

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

Sl.No.	ITA No. & Asst. Year	Appellant	Respondent
1.	600/Bang/2014 2009-10	Dy. Commissioner of Income Tax, Circle 17(1), Bangalore.	Bangalore Development Authority, T.Chowdaiah Road, Kumara Park West, Bangalore-560020
2.	606/Bang/2014 2009-10	Bangalore Development Authority, Kumara Park West, Bangalore-560020	Addl. Director of Income Tax (Exemptions), Range-17, Bangalore.
3.	742/Bang/2014 2009-10	Bangalore Development Authority, Kumara Park West, Bangalore-560020	Addl. Director of Income Tax (Exemptions), Range-17, Bangalore.
4.	936/Bang/2015 2009-10	Addl. Director of Income Tax (Exemptions), Range-17, Bangalore.	Bangalore Development Authority, Kumara Park West, Bangalore-560020
5.	937/Bang/2015 2011-12	Addl. Director of Income Tax (Exemptions), Range-17, Bangalore.	Bangalore Development Authority, Kumara Park West, Bangalore-560020
6.	938/Bang/2015 2011-12	Bangalore Development Authority, Kumara Park West, Bangalore-560020	Addl. Director of Income Tax (Exemptions), Range-17, Bangalore.

Assessee By:	Shri S. Annamalai, Advocate.
Revenue By:	Shri Anurag Srivastava, CIT (D.R)

Date of Hearing :	02.12.2019
Date of Pronouncement :	17. 01.2020

ORDER**PER BENCH :**

These are the cross appeals filed by the assessee and revenue against different orders of CIT(Appeals) for the Assessment Year 2009-10 and 2011-12. ITA No.606/Bang/2014 is assessee's appeal, and ITA no 600/Bang/2014 is revenue's appeal filed against the order of CIT(Appeals) - 5, Bangalore dt.25.5.2014. ITA No.742/Bang/2015 Assessee appeal and ITA no 936/B/2015 Revenue appeal is filled against the Order Giving Effect order of CIT(Appeals)-5, Bangalore dt.28.5.2014. ITA no 938/B/2015 Assessee Appeal and ITA no 937/B/2015 Revenue Appeal filed against order of CIT(Appeals) order dt.13-03-2015. Since the issues are common in all these appeals, they are clubbed and heard together and consolidated order is passed. For the sake of convenience, we shall take up the assessee's appeal in ITA 606/Bang/2014 Asst Year 2009-2010 and Facts narrated therein. The assessee has raised the following grounds of appeal :

1. The order of the learned Commissioner of Income-tax (Appeals) in so far as it is against the appellant is opposed to law, facts, equity and circumstances of the case.
2. The appellant denies itself liable to be assessed to tax on any amount over and above the declared income of Rs.NIL by it in the return of income on the facts and circumstances of the case and consequently the appellant denies itself liable to be assessed to tax on an amount of Rs.132,59,11,000/- being the excess of income over expenditure as part of taxable income on the facts and circumstances of the case

3. The learned Commissioner of Income-Tax (Appeals) is not justified in law in concluding the appellate proceedings inspite of specific request by the Appellant to keep the appellate proceedings in abeyance till disposal of Appellant's appeal on 12A cancellation, pending for adjudication before the Hon'ble Tribunal on the facts and circumstances of the case.

4. **Grounds regarding Jurisdiction :**

- a. The learned Additional Director of Income Tax is not competent to assume jurisdiction vide the Notification No. 262/2011 and consequently the order is bad in law and requires to be quashed in toto for want of jurisdiction.
- b. The authorities below are not justified in holding that there is valid jurisdiction when the authorities have not complied with notifications by passing orders in pursuant to such delegated power. Without prejudice the delegated power from the Board to the Director does not empower the Director exemption to grant jurisdiction to the Additional Director as per para (b) of the notification cited by the learned CIT(A) and hence on this count also the assumption of jurisdiction is bad in law.
- c. The learned Commissioner of Income-Tax (Appeals) was not justified in not holding that the Assessing Officer who passed the assessment had no jurisdiction as once the registration u/s 12A is cancelled, the jurisdiction will vest with the regular circle and not the Trust circle on the facts and circumstance of the case.

- d. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the order passed by the present assessing officer is void ab initio and without jurisdiction as once the exemption under section 12AA has been withdrawn by the Director of Income-tax (Exemptions) the file ought to have been transferred to the officer having jurisdiction and the assessing officer who has passed the order ceases to have jurisdiction and hence the impugned order is bad in law and liable to be cancelled.

5. Ground on applicability of proviso to Section 2(15) and related grounds.

- (a) The authorities below are not justified in holding that the proviso to section 2(15) of the Act is applicable to the appellant on the facts and circumstance of the case.
- (b) The authorities below are not justified in not considering that the appellant falls within several limbs of charity as defined in section 2(15) of the Act and hence ought not to have applied the proviso to the facts of the appellants case.
- (c) The learned Commissioner of Income-tax (Appeals) is not justified in law in not deleting the excess of income over expenditure a sum of Rs.132,59,11,000/- treated as taxable income by the learned Assessing Officer by invoking the proviso to section 2(15) of the Act on the facts and circumstances of the case.

- (d) The learned Commissioner of Income Tax (Appeals) is not justified in law in denying the exemption as a charitable institution for the reason that appellant is carrying on business. The inference drawn for holding that the appellants are doing business are purely arbitrary and purely on suspicion and surmise devoid of factual foundation.
- (e) The learned Commissioner of Income Tax (Appeals) ought not to have denied exemptions for charitable purpose as the Appellant do not fall under second proviso to section 2(15) of the Act.
- (f) The learned Commissioner of Income Tax (Appeals) ought to have taken into account the speech of the Finance Minister which indicate the object and drift of the amendment in as much as that genuine Charitable Trusts are not hit by the proviso to section 2(15) of the Act.
- (g) Without prejudice the authorities below ought to have granted exemption in respect of the other limbs of charity by applying the principles of apportionment and ought to have granted proportionate relief in respect of the other limbs of charity being relief to the poor etc. on the facts and circumstance of the case.
- (h) Without prejudice, the learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant fall under first to fifth limb of the definition of charitable purpose on the facts and circumstances of the case.

6. Ground on the entire income not hit by the proviso to Section 2(15) of the Act:

- i. Without prejudice the authorities below failed to appreciate that the intention of the legislature is not to deny the entire income of the Appellant on the ground that some of the activities may attract the proviso to section 2(15) of the Act and consequently the denial of the exemption for the entire income is unsustainable in law on the facts and circumstance of the case.
- ii. Without prejudice the learned Commissioner of Income-tax (Appeals) is not justified in law in holding a sum of Rs.159,95,56,000/- being interest income as covered by the proviso to section 2(15) of the Act after holding that the same is liable to be assessed under the head income from other sources. The learned Commissioner of Income-tax (Appeals) failed to appreciate any non business income is not hit by the proviso to section 2(15) of the Act and consequently ought to have granted exemption available for a charitable trust in accordance with law under the scheme of the Income-tax Act on the facts and circumstances of the case.
- iii. Without prejudice the learned Commissioner of Income-tax (Appeals) is not justified in law in holding a sum of Rs.10,03,21,000/- being rental income as covered by the proviso to section 2(15) of the Act after holding that the same is liable to be assessed under the head income from house property on the facts and circumstances of the case.

7. The learned Commissioner of Income-Tax (Appeals) was not justified in not cancelling or annulling the entire assessment as void ab initio after having held that assessment in the status of AOP(Trust) is not correct and the appellant is to be assessed as Artificial juridical person on the facts and circumstances of the case.

8. Grounds of statutory collections as income :

a) The learned Commissioner of Income Tax (Appeals) failed to appreciate that the order of the learned assessing officer is bad in law as the entire functions of the Bangalore Development Authority is that of a State and the question of taxing a State does not arise in law on the facts and circumstances of the case

b) Without prejudice the learned Commissioner of Income-tax (Appeals) is not justified in law in holding a sum of Rs.4439.63 lakhs being income from property taxes, building licence fee, betterment charges, development charges, supervision charges and road cutting charges as business income and covered by the proviso to section 2(15) of the Act on the facts and circumstances of the case.

c) The learned authorities below ought to have held that the amount of Rs 4439.63 lakhs is not even income under the scheme of the Income tax Act and thus ought not to have assessed the same on the facts and circumstances of the case.

9. Other Grounds :

- a) The learned Commissioner of Income Tax (Appeals) is not justified in dismissing the claim of the Appellant on the ground that the Appellant is a **service provider of public transport** is totally contrary to the facts of the case and indicates non-application of mind on the facts and circumstances of the case and consequently passed a perverse order.
- b) The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that as per section 40 and 41 of the BDA act the receipts and income gets diverted by over riding title in favour of the Government and hence the question of taxing any part of the same under the Income Tax Act does not arise in the hands of the appellant on the facts and circumstances of the case.
- 10.** Without prejudice, the learned Commissioner of Income-Tax (Appeals) was not justified in observing that the Appellant was not entitled for depreciation on the assets, whose cost has been claimed towards the application of income in the earlier years on the facts and circumstances of the case and contrary to the finding that the appellant is entitled for claiming depreciation on WDV of assets as on 01.04.2008 on the facts and circumstances of the case.
- 11.** Without prejudice the learned Commissioner of Income Tax (Appeals) after having held that the appellant is in business ought to have allowed the full amount of development expenses of Rs 80.44 crores incurred during this year as allowable revenue expenses on the facts and circumstances of the case.

12. Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax/Director General of Income Tax under the provisions of the Act, the Appellant denies itself liable to be charged to interest under section 234B of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under section 234B is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.
13. The appellant prays leave to add, alter, modify or amend and delete any of the above grounds of appeal.
14. For the above and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed and relief may be granted as prayed for the advancement of substantial cause of justice.

2. The assessee is a statutory body named as Bangalore Development Authority (BDA) and is constituted by Govt. of Karnataka. Registration was granted under Section 12AA from 1.4.2003 and was constituted by legislature with the consent of Governor in the year 1976. In the impugned Assessment Year 2009-10, the assessee filed Return of Income on 25.09.2009 within time allowed under Section 139(1) of the Act. As per the financial statements, the assessee has disclosed surplus of Rs.135.54 Crores after set off of the prior period expenses of Rs.2.75 Crores and the net surplus being Rs.132.59 Crores. The Return of Income was processed under Section 143(1) of the Act on 29.09.2010. Subsequently, the case was selected for scrutiny and Notice under Section 143(2) and 142(1) of the Act

along with questionnaire were issued. In compliance, the learned Authorised Representative of the assessee appeared along with the Chief Accounts Officer from time to time and furnished the details. Whereas the Assessing Officer on considering the financial results found that surplus is Rs.135.54 Crores after claiming Expenses, out of the total Receipts of Rs.376.46 Crores , the net profit percentage works out to 35.95% and the AO also referred to the earlier years profit, and the assessee has made net profit is more than builder engaged in similar kind of business and systematic profit earned with a range from 20 to 30%. The Assessing Officer considering the profits earned in the systematic commercial activity being Sale of sites, Apartments and Auctions, relied on the decision of Hon'ble Jharkhand High Court in the case of CIT Vs. Queen's Educational Society 177 taxman 326 and observed that where systematic profits are earned, the purpose may not be held as charitable and exemption under Section 11 of the Act is not permitted and dealt on provisions of Section 2(15) of the Act and observed the assessee activities will not come under any other limb of charitable purpose as defined in Section 2(15) of the Act. The major source of income of BDA is from sale of sites through auction and the Assessing Officer is of the opinion that all the activities are commercial activities. Therefore the other objects of general public activity shall not be charitable purpose if it involves in any carrying on activity in trade, commerce and business or any activity of rendering any services in relation to any trade, commerce or business for a cess or fees or any other consideration.

The Assessing Officer is of the view that, the assessee is hit by the proviso and its activities cannot be called as charitable and Registration does not automatically exempt income of the Institution in view of the amendment from 1.4.2009. Further Show Cause Notice dt.15.3.2011 was issued, as the assessee is engaged in trading, and commercial activity and turnover from the activities was more than Rs.10 lakhs. Whereas the DIT (Exemptions) has cancelled Registration under Section 12A of the Act vide order dt.8.11.2011 from Asst. Year 2009-10 and therefore the Assessing Officer is of the opinion that the taxable income of the assessee shall be under the normal provisions in the status of Association of Persons (AOP) and all provisions under Section 28 to 43 of the Act are applicable. The Assessing Officer dealt on provisions of Section 2(15) of the Act on the definition of a charitable purpose and CBDT Circular No.1912/2008 and observed that the assessee is actively involved in commercial activities with profit element and no charitable purpose is involved and relied on the judicial decisions and finally concluded that BDA is not a charitable organization under Section 2(15) of the Act and DIT (Exemptions) has cancelled the Registration under Section 12A of the Act dt.8.11.2011, therefore the claim of the assessee that the objectives are wholly charitable could not be accepted and surplus is taxable and along with other additions Assessed total income of Rs.191,59,13,950 and passed the order under Section 143(3) of the Act dt.22.11.2011. Aggrieved by the order, the assessee has filed an appeal with the CIT (Appeals). In the appellate proceedings, the CIT

(Appeals) considered the grounds of appeal, submissions and further the learned Authorized Representative of the assessee made a request to keep the appeal in abeyance till 31.12.2013 and in view of cancellation of Registration under Section 12AA by DIT (Exemptions) due to the amend mend to Section 2(15) of the Act. Further letter was filed on 1.11.2014 mentioned that the appeal order of cancellation under Section 12AA(3) is challenged before the Hon'ble Tribunal in ITA No.12/Bang/2012 and was posted for hearing on 31.12.2011 and Hence Requested to keep the appeal in abeyance till the disposal of appeal by the Tribunal. For the Asst. Year 2009-10, the CIT (Appeals) found that Assessee relied on the decision of Karnataka Housing Board in ITA No.1095/Bang/2011 dt.31.01.2013 holding that the Registration already granted under Section 12AA cannot be revoked. But the Revenue has filed an appeal before the Hon'ble High Court against the order of the Tribunal in the case of Karnataka Housing Board (supra) which was admitted and granted stay on.14.8.2013. Hence the CIT (Appeals) is of the opinion that the Tribunal decision on the order of cancellation under Section 12AA(3) of IT Act is pending Hearing, should not be any obstacle to Adjudicate the disputed issues. In the present case the exemption under Section 11 of the Act was denied by the Assessing Officer. The CIT (Appeals) dealt on the Submissions, Remand report and Assessee s comments on the remand report at page 23 of the order.

3. On the issue of granting of exemption under Section 11 of the Act, the CIT (Appeals) dealt elaborately on the facts, financial statements, Guidelines and cancellation of Registration under Section 12AA of the Act and is of the opinion that the assessee activities are hit by proviso to Section 2(15) of the Act, amended from 1.4.2009. Hence the assessee is not eligible for exemption under Section 11 of the Act and confirmed the action of the Assessing Officer on this disputed issue and granted relief in other grounds of appeal and partly allowed the appeal vide order dt.25.2.2014. Aggrieved by the CIT (Appeals) order, the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT (Appeals) has erred in denying the exemption under Section 11 of the Act to the assessee irrespective of the fact that the activities are charitable in nature and supported his stand with the judicial and co-ordinate Bench decisions. Further submitted that the Assessee was granted Registration under Section 12AA of the Act by the Tribunal in ITA No.12/Bang/2012 dt.10.04.2015. And in the subsequent assessment years, the Registration was considered by the Revenue authorities and substantiated with voluminous Paper Book and catena of judicial decisions and prayed for allowing the appeal. Contra, the learned Departmental Representative supported the order of the CIT (Appeals).

5. We heard the rival contentions and perused the material on record. We found that the learned Authorized Representative has Restricted his submissions on Granting of Registration under Section 12A of the Act by the tribunal ,on setting aside the cancellation order of DIT (Exemptions). The contention of the Id. AR that the Registration under Section 12AA of the IT Act is operative and the exemption under Section 11 cannot be denied by the Assessing Officer. Further, these facts were brought to the Knowledge of the CIT(Appeals), on the pendency of appeal before the Tribunal against the cancellation order of 12AA of the Act. We found that the assessee has made a request before the appellate authority on the issue that the appeal was filed against the cancellation order under Section 12AA(3) of the Act by the DIT (Exemptions) Dt.8.11.2011 at page 2 paras 2 & 2.2 of order of CIT(Appeals). Whereas the CIT (Appeals) has proceeded on the grounds of appeal irrespective of Registration or cancellation under Section 12AA(3) of the Act. We also found that the assessee has made a request for keeping the appeal in abeyance till the order of the Tribunal pronounced. But for various reasons and limitations and as per Department guidelines, the CIT(Appeals) has passed the order on 18.02.2014. we found that the co-ordinate Bench of the Tribunal set-aside order of cancellation of Registration under Section 12AA of the Act. we consider it proper to refer to the findings and observations in assessee case in ITA No.12/Bang/2012 dt.10.04.2015 at pages 3 to 9 paras 4 & 5 which is read as under :

“ 4. We have perused the order of the Id.DIT(E). It is not disputed that the assessee has substantial other receipts about Rs.25,563/- lakhs and also income from sale and auction of houses/sites. It is also not disputed that the BDA is an authority set up by the State Government with primary object of designing the layouts and securing the development of Bangalore metropolitan area. The Id.DIT(E) had cancelled the registration granted to the assessee on 26/3/2003 for a reason that it was hit by the proviso to sec.2(15) of the Act which came in by virtue of substitution of sec.2(15) of the Act by the Finance Act, 2008 w.e.f.1/4/2009. We find that in the case of Karnataka Industrial Area Development Board (supra) also, the Id.DIT(E) had cancelled the registration granted u/s 12A of the Act for the same reason. The said Board was also having substantial receipts in the nature of sale of application Form, recovery of fines and penalties, rent receipt, water supply charges, gain on disposal of land, forfeiture of deposit and interest. Their Lordships, on an appeal filed by the Revenue against the order of the Tribunal, wherein it had set aside the cancellation of registration held as under at paras.2 to 9 of its judgment dated 7/11/2014:

“2. The assessee, Karnataka Industrial Area Development Board, (for short hereinafter referred to as ‘KIADB’) was granted registration under Section 12A of the Act vide order dated 20.6.1988 passed by the Commissioner of Income Tax (Exemption). A notice was issued to the assessee under Section 12AA(3) of the Act calling upon to show cause as to why the said registration should not be cancelled on the ground that case falls under first proviso to Section 2(15) of the Act. The assessee appeared, contested the matter. The authorities took note of the fact that the accounts for the year ended 31.3.2009 shows receipts by way of gain on disposal of land to the extent of Rs.18,69,72,000/- and excess of income over expenditure at Rs.155,76,64,004. An extract of the Income and Expenditure account for the financial year 2008-09 is reproduced as under:

INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31.3.2009

<i>EXPENDITURE</i>	<i>Rs.</i>	<i>INCOME</i>	<i>Rs.</i>
<i>To repairs and maintenance</i>	76,18,544	<i>By sale of application forms</i>	1,11,91,886
<i>Administrative expenses</i>	15,42,79,785	<i>Recoveries of fines and penalties</i>	7,01,51,481
<i>Water and electricity charges</i>	10,61,92,021	<i>Interest received</i>	1,31,17,52,356
<i>special and other charges</i>	9,43,78,709	<i>Other receipts</i>	14,16,03,730
<i>Depreciation</i>	63,04,074	<i>Rent received</i>	1,92,90,492
		<i>Forfeiture of deposits</i>	1,12,40,038
		<i>Water supply charges</i>	17,42,26,156
<i>To Excess of income over expenditure</i>	1,55,76,64,004	<i>by gain on disposal of land</i>	18,69,72,000

3. From the aforesaid figures, it is evident that the KIADB charges for every services it renders. Therefore, the authority was of the view, there is no element of charity or providing any services or industrial sites free of cost. After meeting all the expenses, KIADB has earned a net profit of Rs.155,76,64,004/-. Under various heads, KIADB has earned huge profit. Thereafter, taking note of the change in the definition of Section 2(15) of the Act, which came into effect from 1.4.2009, it was held that the activity carried on by the assessee is in the nature of trade, commerce or business or any activity of rendering any services in relation to trade, commerce or business and therefore, the consideration received irrespective of the nature of the use or application, or retention, of the income, from such activity would take the case out of Section 2(15) of the Act and therefore after referring to the various judgments relied on it, proceed to pass an order cancelling the registration granted under Section 12AA with effect from the assessment year 2009-10. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal relying on the judgment in the case of Karnataka Badminton Association in ITA No.1272/Bang/2011 held; the registration already granted under Section 12A cannot be revoked for the reason that the Charitable Trust or Institution pursuing of advancement of objects of general public utility carried on commercial activities and therefore as the conditions stipulated in Section 12AA(3) do not exists in this case, set aside the order of cancellation and registration of assessee under Section 12A of the Act. Aggrieved by the said order, revenue is in appeal.

4. This appeal is admitted to consider the following substantial questions of law:

i). Whether the Tribunal was correct in holding that the assessee is entitled to continue registration under Section 12A of the Act, without appreciating the fact that, in view of the amendment to Section 2(15) of the Act, the activities carried on by the assessee were commercial in nature and therefore cannot be considered as charitable under Section 2(15) of the Income Tax Act?

ii). Whether the Tribunal was correct in holding that Director of Income Tax (Exemption) has not given any finding with regard to genuineness of the activities or the activities not in accordance with the objects of the institutions, without appreciating that clear finding is recorded holding activities of the assessee were not in accordance with the objects and the objects are amended without approval of the department and therefore, provisions of Section 12AA(3) of the Act were applicable and recorded a perverse finding?

5. Learned counsel for the revenue assailing the impugned order contended that the definition of charitable institution has undergone a change with effect from 1.4.2009. The activity carried on by the assessee is in the nature of trade, commerce or business or at any rate activity of rendering any services in relation to any trade, commerce or business and the aggregate value of the receipts from the said activities exceeds Rs.25,00,000/- and therefore, it squarely falls under the first proviso to Section 2(15) of the Act and therefore it ceases to be an institution for charitable purpose. Therefore, rightly the registration under Section 12A of the Act was cancelled which has been erroneously interfered with by the Tribunal.

6. Per contra, learned counsel appearing for the assessee contended, once a person is granted registration under Section 12A of the Act, the said benefit could be denied only if the case falls under Section 12AA(3) of the Act. Admittedly, the assessee's case do not fall under that provision. Even if the activity carried on by the assessee ceases to be a charitable purpose in view of the amendment brought about to the definition of charitable purpose under Section 2(15) of the Act, that is a matter to be considered by the assessing authority to extend the benefit of exemption or not. Therefore he submits that, no case for interference is made out.

7. From the aforesaid facts and rival contentions, it is not in dispute that the assessee was granted registration under Section 12A of the Act. Now the said registration is cancelled by invoking the power conferred under Section 12AA(3) of the Act. Therefore, it is necessary to find out under what circumstances the registration granted earlier could be cancelled. Section 12AA(3) of the Act, reads as under:

Section 12AA(3) [(3)Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution: Provided that no order under this subsection shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]

8. A reading of the aforesaid provision makes it very clear, a registration granted earlier under Section 12A of the Act can be cancelled under two circumstances; (a) If the activities of such trust or institution are not genuine, (b) The activities of trust or institution not being carried out in accordance with the object of the trust or institution. Only on those two conditions being satisfied, the registration granted under Section 12A of the Act could be cancelled by the authorities.

9. It is not in dispute that there is no violation of the said two conditions by the assessee. The activities carried on by the assessee is a genuine one. As could be seen from the profits they have generated, the said profit is earned by carrying on the activities in accordance with the object of the trust. Therefore, the two conditions stipulated in subsection (3) of Section 12AA of the Act, which empowers the authority to cancel registration, do not exist in this case. The registration granted is cancelled in view of the amendment of first proviso to Section 2(15) of the Act. That is not a ground specified in the Statute for cancellation of the registration. In fact, sub-section(8) to Section 13 which is introduced by Financial Act, 2012 which came into effect from 1.4.2009 categorically provides that, nothing contained in Section 11 or Section 12 shall operate so as to exclude any income from the total income of the previous year or any receipt there of. If the provisions of the first proviso to Clause 15 of Section 2 becomes applicable in the case of such person in the said previous year, the Statute has protected the interest of revenue. Notwithstanding the fact that the assessee is conferred registration under Section 12A of the Act, unless the assessee falls within Section 2(15) of the Act, excluding the first proviso, the assessee would not be entitled to the benefit of exemption from the tax. If the case of the assessee falls with first proviso to Section 2(15) of the Act, the benefit of registration which flow from Section 12A of the Act is not available. Anyhow, that is a matter to be considered by the Assessing Authority. But on that ground, registration cannot be cancelled, which is precisely the Tribunal has held. In that view of the matter, we do not see any merit. The substantial questions of law are answered in favour of the assessee and against the revenue.”

We find that the assessee herein stands on a similar footing as Karnataka Industrial Area Development Board (supra). Therefore, the view taken by the Hon’ble jurisdictional High Court in the said case will apply here also. If the assessee falls within the first proviso to section 2(15) of the Act, the benefit of registration which flow from sec.12A of the Act, would not be available to it. However, as noted by their Lordships, this was a matter to be considered by the assessing authority and not a ground for cancellation of registration. We have, therefore, no hesitation to set aside the order of the Id.DIT(E).

5. Appeal of the assessee stands allowed.”

Hence, we are of the considered view, that the above order of the Tribunal was not available to the assessee at the time of Hearing in appellate proceeding. The co-ordinate Bench of Tribunal has set aside the order of DIT (Exemptions) and the and allowed the Assessee Appeal . We are of the opinion that the decision based on the granting of Registration under Section 12A of the Act is crucial and whereas the CIT (Appeals) has confirmed the action of Assessing officer, though Registration u/sec 12A of the Act is pending before the Tribunal. We found the CIT(Appeals) has passed the order on 25.2.2014, But the co-ordinate Bench of Tribunal in ITA No.12/Bang/2012 setting aside the cancellation of Registration under Section 12AA of the Act by DIT (Exemptions) was passed on 10.4.2015. Hence the assessee could not get the order on hand at the time of hearing before the CIT(A). We considering the facts, circumstances, submissions and the decision of the co-ordinate Bench in setting aside the cancellation of Registration under Section 12AA of the Act are of the opinion that the decision making has to be considered afresh based on the Registration u/sec12Aof the Act. . Accordingly, We set-aside the order of CIT(A) and to meet the ends of justice, Restore this issue to the file of CIT(Appeals) to adjudicate afresh considering the Registration under Section 12AA of the Act available to the assessee and pass Reasoned and speaking order. Further the assessee should be provided adequate opportunity of

hearing and shall co-operate for early disposal of the appeal and allow the grounds of appeal of assessee for statistical purposes.

6. The revenue has filed Appeal ITA No.600/Bang/2014. We find the decision in ITA No.606/Bang/2014 is applicable to this appeal . Hence the disputed issues in the Revenue Appeal are also restored to the file of CIT(Appeals) for adjudication afresh and allow grounds of appeal of revenue for statistical purposes.

7. Similarly, the assessee appeal ITA No.742/Bang/2015 and Revenue Appeal ITA No.936/Bang/2015 filed against the order giving effect to the order of CIT(A) order dt.19.03.2015 and We found the CIT(Appeals) has passed the order, when the appeal against cancellation of Registration under Section 12AA of the Act was pending before the co-ordinate Bench of the Tribunal . we have taken a decision in the appeal No.600/Bang/2014 in restoring to the CIT(Appeals) to adjudicate afresh considering the Registration U/sec12A of the act. Since the order giving effect is consequent to the decision of CIT(Appeals) order dt.25.2.2014, we consider it proper and appropriate to restore this appeal also to the file of CIT(Appeals) to adjudicate as directed in ITA No.600/Bang/2014. Since the assessee's appeal is restored to the file of CIT(Appeals), The revenue's appeal No.936/Bang/2015 is also restored to the file of CIT(Appeals) for fresh adjudication and allow the grounds of appeal of assessee and revenue for statistical purposes.

9. Similarly, for the Assessment Year 2011-12 the assessee In ITA no938/Bang/2015 and Revenue In ITA no 937/Bang/2015 have filed appeal against the order of CIT(Appeals) dt.13.03.2015 passed under Section 143(3) and 250 of the Income Tax Act, 1961. Even in this Asst Year, the CIT(Appeals) relied on the earlier order of CIT(Appeals) dt.25.2.2014. we have taken a decision in the appeal No.600/Bang/2014 in restoring to the CIT(Appeals) to adjudicate afresh considering the Registration U/sec12A of the act. we consider it proper and appropriate to restore the assessee appeal ITA no938/Bang/2015 also to the file of CIT(Appeals) to adjudicate as directed in ITA No.600/Bang/2014. Since the assessee's appeal is restored to the file of CIT(Appeals), The revenue's appeal No.937/Bang/2015 is also restored to the file of CIT(Appeals) for fresh adjudication and allow the grounds of appeal of assessee and revenue for statistical purposes.

12. In the result, the assessee's appeals in ITA Nos.606, 742/Bang/2014 and 938/Bang/2015 and Revenue's appeals in ITA Nos.600/Bang/2014 and 936 & 937/Bang/2015 are allowed for statistical purposes.

Order pronounced in the open court on 17th Jan., 2020.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 17.01.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore