

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY ACCOUNTANT MEMBER
AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.386/Mds/2012

M/s. SAE India, 1/17, Ceebros Arcade, II floor, III Cross Street, Kasturba Nagar, Chennai-600 020.	Vs	Director of Income Tax (Exemptions), Ayakar Bhavan Annexe, 3 rd floor, 121, M.G.Road, Chennai-600 034.
PAN:AADTS3913K		
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Mr. R.Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Mr. Durgesh Sumrott, CIT DR

सुनवाई की तारीख/ Date of hearing	:	18 th August, 2014
घोषणा की तारीख /Date of Pronouncement	:	17 th October, 2014

आदेश / ORDER

Per Challa Nagendra Prasad , JM:

This appeal is filed by the assessee against the order of the Director of Income Tax (Exemptions) dated 26.12.2011 passed under section 12AA(3) of the Act cancelling registration granted to the assessee with effect from 1.4.2009 i.e. introduction of proviso to section 2(15) of the Act stating that organization has not remained charitable.

2. Counsel for the assessee submits that assessee was granted registration under section 12AA of the Act vide order

No.DIT(E)No.2(202)/2003-04 dated 24.7.2003. Counsel submits that society was formed with following main objects:-

i) To serve as a forum where Engineers, Scientists, Technologists and Innovators in mobility engineering field can exchange ideas and learn from each other experience;

ii) To hold, organize technical meetings, workshop, seminars educational programs and specialty conferences to report on the frontline development before they impact the industry;

iii) To organize tours, social events and exhibition of latest events related to mobility engineering field; &

iv) To encourage the creation, maintenance and adherence of code of conduct for the profession of mobility engineering, etc.

Counsel for the assessee submits that in view of the amendment to section 2(15) of the Act and since the receipts of the assessee exceeded over ₹ 10 lakhs i.e. threshold limit as provided in 2nd proviso to section 2(15) of the Act the exemption granted under section 12AA was withdrawn as the assessee is no more charitable organization and the assessee's objects fall under general public utility and not education. Counsel submits that objects of the assessee is to serve as a forum where Engineers, Scientists, Technologists and Innovators in mobility engineering field can exchange ideas and learn from each other experience and the objects and activities of the institution are educational in nature as it is conducting programme for school children to cultivate engineering background. Counsel submits that assessee conducts Baja competition where undergraduate and post-graduate engineers can display their technical skill by prototype race cars. Counsel further submits that assessee also conduct professional relevant programme by way of organizing conferences etc. and therefore activities of the assessee certainly fall under the limb of education. Counsel for the assessee further submits that even assuming

for a moment without conceding that its objects do not fall under education, registration granted under section 12AA cannot be withdrawn simply because receipts of the assessee exceeds ₹10 lakhs i.e. threshold limit as per second proviso to section 2(15) of the Act. Counsel submits that simply because receipts of the assessee are exceeded ₹ 10 lakhs i.e. threshold limit as provided under second proviso, the assessee institution cannot be held as not genuine and it is not charitable organization. He submits that Assessing Officer can deny section 11 if he finds that activities of the assessee are coming within the purview of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business but certainly the registration granted under section 12AA of the Act cannot be withdrawn. Counsel for the assessee further referring to the memorandum explained in Finance Bill, 2012 submits that the intention of legislature is not to withdraw registration granted under section 12AA of the Act in each and every case when there is excess of receipts by the assessee prescribed under second proviso to section 2(15) of the Act. Therefore, counsel submits that even if the activities

of the assessee trust fall under general public utility, since its objects are genuine and activities are genuine, registration granted under section 12AA cannot be withdrawn. Counsel places reliance on the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association in Tax Case Appeal No.450 of 2013 dated 21.10.2013.

3. Departmental Representative supports the order of Director of Income Tax (Exemptions) in withdrawing registration granted under section 12AA(3) of the Act.

4. Heard both sides. Perused orders of lower authorities and the case law relied on. The assessee was granted registration under section 12AA of the Act vide order no. DIT(E)No.2(202)/2003-04 dated 24.7.2003. The assessee contends that objects and activities of the assessee are educational in nature as it is conducting programme for school children to cultivate engineering backgrounds. It is conducting Baja competition where undergraduate and postgraduate engineers can display their technical skill by prototype race cars. They are conducting conferences on

various issues of automobile sector while participants are managers and engineers of automobile industry. These activities in our view cannot be considered as 'education'. The activities of the assessee carried on certainly not fall under 'education'. The activities of the institution will fall under the category of object of general public utility. The main reason for withdrawing registration granted under section 12AA(3) seems to be that the assessee is receiving huge amounts as it is conducting various conferences, baja programmes in promoting objects of the assessee. Director of Income Tax (Exemptions) cancelled registration under section 12AA(3) of the Act stating that objects and the activities of the assessee are falling under general public utility and not education and assessee's commercial receipts exceeding ₹ 10 lakhs i.e. threshold limit as per second proviso to section 2(15) of the Act and therefore assessee loses its character with charitable institution as per first and second proviso of section 2(15) of the Act. This conclusion of the Director of Income Tax (Exemptions) appears to be not correct, when the objects of the assessee trust are genuine and assessee is carrying on the activities in accordance with

the objects. In this case, activities of the trust cannot be held to be not genuine and it is not the case of the Director of Income Tax (Exemptions) that assessee is not carrying on the activities in accordance with its objects. The only reason for refusing registration was that assessee's receipts are exceeding threshold limit as specified under second proviso to section 2(15) of the Act.

5. The memorandum Explaining the provisions in Finance Bill, 2012 regarding proviso to section 2(15) of the Act reads as under:-

“Assessment of charitable organization in case commercial receipts exceed the specified threshold

Sections 11 and 12 of the Act exempt income of any charitable trust or institution, if such income is applied for charitable purposes in India and such institution is registered under section 12AA of the Act. Section 10(23C) of the Income-tax Act also provides exemption in respect of approved charitable funds or institutions.

Section 2(15)' of the Act provides definition of charitable purpose. It includes "advancement of any other object of general public utility" as charitable purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business.

The second proviso to said section provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from the commercial activities does not exceed ₹ 25,00,000 in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to

it.

Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

There is, therefore, need to expressly provide in law that no exemption would be available for a previous year, to 1 trust or institution to which first proviso of section 2(15) become applicable for that particular previous year.

However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of the notification issued in respect of trust or institution.

Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of the first proviso on account of commercial receipt threshold provided in the 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. (emphasis supplied).

It is, therefore, proposed to amend section 10(23C), section 13 and section 143 of the Act to ensure that such organization does not get benefit of tax exemption in the year in which it's receipts from commercial activities exceed the threshold whether or not the registration or approval granted or the notification issued is cancelled, withdrawn or rescinded.

This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent assessment years."

6. On reading of the above memorandum explaining proviso in Financial Bill, 2012 the assessment of charitable organization it is understood that in case commercial receipts exceeding the specified threshold, the intention of

the legislature is not to cancel the registration under section 12AA of the Act wherever receipts of an institution exceeds threshold limit as specified in proviso to section 2(15) of the Act.

7. The Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association Vs. Director of Income Tax (Exemptions) (360 ITR 633) held that cancellation of registration should be with reference to the objects satisfying definition of charitable purpose at the time of registration and not by subsequent amendment to section 2(15) of the Act. While holding so, the Hon'ble High Court observed as under:-

“Held, allowing the appeal, (i) that there being no dispute raised by the Revenue as to the genuineness of the trust or as to the activities of the trust not being in accordance with the objects of the trust, the question of cancellation under section 12AA did not arise. Registration was granted on March 28, 2003, taking into consideration the objects of the institution fitting in with the definition of "charitable purpose" defined under section 2(15) and the substitution of the section itself came only in 2008, with effect from April 1, 2009. The circular clearly brings out the object of the amendment and the amended provision had no relevance to the case. The power regarding cancellation, hence, has to be seen with reference to the registration and the object satisfying the definition of "charitable purpose", as it stood at the time of registration and not by the

subsequent amendment to section 2(15).

(ii) That the Revenue granted registration under section 12AA satisfying itself as to the objects of the association befitting the status as charitable purpose as defined under section 2(15), as it stood in 2003 and if the registration were to be cancelled, it must be only on the grounds stated under section 12AA(3) with reference to the objects accepted and registered under section 12AA, in accordance with the law as it then stood under the definition of section 2(15). Thus, if a particular activity of the institution appeared to be commercial in character, and it is not dominant, then it is for the Assessing Officer to consider the effect of section 11 in the matter of granting exemption to a particular head of receipt. The mere fact that the income does not fit in with section 11 would not, by itself, lead to the conclusion that the registration granted under section 12AA was bad and, had to be cancelled. Therefore, section 12AA(1) must not be read along with section 12AA(3) before considering the cancellation.”

8. Therefore, in this case since the assessee's objects and activities are genuine registration cannot be cancelled merely because receipts are exceeding threshold limit as provided under second proviso to section 2(15) of the Act. It is open to the Assessing Officer to deny exemption under section 11 on the receipts of the assessee, if the Assessing Officer feels that activities of the assessee are for general public utility and it is indulging in trade or commerce etc.

Therefore, we set aside the impugned order of the Director of Income Tax (Exemptions) and allow the grounds raised by the assessee.

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

Order pronounced in the open court on Friday, the 17th day of October, 2014 at Chennai.

Sd/- (ए. मोहन अलंकामणी) (A.Mohan Alankamony) लेखा सदस्य/Accountant Member	Sd/- (चल्ला नागेन्द्र प्रसाद) (Challa Nagendra Prasad) न्यायिक सदस्य/Judicial Member
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चेन्नई/Chennai,

दिनांक/Dated, 17th October, 2014

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------------|--------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 4. आयकर आयुक्त/CIT |
| 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |