

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

ITA/32/2019
CIT (EXEMPTION) KOLKATA
VS
M/S GOBIND RAM GOEL CHARITABLE TRUST

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 25th June 2024.

Appearance:

Mr. Prithu Dudheria, Advocate
... for appellant.

Mr. S. M. Surana, Advocate
... for respondent.

1. Heard Sri Prithu Dudheria, learned junior standing counsel for the appellant and Sri S. M. Surana, learned senior counsel for the respondent assessee.
2. Briefly stated, facts of the present case are that the respondent assessee is a Trust registered under Section 12AA of the Income Tax Act, 1961 [hereinafter referred to as 'the Act, 1961'] and donations given to it are exempt under Section 80G with effect from 01.04.2012. The assessee Trust was established on 10.08.2007 and is predominantly engaged in the activities of medical relief and upliftment of poors. The assessee Trust was registered under Section 12AA of the Act, 1961 vide order

dated 05.05.2008 and was granted exemption under Section 80G vide proceedings dated 05.07.2013.

3. The assessee has been filing regularly its return of income within due date under Section 139(1) of the Act, 1961 claiming exemptions under Section 11 of the Act, 1961. A survey of the premises of a donor namely 'School of Human Genetics and Population Health' [for short, 'SHGPH'] under Section 133A was conducted on 27.01.2015. During the survey operations, statement of Smt. Moumita Raghavan, Treasurer of SHGPH, was recorded. As per statement, she accepted donations and returned the same after retaining commission. As per list produced by her, donation of Rs.1,12,00,000/- during assessment year 2013-14 was given by SHGPH to the respondent assessee. As an offshoot of the aforesaid survey in the premises of SHGPH, a survey under Section 133A of the Act, 1961 was conducted in the premises of the respondent assessee on 11.09.2015 and statement of Managing Trustee namely Sri Anand Agarwal was recorded by the survey team. The survey team questioned the aforesaid Anand Agarwal on abnormal increase in the receipts of corpus donation and in reply, the aforesaid Anand Agarwal stated that the unaccounted profit earned by different concerns of his group was pumped in, in the form of corpus donation. However, after three days, on 14.09.2015, in response to summons issued under Section 131 dated 11.09.2015, the aforesaid Anand Agarwal retracted his statement and stated that it was procured under huge pressure and

even he was not aware of the documents and papers impounded and the contents of the deposition recorded under Section 131 of the Act in his name. He asked for copies of impounded documents and the statements recorded by the survey team.

4. Briefly on these facts, a show-cause notice was issued by the CIT (E) to the respondent assessee requiring him to show cause as to why registration under Section 12A/12AA of the Act may not be cancelled by invoking provisions of Section 12AA(3). The respondent assessee replied to the notice. However, the CIT (E) cancelled the registration of the respondent assessee on the ground that the respondent assessee has not received corpus donation of Rs.1,12,00,000/-. The CIT (E) has not disputed the application of the fund by the respondent assessee towards charitable objects of the Trust. The sum of Rs.1,12,00,000/- received by the assessee as donation towards corpus from SHGPH was treated as general donation received by the Trust and accordingly an application was filed by the respondent assessee before the Settlement Commission under Section 245C of the Act. Thus, the aforesaid sum of Rs.1,12,00,000/- received as donation from SHGPH was treated as general donation. The tax was accordingly paid by the respondent Trust.
5. Aggrieved with the order of the CIT (E) cancelling the registration of the respondent assessee under Section 12AA(3) of the Act, 1961, the respondent assessee filed an appeal being ITA Nos.728 & 729/Kol/2016

[Gobind Ram Goel Charitable Trust v. CIT (Exemptions), Kolkata], which was allowed by the Income Tax Appellate Tribunal “A” Bench, Kolkata by order dated 18.08.2017. Aggrieved with the order of the ITAT, the Revenue has filed the present appeal.

6. In the impugned order, the ITAT has recorded the following findings:-

“6.3 We find that the registration granted to a trust u/s 12A of the Act could be cancelled only after fulfilling the conditions stipulated u/s 12AA(3) of the Act viz (a) if the Commissioner is satisfied that the activities of the trust/institution are not genuine, and (b) the activities are not being carried out in accordance with the objects of the trust/institution. We find that there is neither an allegation by the ld CIT(E) in the impugned order nor facts exist which can justify coming to a satisfaction regarding the existence of both the aforesaid conditions.

6.4 We have perused the statement of Smt. Moumita Raghavan and that of Smt. Samadrita Mukherjee Sardar, Treasurer and Secretary of SHGPH. The gist of the statement of the Secretary and Treasurer was that nine brokers whose names have been given in Answer No.11 by Smt. Samadrita Mukherjee Sardar, used to give donations to SHGPH, in the form of cheque/RTGS and simultaneously used to ask for return cheques in the name of certain companies/organizations. The SHGPH would receive a commission of 7 to 8% of the donation amount. It is not in dispute before us that none of the nine brokers referred to in the statement have been examined by the revenue authorities. There is nothing incriminating so far as the assessee is concerned with regard to the gifts given by SHGPH in favour of the assessee. Based on the statements of Treasurer and Secretary of SHGPH it cannot be concluded that the assessee had paid cash to the Treasurer and Secretary of SHGPH and got back

donation in the form of cheques after paying the commission due to SHGPH. In fact in the instant case, the managing trustee of the assessee trust had deposed that the unaccounted income was generated by the business concerns belonging to trustees of assessee trust and that monies have been used to obtain donations for the assessee trust by cheques. It is clear from the perusal of the order of the ld CIT(E) that except the statement recorded at the time of survey and letters given in the course of proceedings for cancellation of registration granted u/s 12A of the Act of SHGPH, there is no other material against the assessee to come to a conclusion that the assessee has indulged in receiving any bogus donations.

6.5 Now let us come to the name of the assessee figuring in the list of donations given by SHGPH as submitted by them in an application filed before the Hon'ble Settlement Commission u/s 245C of the Act. This apparently throws doubts about the genuineness of donation received by the assessee from SHGPH. As far as the assessee is concerned, all general donations received by it during the financial year relevant to asst year have been duly accounted for and spent for charitable purposes. The money representing the donation from SHGPH cannot be said to be money of the assessee. The case of the revenue also is that the money representing the donation is not that of assessee. In fact in the instant case, the business concerns belonging to trustees of the assessee trust had derived unaccounted income to the tune of Rs.10.01 crores and the same had found its way as donations to the assessee trust. There is no case made out for assessee trust paying cash to SHGPH and in turn bringing back the same by cheque/RTGS as donations from SHGPH. The charge of the revenue is that money representing the value of donation has been laundered. The question as to whose money was laundered and by whom is not spelt out in the impugned

order. There is no material brought on record to come to a conclusion that the assessee was part of the scheme of money laundering and that the donation received by the assessee from SHGPH was also part of such scheme of money laundering. The assessee is a charitable trust and receives donations from donors and has utilized the donations for charitable purpose. In the given facts and circumstances, it cannot be concluded that the assessee is not carrying out its objects or that the assessee's activities are not genuine. Apart from this, the grounds for cancellation for registration u/s 12AA(3) of the Act is that the activities of the trust should not be genuine or the activities of the trust are not being carried out in accordance with the objects of the trust. There is neither an allegation in the impugned order nor finding that any of the aforesaid conditions exist in the case of the assessee. There is absolutely no case made out by the revenue that the monies belonging to the assessee trust had been laundered by the trustees of the trust for their personal benefit. Rather it is the other way round wherein their personal monies had come into the coffers of the trust as donations. This would not make the donations received by the assessee trust as bogus. We therefore are of the view that the cancellation of the registration granted to the assessee u/s 12A of the Act cannot be sustained and the impugned order passed u/s 12AA(3) of the Act is hereby quashed. Accordingly the grounds raised by the assessee are allowed.”

7. We have carefully considered the submissions of learned counsel for the parties and perused the paper book.
8. We find that the sum of Rs.1,12,00,000/- received by the respondent assessee was initially claimed as donation towards corpus. But, subsequently, it was admitted by the respondent assessee to be general

donation. The Revenue has not disputed that the amount so received by the respondent assessee was general donation which was subjected to tax as per order of the Settlement Commission under Section 245C of the Act, 1961. Therefore, it is undisputed that the sum of Rs.1,12,00,000/- was received by the assessee from SHGPH as general donation which was subjected to income tax as per scheme of the Act, 1961.

9. We have carefully perused the order of the CIT (E) and we find that the CIT (E) has not recorded any finding disbelieving the application of fund by the respondent assessee towards the object of the Trust. Details of application of fund and receipts of donations were well furnished by the respondent assessee, which have been reproduced by the ITAT in the impugned order. Thus, application of fund by the respondent assessee towards object of the Trust, out of the donations received, is undisputed. The Tribunal has recorded specific finding of fact in this regard. Even, SHGPH has not named the respondent assessee but it was in the list furnished by SHGPH that the name of the respondent assessee figured showing donation of Rs.1,12,00,000/-. The alleged brokers were not examined by the Revenue so as to disbelieve the donations received by the respondent assessee. Instead, the donations received by the respondent assessee were treated as general donations and accordingly it was subjected to tax under the Act, 1961 in the hands of the respondent assessee. The findings recorded by the ITAT in

the impugned order and more particularly the findings aforequoted; are findings of fact based on consideration of relevant evidences on record. Therefore, we do not find any illegality or perversity in the impugned order of the ITAT.

10. For all the reasons aforestated, the substantial questions of law as framed by this Court by order dated 18.02.2019 are answered in favour of the assessee and against the Revenue. Since no ground for cancellation of registration of the respondent assessee under Section 12AA(3) of the Act, 1961 has been made out by the Revenue, therefore, the appeal is **dismissed**.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar