

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI PROMOD KUMAR (VICE PRESIDENT) AND
MS. SUCHITRA KAMBLE (JUDICIAL MEMBER)**

**ITA No. 2436/MUM/2014
Assessment Year: 2009-10**

Slum Rehabilitation Authority,
SRA Administrative Building,
AnantKanekar Marg, Behind HDIL
Tower, Bandra (E),
Mumbai-400051.

PAN No. AAJS 1094 A

Appellant

Vs. Director of Income Tax (Exemption),
R. No. 616, 6th floor, Piramal
Chambers, Lalbaug,
Mumbai-400012.

Respondent

Assessee by : Mr. Bharat Raichandani, AR
Revenue by : Mr. Harendra N. Singh, CIT-DR

Date of Hearing : 10/01/2022
Date of pronouncement : 05/04/2022

ORDER

PER MS. SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 27.03.2014 passed u/s 12AA(3) of the Income Tax Act, 1961 passed by the Director of Income Tax (Exemption), Mumbai.

2. The grounds raised by the assessee are as under :

1. Cancellation of registration under s.12AA(3)

The learned DIT(E), Mumbai erred on facts and in law in passing the impugned order dated 27th March, 2014, passed under s.12AA(3) of the

Act cancelling registration granted unders.12A.A/12A of the Act. The registration may be restored by annulling the impugned order.

2. Cancellation of registration with retrospective effect

Without prejudice to other Grounds of Appeal, the learned DIT(E); Mumbai, erred in law incancelling registration by order dated 27 March,2014, with affect from 1stApril,2002.*

3. Cancellation of registration based on Proviso to s.2(15)

Without prejudice to other Grounds of Appeal, the learned DIT(E), Mumbai erred incancelling registration granted under .12AA/12A with effect from 1stApril,2002, on theground that Proviso to s.2(15) of the Act applied to the facts, whereas the Proviso wasintroduced with effect from A.Y.2009-10.

3. The Slum Rehabilitation Authority (SRA) was granted registration u./s. 12A on 01.04.2002. The SRA was created by the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 with the preamble to make better provision for the improvement and clearance of slum in the State through redevelopment and from the protection of the occupiers for evacuation and distress warrants. Section 2(15) which defines the words "Charitable Purpose" was amended and the following 2 provisos were brought in by the Finance Act, 2008 w.e.f. 01.04.2009 and the Second proviso by Finance act, 2010 with retrospective effect from 01.04.2009. The financial limit mentioned in the Second Proviso was increased to Rs.25 lakhs by the Finance Act, 2011 w.e.f. 01.04.2012. The Slum Rehabilitation Authority was granted registration under Section 12A on 01.04.2002

3.1 The Director of Income Tax (Exemption) observed that for assessment year 2010-11, it was found that the SRA has received certain interest income against specifically that of interest on loan and interest of Balcony Enclosure Fees and other various interest income. Thus the Assessing Officer observed

that SRA is indulging in activity which is in the nature of trade, commerce or business or any activity rendering any service in relation to trade, commerce or business for Cess or fees or any other consideration, irrespective of nature of use or application or retention of the income from such activity and thus as per the amended proviso u/s 2(15) it is no longer remains charitable in nature. Thus the Director of Income Tax (Exemption) cancelled/withdrawal registration granted u/s 12AA(3) w.e.f. the date on which the registration was granted i.e. 01.04.2009.

4. Being Aggrieved by the order of the Director of Income Tax (Exemption), the assessee is before us. The Ld. AR submitted that the nature and purpose as well as the object of the Slum Rehabilitation Authority had no point of time has changed which has been duly taken note by the Director of Income Tax (Exemption) in para 5. Merely putting the interest income and fees received cannot be the criteria for cancelling the registration with the retrospective effect. The proviso came into effect from assessment year 2009-10 and the registration was granted to the assessee i.e. Slum Rehabilitation Authority w.e.f. 01.04.2009, therefore, the registration may be restored. The Ld. AR relied upon the following case laws:

- a) Kapurthala Improvement Trust vs. CIT 2015-TIOL-945-ITAT-Amritsar
- b) BCCI vs. Pr. CIT (ITA No. 3301/Mum/2019 order dated 02.11.2021 Mum. Tri.)
- c) Karnataka Industrial Area Development Board vs. Add. DIT (E) 2020-TIOL-1892-HC-KAR-IT

d) Karnataka Industrial Area Development Board vs. Add. DIT (E) (ITA No. 378/Bang/2013 order dated 04.09.2015 Bang. Tri.)

e) Mumbai Metropolitan Region Development Authority vs. DIT (E) (ITA No. 625/Mum/2012 order dated 31.12.2013 Mum. Tri.)

f) CIT (E) vs. Mumbai Metropolitan Region Development Authority (ITA No. 2010 of 2017 order dated 24.01.2020 Bombay High Court)

5. The Ld. DR relied upon the order of the Director of Income Tax (Exemption). The Ld. DR further submitted that the assessee is generating huge income by charging premium which is mentioned as premium income which is over and above its regular fees that it is charging. The Ld. DR relied upon the order of the Tribunal in case of Improvement Trust, Bathinda vs. CIT (ITA No. 36/Asr/2012 order dated 18.12.2012)

6. We have heard both the parties and perused all the materials on record. It is pertinent to note that the DIT (E) nowhere in the order dated 27.03.2014 observed that the activities of the Slum Rehabilitation Authority are not genuine or that the activities carried out are not in accordance with its objects. The requirement for rejecting the registration under Section 12AA(3) is that if the trust or institution is carrying out non-genuine activities and the activities beyond the scope of its defined objects. But in the present case, the DIT(E) has not pointed out any such violation of the conditions. The DIT(E) is solely stated that the assessee is generating huge income by charging premium which over and above and the amount is invested in Fixed Deposit and not transmitted to the government body. As per the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation) Act, 1971 more specifically

Section 3M, the Slum Rehabilitation Authority is utilizing and investing its fund as per the guidelines set out in the said Act. The Tribunal in case of Board of Control for Cricket in India vs. Pr. CIT (supra) held as under:

26. What essentially follows is that the remedy to the proviso to Section 2(15) coming into play is not denial of registration under section 12A or 12AA but denial of benefits of exemption under section 11 under section 13(8). That is the reason that along with the insertion of proviso to Section 2(15), effective from the same date, sub section 13(8) was also inserted and these two provisions are thus clearly complementary in nature. It is important to note that the Explanatory Memorandum to the Finance Bill categorically states that “there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of first proviso on account of commercial receipt threshold provided in second proviso in a previous year. Then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year for which such proviso is applicable. Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded”. The application of proviso to Section 2(15) is to be thus done on a year to year basis, while the grant of registration is a one time exercise.”

The Hon'ble Bombay High Court in case of Mumbai Metropolitan Region Development Authority (supra) held as under:

“28. In North Indian Association (supra) this court in similar circumstances observed that there is difference between registration and exemption.

Referring to Section 13(8) of the Act which was introduced by the Finance Act, 2012 with retrospective effect from 1st April, 2009 this court held that where the receipts are hit by the proviso to Section 2(15) of the Act, the benefit of exemption to its income for the relevant previous year would not be available. Thus income would be brought to tax to secure the interest of the revenue but it does not necessarily result in automatic cancellation of registration.”

Thus, in the present case, the Slum Rehabilitation Authority has not changed its objects or deviated from its objects notified before the Revenue Authority at the time of registration under Section 12A of the Act i.e. from 01.04.2002. Therefore, withdrawing the registration with retrospective effect from the date of grant of registration (i.e. 01.04.2002) by the DIT(E) is bad in law and will not sustain in the eyes of law. The decision relied by the Ld. DR will not be applicable in the present case. It is pertinent to note here that where the receipts are coming under the purview of proviso to Section 2(15) of the Act, then the benefit of exemption to the income for the relevant previous year would not be available to the assessee and the Revenue can brought the said income to tax to secure the interest of the Revenue. But so far as the cancellation of registration with retrospective effect is concern, we are setting aside the order of the DIT(E) and allowing the appeal of the assessee.

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

Order pronounced in the open Court on 05/04/2022.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Mumbai;
Dated: 05/04/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai