

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

ITA/111/2019

COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA
VS
HARNARAYAN RAJDULARI DEVI TAPARIA CHARITABLE TRUST

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 1st July, 2024.

Appearance:
Ms. Smita Das De, Advocate
... for the appellant.

1. Heard Ms. Smita Das De, learned senior standing counsel for the appellant/Income Tax Department. None appears for the respondent.
2. This appeal was admitted by this Court by order dated 20.08.20196 on the following substantial question of law:-

*“Whether on facts and in the circumstances of the case, there were fit grounds for cancellation of registration of the assessee under **Section 12AA of the Income Tax Act, 1961** and the order of the tribunal was perverse in setting aside such cancellation of registration made by the authorities below ?*

Facts :

3. Briefly stated, facts of the present case are that the respondent is a trust which came into existence on 29.04.2016. The trust filed an application in Form-10A on 17.11.2016 for grant of registration under Section 12AA of the Income Tax Act, 1961 (hereinafter referred to as ‘the

Act, 1961') and also submitted an application of even date for granting registration under Section 80G of the Act, 1961. The Commissioner of Income Tax (Exemption) examined the application of the respondent for grant of registration under Section 12A(1) of the Act, 1961 and rejected it by the order dated 01.05.2017 on the ground that the respondent trust is yet to start charitable activities as defined in Section 2(ii) of the Act, 1961. Consequently, the application for registration under Section 80G of the Act, 1961 was also rejected by a separate order dated 11.07.2018. Aggrieved with the aforesaid orders, the respondent preferred two separate appeals being ITA Nos.1366 & 1367/Kol/2017 before the Income Tax Appellate Tribunal, "A" Bench, Kolkata. The ITAT allowed the appeal by the impugned order dated 11.07.2018. Aggrieved with the aforesaid order of the ITAT, the revenue has filed present appeal which was admitted on the afore-noted substantial question of law.

Submission :

4. Learned Counsel for the appellant submits that the order passed by the CIT(E) was correct and the Tribunal has committed a manifest error of law to interfere with it. No other submission has been advanced before us by learned counsel for the appellant.

Discussion & Findings :

5. We have carefully considered the submission of the learned Counsel for the appellant and perused the paper book.

6. Before we proceed to examine the impugned order and the submission of learned counsel for the appellant, it would be appropriate to reproduce Section 12A(1) of the Act as under:

12AA. Procedure for registration.-(1) The [***] [Principal Commissioner or Commissioner), on receipt of an application for registration of a institution made under clause (a) for clause (aa) (or clause (ab)] trust or of sub-section (1)) of section 12A, shall-

[(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,-

- (i) the genuineness of activities of the trust or institution; and
- (ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects,
and may also make such inquiries as he may deem necessary in this behalf; and]

- (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities [as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause], he-

- (i) shall pass an order in writing registering the trust or institution;
- (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,
and a copy of such order shall be sent to the applicant:

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.”

7. The CIT(E) while refusing to grant registration under Section 12A of the Act, 1961 has neither doubted nor recorded his dis-satisfaction with regard to the objects of the trust. In other words, the CIT(E) has neither held nor doubted the objects of the respondent trust to be not charitable. Thus, there is no dispute that the objects of the respondent trust is charitable as defined in Section 2(15) of the Act, 1961.
8. The only ground on which the CIT(E) rejected the application of the respondent trust for registration under Section 12AA of the Act, 1961 is that the trust has not yet started its activities. The ITAT has set aside the order of the CIT(E) holding as under:

“4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the issue before us is as to whether it is essential for a trust to commence charitable activity before it can be considered eligible for registration u/s. 12AA of the Act We note that the objects of the assessee trust are relief of the poor, education, medical relief and advancement of objects of general public utility, to establish support, maintain and/or grant aid or other assistance financial or otherwise to schools, colleges, vidyapiths, libraries, read rooms, lecture halls and other establishments and institutions for the advancement of education and diffusion of knowledge in art, humanities, science, commerce, industry. agriculture and any

other objects of similar nature pertaining to education, grant scholarship, stipends, prizes, rewards allowance or other financial assistance etc., to establish support and/or maintain hostels, boarding houses etc. From the reading of the objectives of the Trust, it is clear that these are charitable objects and are supported by other ancillary objects to which a detailed reference is not necessary.

5. Time and again we have been reiterating that at the time when the assessee applies for registration u/s. 12AA of the Act, the Ld. CIT(E)'s jurisdiction is only to verify the objects of the Institution/Trust and look into the genuineness of the activities, meaning thereby that he has to satisfy himself that the objects are charitable in nature and the activities being carried on or to be carried on are genuine, meaning thereby that they are in consonance for achieving the charitable object and nothing else. The Ld. CIT(E) while discharging his duty for grant of registration u/s. 12AA of the Act has to restrict himself in the field which we have stated above. **We note that where a Trust is set up to achieve its objectives for establishing educational institution and is in the process of establishing such Institutions, the registration us. 12AA of the Act cannot be refused on the ground that the Trust has not yet commenced the charitable activity.** Any enquiry of this nature would amount to putting the cart before the horse. As stated above, when the application for registration under section 12AA of the Act is considered by the Ld. Commissioner only the genuineness of the objectives has to be tested and not the activities which have not commenced. The enquiry of the Commissioner of Income-tax as such is at a preliminary stage should be restricted to genuineness of the objectives and not the

activities unless the activities have commenced. Since the assessee Trust came into existence vide Deed of Trust dated 29.04.2016 and the Trust had applied for registration on 17.11.2016 it is at the initial stage only. It has to be noted that the Trust cannot claim exemption unless it is registered u/s. 12AA of the Act and **thus at that initial stage the test of genuineness of the activities cannot be a ground on which the registration can be refused and for that we rely on the decision of the Hon'ble Allahabad High Court in the case of Hardayal Charitable & Educational Trust Vs. CIT-2, Agra (2013) 32 Taxman.com 341 (All).** Therefore, the action of the Ld. CIT(E) cannot be countenanced for the reasons stated above and, therefore, we are inclined to set aside the order of the Lit CIT(E) for both the appeals and remand the matter back to the file of the Ld. CIT(E) and direct him to pass a fresh order on the assessee's application for registration u/s: 12AA and approval u/s. 80G of the Act keeping in view the law governing the subject and pass a speaking order after hearing the assessee trust.

6. In the result, **both the appeals of assessee are allowed for statistical purposes.**"

9. In **Director of Income Tax vs. Ophthalmic and Optometry Research Education Centre** reported in 2013 ITR (355) 361 the Delhi High Court considered substantial question of law "whether the Income Tax Appellate Tribunal was right in holding that while examining the application under Section 12AA(1)(b) read with Section 12A of the Income Tax Act, 1961, the concerned Commissioner/Director is not required to examine the question

whether the Trust has actually commenced and has, in fact, carried on charitable activities ?” and answered this question in favour of the assessee and against the revenue. Similar view was also taken by the Allahabad High Court in **M/s. Hardayal Charitable and Educational Trust vs. CIT, Agra** reported in [2013] 32 taxmann.com 341 (Allahabad) .

10. In **M/s. Ananda Social and Educational Trust vs. The Commissioner of Income Tax & Anr.** reported in **AIR 2020 SC 1189 : 2020 (17) SCC 254**, the Hon’ble Supreme Court considered similar issue and held as under:

8. No activities had been undertaken by the respondent Trust before the application was made. The Commissioner rejected the application on the sole ground that since no activities have been undertaken by the trust, it was not possible to register it, presumably because it was not possible to be satisfied about whether the activities of the trust are genuine. The Income Tax Appellate Tribunal, Delhi (for short, the Tribunal') reversed the orders of the Commissioner. The Revenue Department approached the High Court by way of filing an appeal. The High Court upheld the order of the Tribunal and came to the conclusion **that in case of a newly registered trust even though there was no activities, it was possible to consider whether the trust can be registered under section 12AA of the Act. This judgment is assailed before us.**

9. Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and

genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

10. It was argued before us that the Commissioner is required to be satisfied about two things firstly that the objects of the trust and secondly, its activities are genuine. If there have been no activities undertaken by the trust then the Commissioner cannot assess whether such activities are genuine and therefore, the Commissioner is bound to refuse the registration of such a trust. **We have given our anxious consideration to the above submissions made by Ms. Aishwarya Bhati, learned Senior Counsel appearing for the appellant - Director of Income Tax and find that it is not possible to agree with the same.** The purpose of section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. **In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.**

11. Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to

consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.

14. Apparently, a contrary view has been taken by the Kerala High Court in the case of Self Employers Service Society vs. Commissioner of Income Tax (2001) Vol.247 ITR 18. That view however does not commend itself. However, the facts in Self Employers Service Society (Supra) suggest that the Commissioner of Income Tax had observed that the applicant for registration as a Trust had undertaken activities which were contrary to the objects of the Trust.”

11. The aforesaid judgment in the case of M/s. Ananda Social and Educational Trust (*supra*) and the judgement of Delhi High Court in the case of Director of Income Tax vs. Foundation of Ophthalmic and Optometry Research Education Centre (*supra*) have been affirmed by the Hon’ble Supreme Court by judgment and order dated 01.09.2022 in Civil Appeal No.5103 of 2012 (**Director of Income Tax**

(Exemption), Bangalore Etc. Vs. Meenakshi Amma Endowment Trust Etc.) holding as under:

“Delay condoned.

*In view of the judgment of this Court in '**Ananda Social And Educational Trust v. Commissioner of Income Tax and Another**', [(2020) 17 SCC 254], which judgment has approved the view taken by the Delhi High Court in 'Director of Income Tax v. Foundation of Ophthalmic & Optometry Research Education Centre' [(2013) 355 ITR 361], the question of law raised in these matters has to be **answered against the Revenue and in favour of the assessee.***

***Accordingly, the appeals and the special leave "petitions are dismissed.** However, dismissal of these cases would not bar the Assessing Officer from cancelling the registration in case he finds that the 'charitable activity' was not undertaken, set up or established by the assessee.*

Pending application(s), if any, shall stand disposed of.”

12. Thus, from bare reading of the provisions of sub-Section (1) of Section 12A it is evident that on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-Section (1) OF Section 12A, the Principal Commissioner or Commissioner of Income Tax shall – call for such document or information from the trust or institution as it thinks necessary **in order to satisfy himself about** the genuineness of activities of the trust or institution; and the compliance of such requirement of any other law for the time being in force by the trust or institution as are material for the purposes of achieving its object and may also make

such enquiries as he may deem necessary in this behalf; and **after satisfying himself about the objects of the trust or institution and genuineness of its activities** as required under sub-Clause (i) of clause (a) and compliance of the requirement of sub-clause (ii) of clause (a), he shall pass an order in writing registering the trust or institution or if he is not satisfied then pass an order in writing refusing to register the trust or institution. Thus in matters where the trust recently came into existence and application for registration under Section 12AA(1) of the Act, 1961 is filed by the trust before the Principal Commissioner or Commissioner of Income Tax, then at that stage the Principal Commissioner or Commissioner of Income Tax has to satisfy himself that the objects and activities of such trust or institution are genuine and that its activities are in furtherance of the objects of the trust. Therefore, at the very initial stage i.e. immediately after the trust or institution came into existence and applies for registration under Section 12A of the Act, 1961, the Commissioner is required to satisfy himself that the objects of the Trust are genuine. If the trust or institution has started its activities then he shall also satisfy himself that the activities of such trust or institution are in furtherance of the objects of the trust. The application for registration under Section 12AA of the Act cannot be refused by the Principal Commissioner or Commissioner of Income Tax solely on the ground that such trust or institution has not yet started its activities.

13. For all the reasons afore-stated, we do not find any merit in this appeal. The impugned order of the ITAT does not suffer from any infirmity. Therefore, the appeal (ITA/111/2019) of the revenue is **dismissed**. The substantial question of law is answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(AJAY KUMAR GUPTA, J.)

As.