

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA No.468/Bang/2021

Assessment year : NA

The Pr. Commissioner of Income-tax (Central), Bengaluru.	Vs.	M/s Devaraj Urs Educational Trust for Backward Classes (Regd), No.1, Tamaka, Kolar-563 103. PAN – AAATS 5344 P
REVENUE		RESPONDENT

Revenue by	:	Shri Srinivas T Bidari, , CIT (DR)
Assessee by	:	Shri Ramasubramanian, C.A

Date of hearing	:	22.11.2021
	:	22.11.2021
Date of Pronouncement	:	

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the Pr.CIT dated 31/3/2021, wherein application for grant of approval u/s 12AA is rejected.

2. The facts of the issue are that

The assessee is a trust established for the purpose of providing education and medical relief. The assessee was registered u/s 12A of Income Tax Act 1916 (Act) by the Commissioner of Income Tax - 1 Karnataka vide Registration No.ACCTS.718/10A/Vo1.B.i/D.113/CIT-1 dated 20.01.1992. It may be stated here that the Commissioner of Income Tax (Exemptions), Bangalore has jurisdiction over trusts claiming exemption u/s 11 of the Act. The assessee had been carrying on charitable activities by running, schools, engineering colleges and medical college. The assessee has been regularly filing the return and for various years the exemption u/s 11 was allowed.

3. A search was carried out in the premises of the assessee u/s 132 of the Act on 6.8.2015. Various documents were seized. Notice u/s 153A of the Act was issued for assessment years 2010-11 to 2015-16. For the assessment year 2016-17, a notice u/s 143(2) of the Act was issued. The assessments were completed u/s 153A of the Act up to assessment year 2015-16 and u/s 143(3) of the Act for the assessment year 2016-17. The assessee filed an appeal against the

assessments before the learned CIT(A)- 11, Bangalore. The appeals were dismissed and the assessee filed further appeal before the Hon'ble Income Tax Appellate Tribunal, Bangalore. The Hon'ble Tribunal vide its order dated 16.8.2021 (ITA No.1463/13/2018) allowed the appeal on merits by holding that the assessee, has not collected any capitation fee from the students, has not violated S.13(1) and is carrying on its activities in accordance with the objects of the trust.

4. When the assessment proceedings were pending, the learned Principal Commissioner of Income Tax (Central), Bangalore passed an order u/s. 12AA(3) of the Act on 23.03.2018 cancelling the registration u/s. 12A of the Act. The assessee filed an appeal before Hon'ble Income-tax Appellate Tribunal, Bangalore which is pending.

5. The assessee filed a fresh application in Form 10A for registration u/s. 12A of the Act on 23.10.2018. The same was rejected by learned Commissioner of Income-tax (Exemption) on

23.04.2019 for not submitting the details and information. On appeal, the Hon'ble Tribunal vide order dated 13.12.2019 remanded the case for considering the application afresh. The learned Commissioner of Income-Tax (Exemption) forwarded the details and documents and above said ITAT order to the office of the learned Pr. Commissioner of Income-Tax (Central), Bangalore on 23.06.2020.

6. The assessee was again subject to search proceedings u/s. 132 of the Act on 10.10.2019. Some documents were seized. Notice u/s 153A of the Act was issued for assessment years 2014-15 to 2019-20. For the assessment year 2020-21, a notice u/s 143(2) of the Act was issued.

7. When the assessment proceedings were pending, the learned Principal Commissioner of Income Tax (Central), Bangalore issued a notice on 03.03.2021 proposing to reject the application for registration u/s. 12A of the Act.

8. After hearing the assessee, the learned Principal Commissioner of Income Tax (Central), Bangalore vide the order dated 31.03.2021 cancelled the registration. The finding of the learned Principal Commissioner in brief is as under:

- “i. Agents have been appointed to identify probable candidates who will pay capitation fees in cash.
- ii. Agents were also appointed to find candidates to enable the assessee to convert the merit seats into management quota seats.
- iii. The capitation fees were received in cash from students and not accounted. The fee collected are not in accordance with the norms laid down by the Fees Fixation Committee.
- iv. The fees collected in cash was routed into the accounts of the trust through dubious means.

v. Based on the above findings, the learned Principal Commissioner rejected the registration u/s 12A of the Act.

9. Now the assessee is in appeal before us by way of following grounds:-

“1. That the order of the learned Principal Commissioner of Income Tax (Central) in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. Jurisdiction

2.1. That the order of the learned Principal Commissioner of Income Tax (Central) is without jurisdiction.

2.2. That the order of the Principal Commissioner of Income Tax (Central) passed u/s 12AA(1) is without jurisdiction as the order rejecting the registration can be passed only by Authority who has granted the registration.

2.3. That the learned Director of Income Tax (Exemptions) has no authority to transfer the application to Principal Commissioner of Income Tax and hence the impugned order is void ab initio.

3. Grounds regarding finding of alleged facts:

3.1. That the finding of the learned Principal Commissioner of Income Tax (Central) in paragraphs 3.2 to 5 are perverse as being not supported by any evidences on records and in fact being contrary to the materials on records.

3.2. That the finding of the learned Principal Commissioner of Income Tax (Central) is violative of principles of natural justice

as the assessee had not been given an opportunity to cross examine some of the parties.

3.3. That the learned Principal Commissioner of Income Tax (Central) erred in law and on facts in relying on the proposals in the notice u/s. 142(1) even though such findings have not become final as the assessment order is yet to be passed.

3.4. In any case, that the learned Principal Commissioner of Income Tax (Central) could not have relied on the proposals in notice u/s 142(1) without conducting enquiry on his own after giving an opportunity to the assessee including right to cross examine various witnesses.”

10. At the time of hearing, it was submitted that the assessee came in appeal before this Tribunal in ITA No.1463/Bang/2018 vide order dated 20/10/2021. The Tribunal disposed of the appeal of the assessee by way of following observations:-

“8. We heard the rival contentions and perused the record. It is the contention of the assessee that the impugned order cancelling the registration granted to the assessee u/s 12A of the Act has been passed by the Ld Principal CIT on the basis of findings noticed by the search officials and also by the AO during the course of assessment proceedings. It is the contention of the Ld. A.R. that all the findings and additions have since been deleted by the Tribunal. Accordingly, it was submitted that the grounds on which the registration was cancelled no longer survive now. Besides, the above, the assessee is also questioning the validity of jurisdiction assumed by the Ld. Principal CIT while cancelling the registration u/s 12AA(3) of the Act and also challenging the validity of cancelling the registration with retrospective effect. On the contrary, it is the contention of the Ld.DR that the

assessment orders passed by the AO were no entirely relied upon by Ld.PCIT.

9. Be that as it may, the fact remain that the Tribunal has now passed orders for AY 2010-11 to 2016-17 against the assessment orders passed for the above said years u/s 153A of the Act. There is no dispute that the Ld PCIT has also referred to the assessment orders passed u/s 153A of the Act. Now there is change in circumstances on account of passing of the orders by the Tribunal. Under these set of facts, we are of the view that the entire issues urged by the assessee before us require re-examination at the end of Ld. Principal CIT, who can take judicial view of the matters after considering the order passed by the Tribunal.

10. Accordingly, we set aside the order passed by Ld. Principal CIT and restore all the issues to his file for examining the claims of the assessee. After affording adequate opportunity to the assessee, Ld.Principal CIT may take appropriate decision in accordance with law on all the issues.”

11. It was submitted that if the above issue is decided in favour of the assessee by Pr.CIT, then this appeal will become infructuous and the issue may be remitted to the Pr.CIT for reconsideration in the event of deciding the issue with restoration of registration in that appeal.

12. We have heard both the parties and perused the materials on record. In our opinion, there is merit in the plea of the assessee and if the registration is restored by the Pr.CIT in consequent to the order of Tribunal in

ITA No.1463/Bang/2018, the issue raised in this appeal will become infructuous, otherwise Pr.CIT is directed to decide the issue raised in this appeal independently without any influence by an earlier order of the Tribunal in ITA No.1463/Bang/2018 cited (Supra), ordered accordingly.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22nd Nov, 2021.

Sd/-

(GEORGE GEORGE K)
Judicial Member

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated, 22nd Nov, 2021
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
.....
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order
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