

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

Before: **Shri P. M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

I.T.A No.767/Kol/2017
(Assessment Year: 2012-13)

Govardhan Foundation
[PAN: AAATG 2360 F]

Appellant

Vs

CIT(Exemptions), Kolkata

Respondent

For the Appellant : Shri D.S. Damle, FCA
For the Respondent : Shri Anand R. Baiwar, CIT - DR

Date of hearing : 31.08.2017
Date of pronouncement : 29.11.2017

ORDER

Shri S.S. Viswanethra Ravi, JM:

This appeal by the assessee against the order dated 28.02.2017 passed by the Commissioner of Income Tax (Exemptions), Kolkata wherein he cancelled registration granted u/s 12AA of the Income Tax Act for short the **Act** hereinafter.

2. During the course of proceedings u/s 12AA(3) of the Act, the Respondent herein found from the records that the assessee paid Rs.1.5 crores & Rs.0.85 crores to Modern Indian School *for short MIS hereinafter*, Chobhar, Kathmandu, Nepal on 01.12.2011 & 04.03.2015 respectively and was of the opinion that the assessee applied its funds outside India contrary to the provisions of sec. 11(1)(a) of the Act and u/s 11(1)(c) of the Act for not obtaining prior approval from the CBDT by general or special order for application of funds outside India.

3. In response to the said objections, the Assessee filed submissions dt:25-04-2016 by stating that the assessee was registered u/s 12A of the Act and there is no prohibition for donation to **MIS** is an educational institution in Nepal in terms of Clause 4(A) of the Trust Deed. Further, it was contended that Shri R.S. Saraf who is the President of Managing Committee of **MIS** is not the beneficiary and he is not entitled for any profit from **MIS**. The section 11 of the Act shall not apply, if any part of income or any property of the Trust is applied directly or indirectly for the benefit of any concern in which Trustee is not entitled to less than 25% of the profit of such concern and pleaded no violation section 13(1) of the Act. The assessee also filed **1.copies of Trust Deed, Certificate u/s 12A and 80G of Chatral Jiwandan Trust, 2.donation received and paid in Chatral Jiwandan Trust, 3.balance sheet and income & expenditure of Chatral Jiwandan Trust, 4.balance sheet and income & expenditure account of assessee and 5. Memorandum / trust deed of MIS.**

4. The Respondent, considering the above, found the submission of the Assessee was not tenable. The Respondent observed that the benefit of exemption u/s 11(1)(a) of the Act could be claimed only when the donation is made within India and no prior approval was obtained by the assessee u/s 11(1)(c) of the Act to pay donation outside India and opined that the Assessee indulged in bogus activities and for violation of provisions u/sec's 11(1)(a) and 11(1)(c) of the Act issued a show cause notice dated 31.10.2016 to the assessee seeking explanation why the registration granted u/s 12A of the Act should not be cancelled for indulging in fake activities.

5. According to the Respondent, the Assessee did not comply and filed no written submissions in response to the show cause notice dated 31.10.2016 and held that the activities of the Assessee are not genuine and are not being carried out in accordance with the

objectives of the Trust and cancelled the registration granted u/s 12A of the Act vide his order dt:28-02-2017.

6. Aggrieved, the assessee is before us. The Id. AR submits that Clause-4 of the Trust Deed dated 17.08.1995 does not debar assessee to apply its funds for charitable purpose outside India as its objective was to give good quality education to the said Indian educational institution which was formed to give high quality education both traditional and innovative means and supporting the same placed on record trust deed dt:17-08-1995 and magazines **MIS** for years 2012, 2013, 2014 and 2015. The Id. AR placed reliance on the decision of Hon'ble High Court of Madras in the case of *M/s Tamil Nadu Cricket Association Vs. DCIT(Exemptions)* & others reported in 360 ITR 633 (Mad) and argued that the Respondent has no power to cancel the registration. The Respondent has empowered only to examine whether the assessee conducting its activities for charitable purposes in accordance with the objects or the activities of the assessee were genuine or not. The Id. AR submits that the Respondent is wrong and his jurisdiction in cancelling the registration granted u/s 12A without making any reference to the conditions as contemplated sub-section 3 of section 12AA of the Act that its charitable purposes not within objects and the activities are ingenuine. The Id. AR prayed to allow this appeal with a direction to CIT(E) to grant registration u/s 12A of the Act.

7. The Id. DR submits that the CIT(E) examined the facts and circumstances in accordance with provisions contained in sec's. 11(1)(a) and section 11(1)(c) of the Act and found the assessee applied its funds outside India without taking any approval from CBDT in general or special order. The facts of indulging in fake activities were established from the records violating the statutory provisions and also beyond the objectives of the trust deed. The Id. DR submits that the CIT(E) rightly cancelled the registration as the

assessee failed to give any reply in response to the show cause notice 31.10.2016. The Id. DR vehemently opposed the relief sought by the assessee before this Tribunal and prayed to dismiss the appeal and relied on the order of CIT(E).

8. Heard both and perused the materials available on record including the trust deed dt:17-08-1995 and magazines for years 2012, 2013, 2014 and 2015. It is observed from the record that the assessee applied its funds outside India where the said recipient institution was not registered in India u/s 12A of the Act. The contention of the Id. CIT(E) was that u/s 11(1)(a) & 11(1)(c) explains the applications of charity should be within India and if at all the application of charity is to be applied outside India, there must be an approval from CBDT by general or special order. It is observed from the submissions made by the assessee through a letter dated 25.04.2016 contending that there is no bar in the trust deed of the assessee to donate funds outside India and Shri R.S. Saraf, the President of managing committee of **MIS**, is not the beneficiary and is not entitled to profit in **MIS** situated in Nepal. It was contended that section 11 does not apply in a situation if the trustee is entitled not less than 25% of profit of the said concern *i.e.* **MIS** of Nepal.

9. Therefore, a question arises before us, whether the said action of Assessee donating the funds out of India violating provisions of Income tax Act constitutes a case for Respondent for cancellation of registration granted u/s 12A of the Act.

10. The Id. AR placed reliance in the decision of Hon'ble High Court of Madras in the case of *Tamilnadu Cricket Association* supra reported in 360 ITR 633 (Mad) to say that the income donated is a transactions to be considered in terms of claim u/s 11 of the Act whether it is to be included in the total income of the recipient and whether the trust would be entitled to claim of its actions violating

provisions of the Act in consonance within the clause 4A of the deed and non applicability section 11 of the Act, the entire matters to be considered at the time of assessment, but not in the hands of Respondent under subsection 3 of 12AA of the Act.

11. We shall examine the facts of the case involved in the case of Tamilnadu Cricket Association supra as relied on by the Id. AR. The facts therein are that the Tamilnadu Cricket Association the assessee therein is a member of Board of Cricket Control of India *for short BCCI hereafter* which is a member of International Cricket Council. The said BCCI holds test matches and one day international matches with visiting foreign teams and allots to various member cricket associations which organizes matches in the stadiums of state cricket associations. The State Cricket Association incurs expenditure for the conduct of such matches and is entitled to all in-stadia sponsorships, advertisements, beverage revenues. The BCCI earns revenues by way of sponsorships and media rights as well as franchise revenues for the Indian Premier Leagues *for short IPL hereafter*. The said BCCI distributes 70% of the revenues to member cricket associations, thereby, the assessee therein the Tamilnadu Cricket Association received revenue from BCCI. The CIT(E) opined that dominant activities are in the nature of trade, commerce and business and by invoking section 12AA of the Act read with section 2(15) of the Act and held the said receipt in the hands of Tamilnadu Cricket Association involved a commercial trading activity, accordingly, registration was cancelled u/s 12AA(3) of the Act. The jurisdictional Tribunal upheld the cancellation order of the CIT(E). The Hon'ble High Court of Madras held that these considerations are not germane in considering the question as to whether the activities are genuine or carried on in accordance with the objects and it is for the AO to take note of all facts, while considering the same u/s 11 of the Act and disapproved the finding of the Tribunal in confirming the action of CIT(E) in cancelling the registration u/s 12AA(3) of the Act.

12. In the present case that the Respondent has found that the assessee has paid donations for charity outside India contrary to the provisions of Section's 11(1)(a) and 11(1)(c) of the Act. In our opinion, this may become point for consideration for disallowance during the course of assessment proceedings and it is the duty of AO to take note of all facts, while considering the same u/s 11 of the Act and thus, the ratio enunciated by the Hon'ble High Court of Madras is applicable to the issue on hand. In our opinion, the Respondent having exercising powers u/s 12AA of the Act has to satisfy that the activities of such trust or institution are genuine or not being carried out in accordance with the objects of the trust or institution and the Respondent is empowered to examine all the details of the trust or institution which has got registration u/s 12A in terms of exercising its power under sub-Section 3 of Section 12AA of the Act. We find no adverse remark made by the Respondent regarding the activities of the assessee are not in accordance with the objects and its activities are not genuine. Therefore, in our opinion, exercising jurisdiction under sub-Section 3 of Section 12AA of the Act in cancelling the registration by the Respondent is not maintainable and thus, it is set aside. Ground no's 1 to 4 raised by assessee in this regard succeeds and are allowed.

13. In the result, the appeal of the assessee is allowed

Order pronounced in the open court on 29.11.2017.

Sd/-
P. M. Jagtap
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 29.11.2017
Place : Kolkata
RS(SPS)

Copy of the order forwarded to:

1. Appellant –Govardhan Foundation, 15, India Exchange Place, 1st Floor, Kolkata – 1.
2. Respondent – CIT(Exemptions), 10B, Middleton row, 6th Floor, Kolkata – 71.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

//True Copy//

By order,

Sr.PS/H.O.O
ITAT, Kolkata