

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.702/Bang/2014

Sri Vidyaranya Seva Sangha,
RS No.25/1, Near Mishrikoti cross,
Kadanakoppa, Karwar Road,
Uganakeri-581 198.
Tq.Kalkhatgi
PAN: AAAJS 4355 C

... Appellant

Vs.

Commissioner of Income-tax,
Hubli.

... Respondent

Appellant by : Shri G.Venkatesh, Advocate.
Respondent by : Shri Sanjay Kumar, CIT(DR).

Date of hearing : 09/05/2016
Date of pronouncement : 25/05/2016

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee-trust directed against the order of the Commissioner of Income-tax, Hubli, passed u/s 12AA(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] dated 25/03/2014.

2. The assessee-trust raised the following grounds of appeal:

1. The Order of the learned Commissioner of Income-tax, Bangalore - I, Bangalore passed under section 12AA(3) of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.
2. The order of cancellation under section 12AA(3) is not in accordance with law and requires to be set-aside on the facts and circumstances of the case.

3. Grounds on Cancellation of registration of a trust registered under Section 12 A of the Act:

- a. The learned CIT erred in not appreciating that cancellation of registration granted 12A has to always be prospectively and consequently the order passed is bad in law and requires to be cancelled.
- b. The learned CIT was not justified in cancelling the registration with effect from 01/04/2004 on account of the Show Cause Notice dated 06/03/20 14 and consequently the order is bad in law.
- c. Without further prejudice, the Show Cause Notice does not indicate that it is proposed to be retrospectively withdrawn and consequently passing a order on an issue when no express show cause notice has been given is contrary to law and is liable to be cancelled.
- d. The learned commissioner of Income Tax erred in law in applying the provisions of section 12 AA(3) in respect of a Trust which has been granted registration under section

12 A of the Act for period prior to 1/6/2010 when no such power was vested in the authority to cancel registration and further the power can be exercised only prospectively and not for prior period on the facts of the case_

4. Grounds on applicability of 12 AA(3) of the Act:

- a. Without prejudice the learned CIT failed to appreciate that the section 12 AA(3) itself was inserted w.e.f. 01/10/2004 and cancelling the registration with retrospective effect from 01/04/2004 amounts to providing unintended retrospective effect of the provision which is not in accordance with the legislative intention on the facts and circumstances of the case.
- b. The learned CIT erred in law as unintended retrospective effect cannot be given unless the statute itself expressly provides for such a situation and thus by giving unintended retrospective effect to the cancellation, the order is rendered void-ab-initio on the facts and circumstances of the case.

5. Grounds on merits of the matter:

- a. The learned CIT failed to appreciate that the twin conditions essential for the purpose of cancellation the registration arc not satisfied in the Appellant's case and consequently passed a perverse order on the facts and circumstances of the case.
- b. The learned CIT has not given any finding on the issue of activities are not genuine nor has the trust not being carried in accordance with the objects of the trust. In the absence

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of these two conditions precedent the CIT was precluded from exercising his powers under 12AA(3) of the Act on the facts and circumstances of the case.

- c. The learned CIT erred in holding that the Appellant is not carrying on the activity of running educational institution is being run on the facts and circumstances of the case.
- d. Without prejudice the learned CIT failed to appreciate that if there is a lull in the activities of the Trust for various reasons the remedy is not to cancel the registration of the Trust that to with retrospective effect on the facts of the case.

6. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

7. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of Justice and equity

3. Briefly, facts of the case are that the assessee is a society registered under the Karnataka Societies Registration Act, 1960 on 17/04/1984. The society was registered under the provisions of sec.12A of the Act on 08/06/1991 vide Registration No.718/121/90/CIT-II. The assessee-society was also granted recognition under the provisions of section 80G of the Act. It was stated that the society was formed for the purpose of carrying out charitable activities. Pursuant to this object, assessee has constructed a school building and old-age home etc. However, the school building was given on lease to Akshya Trust, which is

also a society registered u/s 12A of the Act for license fee of Rs.5000/- p.m. for a period of 30 years. Subsequently, the land was acquired by the Government of Karnataka for which a compensation of Rs.15,04,16,823/- was paid to the assessee-society on 23/12/2010. While fact stood thus, the CIT, Hubli initiated proceedings u/s 12A(3) to cancel registration granted u/s 12A and show cause notice was served upon the assessee-society vide letter dated 6/3/2014 for the following reasons:

- i. The society was formed only for the benefit of Brahmin community which violates the provisions of sub-sec.(3) of sec.13 of the Act.
- ii. The society is not carrying on any activities towards objects of the trust.
- iii. There was no element of charity running old-age home as the society was collecting deposits from inmates.

In response to above show-cause notice, assessee-society has submitted that though the society was formed by Brahmin, benefits are extended to public at large. It was further submitted that the assessee had commenced activities towards objects of the society by conducting Vydhika Sibira during the financial year 2000-01 and it was further submitted that the assessee-society was not running old-age home during the above period. School is being run jointly along with Akshya Trust. The CIT, after considering the submissions held that the activity of the assessee-society was not genuine since no activities have been

carried on for long time and therefore, cancelled the registration granted u/s 12A w.e.f. 01/04/2004 vide impugned order.

4. Being aggrieved, assessee-society is before us in the present appeal.

4.1 Learned counsel for the assessee submitted that the assessee-society has been carrying on the object for which the society was set up. The assessee-society also carried on the activity of education by giving building on lease to Akshya Trust which is running jointly. Learned counsel for the assessee submitted that it cannot be held that the assessee-society is not carrying on any charitable activity. Finally, he submitted that the CIT is not justified in withdrawing registration u/s 12A with retrospective effect from 1/4/2004 as the power of withdrawal of registration granted u/s 12A was available only w.e.f. 1/6/2010.

4.2 On the other hand, learned Departmental Representative relied on the orders of the CIT.

5. We heard rival submissions and perused material on record. The issue involved in the present appeal is about legality of the order passed by the CIT under the provisions of sub-sec.(3) of 12AA of the Act. The provisions of sub-sec.(3) of sec.12AA of the Act empower the CIT to cancel registration

granted under clause (b) of sub-sec.(1) of sec.12A of the Act, where the CIT is satisfied that the activities of the trust or institution are not genuine and are not carried out in accordance with objects of the trust/institution. Therefore, conditions to be satisfied by the CIT before invoking provisions of sub-sec.(3) of sec.12AA are that the objects of the trust are not genuine or not being carried on in accordance with objects of the trust. The Hon'ble High Court of Karnataka, in the case of *Director of Income-tax (Exemption) vs. Venkatesha Education Society* (2012) 48(I) ITCL 27(Kar)(HC) held that where trust not carried out the activities for which the trust was set up, it can be said that the condition of genuineness of the activities is not satisfied. In the present case, assessee-society not carried out any activity since 2001. The fact that school building was given on lease to another society for the purpose of running school does not amount to carrying on the activities of trust. It is neither the case of the assessee-society that leasing of building is one of the activities for which the society was set up. It is also undisputed fact that assessee-society has not been filing returns of income regularly except for assessment year 2011-12 in which there was a claim for exemption for capital gains arising on acquisition of land by the Government of Karnataka. All these go to show that the assessee has been dormant and no activities were pursued. Therefore, we are of the considered opinion that the CIT was justified in invoking provisions of sub-section (3) of sec.12AA of

the Act to cancel registration granted u/s 12A of the Act. However, we note that power of cancellation of registration obtained u/s 12A cannot be incorporated by way of amendment introduced by the Finance Act, 2010 w.e.f. 01/06/2010. Therefore, w.e.f. 01/06/2010, power vests with the CIT even to cancel registration granted under any clauses of sub-sec.(1) of sec.12A. Now, the issue is whether the CIT is empowered even w.e.f. 01/06/2010 to withdraw registration of trust earlier registered under the provisions of sec.12A of the Act with retrospective effect. It may be noted that w.e.f. 01/04/1997 a new provision i.e. a new section i.e. 12AA was enacted by the Parliament governing the procedure for registration of trust or institution. Even under this new section, in the beginning there was no provision for cancellation of registration once granted till the enactment of sub-sec.(3) w.e.f. 01/10/2004. This power of cancellation was confined only to trusts registered under the provisions of new section i.e. 12AA of the Act. However, subsequently by the amendment introduced by the Finance Act, 2010 w.e.f. 01/06/2010, power to cancel registration registered under sec.12A was conferred. This demonstrates the intention of the Parliament that the CIT is empowered to cancel registration with retrospect effect subject to condition specified in sub-sec.(3) of sec.12AA of the Act. If this is not the intention of the Parliament there was no need to specifically provide that the CIT is empowered to cancel registration once granted u/s 12A of the

Act. If, we are to accept the contention of the appellant society that under the provisions of sub-section (3) of section 12AA, CIT has no power to cancel the registration of the trust once granted u/s 12A with retrospective effect, the amendment which was carried out by Finance Act, 2010 to the provisions of sub-section (3) of section 12AA empowering the CIT to cancel registration u/s. 12A becomes redundant or *otiose*, because the original provisions of section 12A governing the registration had ceased to operate after insertion of provisions of section 12AA w.e.f. 1.4.1997. Had the intention of the Parliament been not to confer the power of withdrawal of registration with retrospective effect, there was no need of amendment by Finance Act, 2010. Therefore, the purpose of the amendment is to confer on the Commissioner under sub-section (3) of section 12AA the power of withdrawing the registration once granted u/s. 12A or 12AA with retrospective effect. When interpreting a provision in a taxing statute, a construction, which would preserve the purpose of the provision, must be adopted. As observed in *State of Tamil Nadu v. M.K. Kandaswami [(1975) 36 STC 191, 198 (SC)]*, in interpreting a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it *otiose* or sterile. In that view of the matter, the court should not adopt a construction which would

upset or even impair the purpose in introducing a particular provision in the *statute* [*Calcutta Jute Manufacturing Co. v. CTO, (1997) 106 STC 433, 439 (SC)*]. Therefore, we hold that the CIT is very much empowered to cancel registration of the trust once registered u/s 12A of the Act with retrospective effect. The Hon'ble Bombay High Court in the case of *Sinhagad Technical Education Society vs. CIT (2012)(343 ITR 23)(Bom)*, while upholding the provisions of sub-sec.(3) of sec.12AA of the Act, held as follows:

"In the present case, by and as a result of the amendment by the Finance Act of 2010, the Commissioner has been empowered to initiate steps for the cancellation of the registration of a trust or institution where the activities of the trust/institution are not genuine or are not being carried out in accordance with the objects thereof even in relation to a trust which was registered under section 12A as it then stood. Such an amendment cannot be regarded as taking away a vested right retrospectively. Alternately, even if it is construed to be retrospective, it cannot be held to be violative of article 14."

Thus, as held by the Hon'ble Bombay High Court, it cannot be said that interpreting provisions of sub-sec.(3) of sec.12AA in such a way that the power to cancel registration with retrospective effect, does not amount to taking away a vested right. Therefore, it is not the case of the assessee-trust that the conditions specified in sub-sec.(3) of sec.12AA were not present in the present case even from 01/04/2004 till date of the impugned order. As held by us in the foregoing paragraph, the

appellant trust has not been carrying on any activity during that period. The assessee had been afforded an opportunity of proving that the objects of the trust are genuine. The appellant could not lead any evidence on record to establish that the appellant trust has been carrying on the objects for which it was set up. Therefore, the argument that there was no opportunity cannot be accepted.

6. In the result, appeal filed by the assessee trust is dismissed.

Order pronounced in the open court on 25th May,2016

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bangalore
D a t e d : 25/05/2016
srinivasulu, sps/ DS

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore