



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No. 248/CTK/2023
Assessment Year : 2023-24

Maa jagat Janani Seva Trust, At-Nambira, PO: Bamebari, PS: Joda, Dist: Keonjhar	Vs.	CIT (E), Hyderabad
PAN/GIR No.AADTM 1575 H		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, Adv
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 16/07/2024
Date of Pronouncement : 16/07/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the cancellation of registration by an order dated 20.6.2023 of the Id CIT(E), Hyderabad u/s.12AB (4) of the Income tax Act, 1961 for the assessment year 2023-24.

2. Shri P.K.Mishra, Id AR appeared for the assessee and Shri Sanjay Kumar, Id CIT DR appeared for the revenue.

3. It was submitted by Id AR that the assessee trust had been granted registration u/s.12A of the Act on 21.5.2014 w.e.f. 1.4.2013. The assessee trust had filed Form 10A to get re-registration u/s.12A of the Act. Form 10AC was issued granting registration to the assessee trust for the period from A.Y. 2022-23 to A.Y. 2026-27 vide an order dated 5.4.2022. Subsequently, it was the submission that a show cause notice was issued to the assessee on 6.10.2022, wherein, the assessee trust was asked to explain as to why registration should not be cancelled. The assessee had responded to same and further opportunities were also granted to the assessee. Subsequently, a final show cause notice was issued and there was no proper reply on behalf of the assessee. The assessee gives reply on 3.6.2023. Ld CIT (E) by holding that the assessee had not submitted any categorical explanation or reply to the show cause notice of this office, cancelled the registration granted to the assessee u/s.12AA of the Act w.e.f. 1.4.2014. It was the submission that a show cause notice for cancellation of registration had been issued by Id CIT (E) on 6.10.2022 but the cancellation of registration was done w.e.f. 1.4.2014 relevant to assessment year 2015-16. It was the submission that the provisions of section 12AB does not provide for retrospective cancellation of registration u/s.12A of the Act. It was the further submission that the assessee had been granted registration under new regime vide order dated 5.4.2022. Id CIT (E) has cancelled the registration because of assessment order for the assessment

years 2013-14 and 2014-15. It was the submission that this assessment was on account of reopening done on the basis of Investigation report dated 7.2.2020/13.2.2020. It was the submission that when the assessee was granted registration on 5.4.2022, the said investigation report was very much available and the fact that the registration had been granted to the assessee even when the investigation report existed itself showed that the investigation report was a make belief document and it had no sanctity or relevance to the evidence. It was the further submission that in any case, the retrospective cancellation is not permissible in view of the decision of the Co-ordinate Bench of Bangalore Tribunal in the case of Amala Jyothi Vidya Kendra Trust vs Pr. CIT (2024) 206 ITD 601 (Bang).

4. In reply, Id CIT DR vehemently supported the order of Id CIT(E) cancelling registration u/s.12AA of the Act. It was the submission that the assessee has been misusing the funds received under the guise of donation which was evident from the investigation report. It was the submission that the order of Id CIT(E) cancelling the registration is liable to be upheld.

5. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that a show cause notice for the purpose of cancellation of registration u/s.12AA of the Act came to be first issued by Id CIT(E) on 6.10.2022. A perusal of the order cancelling the registration shows that the Id CIT(E) has not given any reason for rejecting various explanation given by the assessee to various show cause notices issued. All

that the Id CIT(E) says that the replies are in relation to observations made by the Assessing officer and has nothing to do with the reasons given for giving show cause notice for cancellation of registration. A perusal of the order of Id CIT(E) clearly shows that the reasons given for the show cause notice are the reasons which are considered by the Assessing Officer in the assessment order for the assessment years 2013-14 & 2014-15. The assessee has also given reply to various issues in the show cause notice. In any case, the show cause notice for cancellation of registration having been issued on 6.10.2022, Id CIT (E) could not have cancelled registration retrospectively w.e.f 1.4.2014 insofar as the provisions of section 12AA/12AB does not provide for the cancellation of registration with retrospective effect. This view of our finds supports from the decision of ITAT Bangalore Bench in the case of Amala Jyothi Vidya Kendra Trust (supra), wherein, from paras 6 to 6.10, the Co-ordinate Bench has held as follows:

"6. We have heard the rival submissions and perused the materials available on record. The main contention of the Id. A.R. is that the Id. PCIT cancelled the registration granted to the assessee w.e.f. the previous year i.e. 2017-18 relevant to assessment year 2018-19 by applying the provisions as stood on 29.12.2023, which cannot be applied for the violations of the provisions of section 12AA or 12AB of the Act. According to the Id. A.R., the Id. PCIT has cancelled the registration granted to the assessee since the Id. PCIT was satisfied that one or more specified violations have taken place. The specified violations are mentioned in explanation to section 12AB(4) of the Act as follows:

Explanation: For the purposes of this sub-section, the following shall mean "specified violation",--

a) Where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or

b) The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

c) The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or

d) The trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

e) Any activity being carried out by the trust or institution—

(i) is not genuine, or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

f) The trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

6.1 The contention of the Id. A.R. is that, these provisions have been inserted by Finance Act, 2022 w.e.f. 1.4.2022 and if there is a violation in previous year 2017-18 relevant to assessment year 2018- 19, these provisions cannot be applied to the assessee's case. For clarity, we will go through the relevant provisions applicable to previous year 2017-18 relevant to assessment year 2018-19 as follows:

"12AA(4) Without prejudice to the provisions of sub-section (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 it is noticed that, the activities of the trust or the institution are being carried out in a manner that the provisions of section 11 and 12 do not apply to exclude either whole or any part of the income of such

trust or institution due to operation of sub-section (1) of section 13, then the Pr. Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institutions.

Provided, that the registration shall not be cancelled under this subsection if the trust or institution proves that, there was reasonable cause for the activity to be carried out in the said manner."

6.2 This section has been amended by Finance Act, 2022 w.e.f. 1.4.2022 as follows:

12AB(4): Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of subsection (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,--

- a) The Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year;
- b) The Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or
- c) Such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year;

The Principal Commissioner or Commissioner shall—

- i. call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;
- ii. pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;
- iii. pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;
- iv. forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation: For the purposes of this sub-section, the following shall mean "specified violation",-

- a) Where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or
- b) The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or
- c) The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or
- d) The trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or
- e) Any activity being carried out by the trust or institution—
 - (i) is not genuine, or
 - (ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or
- f) The trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

6.3 As per section 12AB(4) of the Act as applicable to assessment year 2017-18, the Id. PCIT if he is satisfied that activities of the Trust or institution are not genuine or 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 after affording reasonable opportunity of being heard. As per section 12AB(5) of the Act, when trust or institution complied wholly or in part of the income of such trust or institution in violation of section 13(1) of the Act or if they complied with any other law, for the time being in force by the trust or institution as are material for the purpose of achieving its objectives as mentioned in section 12AB(1)(b)(ii)(B) of the Act. However, in the present case, the Id. PCIT invoked the provisions of section 12AB(4)(a)(ii) of the Act as stood in the assessment year 2022-23. The objection of the Id. A.R. is that for the cancellation of registration for the assessment year 2021-22, he could not invoke the provisions of section 12AB(4)(ii) of the Act which is introduced by Finance Act, 2022 w.e.f. 1.4.2022 and applicable for the assessment year 2022-23 onwards.

6.4 In the case of Isthmian Steamship Lines reported in 20 ITR 572 (SC) wherein the Hon'ble Supreme Court held that "it is a cardinal principle of the tax law that law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication".

6.5 In the case of Karimtharuvi Tea Estate Ltd. Vs. State of Kerala reported in 51 ITR 129 (SC) the same view was taken by the Hon'ble Supreme Court.

6.6 Further, the Hon'ble Supreme Court in the case of Shree Chowdhary Transport Company Vs. ITO reported in 426 ITR 289 (SC) wherein held as under:

17.4 It needs hardly any detailed discussion that in income-tax matters, the law to be applied is that in force in the assessment year in question, unless stated otherwise by express intendment or by necessary of implication. As per section 4 of the Act of 1961, the charge of incometax is with reference to any assessment year, at such rate or rates as provided in any central enactment for the purpose, in respect of the total income of the previous year of any person. The expression "previous year" is defined in section 3 of the Act to mean "the financial year immediately preceding the assessment year"; and the expression "assessment year" is defined in clause (9) of section 2 of the Act to mean "the period of twelve months commencing on the 1st day of April every year".

17.5 In the case of CIT v. Isthmian Steamship Lines (1951) 20 ITR 572 (SC), a 3-judge Bench of this court exposted on the fundamental principle that "in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied." This decision and various other decisions were considered by the Constitution Bench of this court in the case of Karimtharuvi Tea Estate Ltd. v. State of Kerala (1966) 60 ITR 262 (SC) and the principle were laid down in the following terms (at pages 264-266 of 60 ITR):

"Now, it is well-settled that the Income-tax, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.....

The High Court has, however, relied upon a decision of this court in CIT v. Isthmian Steamship Lines, where it was held as follows: `

It will be observed that we are here concerned with two datum lines: (1) the 1st of April, 1940, when the Act came into force, and (2) the 1st of April, 1939, which is the date mentioned in the amended proviso. The first question to be answered is whether these dates are to apply to the accounting year or the year of assessment. They must be held to apply to the assessment year, because in income-tax matters the law to be applied

is the law in force in the assessment year unless otherwise stated or implied. The first datum line therefore, affected only the assessment year of 1940-41, because the amendment did not come into force till the 1st of April, 1940. That means that the old law applied to every assessment year up to and including the assessment year 1939-40.'

This decision is authority for the proposition that though the subject of the charge is the income of the previous year, the law to be applied is that in force in the assessment year, unless otherwise stated or implied. The facts of the said decision are different and distinguishable and the High Court was clearly in error in applying that decision to the facts of the present case."

(emphasis supplied)

17.6 We need not multiply on the case law on the subject as the principles aforesaid remain settled and unquestionable. Applying these principles to the case at hand, we are clearly of the view that the provision in question, having come into effect from April 1, 2005, would apply from and for the assessment year 2005-06 and would be applicable for the assessment in question. Putting it differently, the Legislature consciously made the said sub-clause (ia) of section 40(a) of the Act effective from April 1, 2005, meaning thereby that the same was to be applicable from and for the assessment year 2005-06; and neither there had been express intendment nor any implication that it would apply only from the financial year 2005-06."

6.7 Being so, we find force in the argument of Id. A.R. that in income-tax matters, law to be applied is the law in force in the assessment year unless otherwise stated or implied. In the present case, Id. PCIT is cancelling the registration granted u/s 12AA/12AB of the Act w.e.f. previous year 2020-21 relevant to assessment year 2021-22. In our opinion, the law as stated in the assessment year 2021-22 is to be applied and not the law as stood in the assessment year 2022-23.

6.8 Thus, we are of the view that no retrospective cancellation could be made u/s 12AB(4)(ii) of the Act as it has been provided or is seen to have explicitly provided to have a retrospective character or intended. Therefore, without a specific mention of the amended provisions to operate retrospectively, no cancellation for the earlier years could be made. In this regard, it is appropriate to place reliance on the judgement of Hon'ble Madras High Court on the question as to whether the cancellation will operate from a retrospective date in the case of Auro Lab Ltd. Vs. ITO (2019)411 ITR 308 (Mad) wherein held as under

20. On the second question as to whether the cancellation will operate from a retrospective date, it was held that the amendment to section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when Parliament had plenary powers to enact retrospective legislation

in matters of taxation, the amended section is not seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date.

21 On the third question of the effective date of operation of the cancellation order, it was held that the cancellation will take effect only from the date of the order/notice of cancellation of registration. Since the act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in' the event the pending tax appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is December 30, 2010. In other words, the exemption cannot be denied to the petitioner for and up to the assessment year 2010-11 on the sole ground of cancellation of the certificate of registration."

6.9 In this case, the Id. PCIT has cancelled the registration under the new provisions of the Act i.e. 12AB(4)(ii) of the Act, which specifically provides that cancellation can be done for such previous year and all subsequent previous years, which makes it clear that the cancellation cannot be retrospective, therefore, in view of the above discussion, we are of the opinion that cancellation of registration with retrospective effect is invalid in these cases. Since the Id. PCIT invoked the provisions of section 12AB(4)(ii) of the Act, which has been introduced by the Finance Act, 2022 w.e.f. 1.4.2022 so as to cancel the registration with retrospective effect from assessment year 2018-19, which is bad in law.

6.10 It is noted that coordinate bench of this Tribunal in both assessee's case for AY 2021-22 has taken similar view and as quashed the retrospective applicability of the new amended provision u/s 12AB(4)(ii) of the Act. We also note that same view has been taken by Coordinate bench of Mumbai in the case of Heart Foundation of India in ITA No.1524/Mum/2023 vide order dated 17 27.7.2023, wherein held that registration granted u/s 12A of the Act dated 21.7.1989 cannot be cancelled by Id. PCIT (Central) vide order dated 6.3.2023 w.e.f. assessment year 2016-17, by invoking the provisions of section 12AB(4)(ii) of the Act. Accordingly, we allow the primary ground nos.2, 3, 5 & 12 and order of Id. PCIT passed u/s 12AB(4)(ii) of the Act is quashed. "

6. Further, on perusal of provisions of section 12AB(4) of the Act shows that the said provision has been substituted by the Finance Act, 2022 w.e.f. 1.4.2022. Before 1.4.2022, the registration could have been cancelled u/s.12AB(5). However, the provisions of section 12AA and Section 12AB came into effect from 1.4.2015. Before that registration was done under

section 12A of the Act. One needs to understand that the provisions of section 12A of the Act was amended to 12AA and then 12AB because registration scheme for Trust was to corollary to claim file and smile i.e. to file the registration as admittedly charitable institution. Subsequently, the provisions of exemption was brought in and opportunity was given to Id CIT(E) to deny the exemption, still the power for cancellation the registration was granted. However, the power to cancel the registration with retrospective effect is not provided in the Statute. This being so, as the registration in the present case, has been cancelled retrospectively, same is not permissible as the same is not provided in the Statute, the order passed by Id CIT(E) cancelling the registration retrospectively stands cancelled.

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

Order dictated and pronounced in the open court on 16/07/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 16/07/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Maa jagat Janani Seva Trust, At-Nambira, PO: Bamebari, PS: Joda, Dist: Keonjhar
2. The Respondent: CIT (E), Hyderabad
3. Pr.CIT, Bhubaneswar
4. DR, ITAT,
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack

