom statements were recorded, namely, the treasurer and secretary of the said organisation, were not presented for cross-examination. Therefore, the revenue cannot be heard to say that they should be given one more opportunity to rectify the defects. This procedure is unknown to law. The learned senior standing counsel placed reliance on the decision of the Hon'ble Supreme Court in *Tin Box Company Vs. Commissioner of Income-Tax* reported in (2001) 249 ITR 216. The case involved in the

said decision was challenge to an order of assessment on the ground that the assessee was not provided with fair and reasonable opportunity of furnishing an explanation with regard to the alleged discrepancy and, therefore, the additions made by the assessing officer were not justified. The argument of the revenue was that the assessee could have placed evidence before the first appellate authority or before the tribunal. This submission was rejected by the Hon'ble Supreme Court as an opportunity before the appellate tribunal cannot be a substitute to that of an opportunity before the original adjudicating authority. The learned senior standing counsel also placed reliance on the decision in the case of *Income Tax Officer Vs. M. Pirai Choody* reported in (2011) 334 ITR 262(SC). In the said case the order of assessment was set aside on the ground that no opportunity to cross-examine was granted as sought by the assessee.

Considering the facts of the case, the Hon'ble Supreme Court held that the High Court should have directed the assessing officer to grant an opportunity to the assessee to cross-examine the concerned witness. The said decision is clearly distinguishable on facts as the case of the assessee before us is that the documents which were the basis for concluding that the registration granted in favour of the assessee should be cancelled were not furnished to the assessee. Therefore, the CIT(E) having committed a fundamental error cannot be granted for one more

opportunity. Therefore, the tribunal was right in rejecting the prayer for remanding the proceedings and we are also of the view that the question of granting a further opportunity to the CIT(E) on the facts of the case on hand does not arise. Thus, for all the above reasons, we find no grounds to interfere with the order passed by the tribunal.

In the result, the appeal stands dismissed and, consequently, the substantial questions of law are answered against the revenue.

With the dismissal of this appeal, the stay application also stands closed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)