

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " A "**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.39/Bang/2012		
M/s. Bangalore Metropolitan Transport Corporation, Central Office, Shanthi Nagar, Bangalore-560 027	Vs.	The Director of Income Tax (Exemptions), Bangalore.
Appellant		Respondent.

Appellant By : Shri Devaraj, C.A.

Respondent By : Shri C.H. Sundar Rao, CIT-I (D.R)

Date of Hearing : 01.01.2015.

Date of Pronouncement : 20.02.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the assessee is directed against the order of the Director of income Tax (Exemptions), Bangalore passed under Section 12AA(3) of the Income Tax Act, 1961 (herein after referred to as 'the Act') dt.8.11.2011, cancelling the Registration granted to the assessee under Section 12AA of the Act vide order dt.19.12.2000.

2. The facts of the case, briefly, are as under :-

2.1 The assessee is a public sector undertaking of the State Government of Karnataka, set up to fulfill its constitutional obligations of providing proper living conditions; which includes the provision of a secure and progressive transport service to the general public

as specified in section 18 of the Road Transport Corporation Act, 1950. The assessee was granted registration under Section 12A of the Act vide order dt.19.12.2000. The DIT (Exemptions) initiated proceedings under Section 12AA(3) of the Act to withdraw the registration granted to the assessee under Section 12A of the Act on the following grounds :-

(i) The financial accounts of the assessee relating to the period relevant to Assessment Year 2009-10 reveal that the assessee had surplus of Rs.55.18 Crores.

(ii) On a perusal of the Website of the assessee, the Id. DIT (Exemptions), concluded that the assessee was providing buses for casual contracts and chartered services on hire, charging rates similar to those charged by private transporters;

(iii) The assessee permits commercial advertisements on its fleets.

2.2 The assessee filed written submissions objecting to the proceedings initiated by the DIT (Exemptions) in respect of the above contentions. The Id. DIT (Exemptions), while concluding that the assessee is existing as an organisation for general public utility, however was of the view that since the assessee is carrying on the activity of trade, commerce or business and the gross receipts from the commercial activities exceeds the limit of Rs.25 lakhs, it gets covered directly within the ambit of the first proviso to section 2(15) of the Act and thus it is not an entity for charitable purposes within the meaning of section 2(15) of the Act.

3. Before us, the learned Authorised Representative of the assessee reiterated the submissions already put forth before the DIT (Exemptions). The learned Authorised Representative placed reliance on the decision of the Hon'ble Karnataka High Court in the case of DIT (Exemptions) V Karnataka Industrial Area Development Board in ITA No. 261/2013 dt.7.12.2014; which it was submitted was on the same issue of cancellation of Registration under Section 12AA(3) of the Act. It was submitted by the learned Authorised Representative that in view of the above decision of the Hon'ble Karnataka High Court (supra), wherein this issue was decided in favour of the assessee and against revenue, the same issue in the case on hand also ought to be held in favour of the assessee and its appeal allowed.

4. Per contra, the learned Departmental Representative strongly supported the impugned order of the Id. DIT (Exemptions). It was submitted that the impugned order ought to be upheld since, on the same issue, the assessee's SLP, filed before the Hon'ble Apex Court against the decision of the Hon'ble High Court of Jammu & Kashmir in the case of Jammu Development Authority V UOI in ITA No.164/2012 dt.7.12.2013, was dismissed by order of the Hon'ble Apex Court dt.21.7.2014.

5.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. We find that the issue before us, on similar facts, is covered by the decision of the Hon'ble High Court of Karnataka in the case of Director of Income Tax (Exemptions) V

Karnataka Industrial Area Development Board in ITA No.261/2013 dt.7.12.2014, wherein

at paras 7 to 9 of its order the Hon'ble Court has held as under :-

" 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 :-

[(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 [Principal Commissioner or] 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 sub-section 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 sub-section (3) of section 12AS 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 thereof. 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 at 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."

5.2.1 In the case on hand also, the assessee is a public undertaking of the State Government of Karnataka. As held by the Hon'ble High Court (supra), registration granted under Section 12A of the Act can be cancelled only under the following two circumstances:

- (i) if the objects of such trust or institution are not genuine; and
- (ii) the activities of the trust or institution are not being carried out in accordance with the objects of the trust or institution.

5.2.2 In the impugned order in the case on hand, there is no finding rendered by the Id. DIT (Exemptions) that there was any violation of the aforesaid two conditions by the assessee, and therefore the grounds which empower the Id. DIT (Exemptions) to cancel the registration under Section 12AA(3) of the Act, are absent. The Hon'ble Court has also observed that the registration cannot be cancelled in view of the amendment of the first proviso to section 2(15) of the Act, since it is not a ground specified in the statute for cancellation of registration under Section 12AA(3) of the Act. The Hon'ble Court has also observed that if the case of an assessee falls within the ambit of the first proviso to

section 2(15) of the Act, the benefits which arise from registration under Section 12AA of the Act will not be available to it, and this aspect is to be considered by the Assessing Officer, but this would not be a ground for cancellation of registration. From an appreciation of the facts and circumstances of the case on hand, we find that the facts herein are similar both factually and legally to that of the cited case of DIT(Exemptions) V Karnataka Industrial Area Development Board (supra) and therefore respectfully following this decision, we hold that the impugned order of DIT (Exemptions) cancelling the assessee's registration by order under Section 12AA(3) of the Act dt.8.11.2011 is not sustainable and therefore cancel the same.

6. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 20th Feb., 2015.

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Sd/-

(JASON P BOAZ)
Accountant Member

*Reddy gp
Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - A Bench.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore