

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE: SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

ITA No. 712/PN/2011

Assessment Year :

**Pune District Security
Guards Board,
2nd Floor, 29/2, Shnati Kunj,
Somwar Peth, Pune-411011
(Appellant)
PAN No. AABTP3601M**

**Commissioner of Income Tax – V,
Pune
Vs.
(Respondent)**

Assessee By: **Shri Sharad Shah**
Revenue By: **Ms. M.S. Verma**

Date of hearing : **03-06-2015**
Date of pronouncement : **10-06-2015**

ORDER

PER VIKAS AWASTHY, JM:-

The appeal of the assessee is directed against the order of Commissioner of Income Tax-V, Pune dated 21-12-2010 rejecting application of the assessee for grant of registration u/s. 12AA of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The brief facts of the case as emanating from records are: The assessee is a Board established with the main object of regulating employment of Private Security Guards employed in factories and other establishments. Further, it endeavors to make better provisions for their terms and conditions of employment and welfare. The assessee Board has been established under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The assessee made

an application for grant of registration u/s. 12A of the Act. The same was rejected by the Commissioner of Income Tax vide order dated 30-11-2007 for non furnishing of documents as called for by the Commissioner of Income Tax and certain other defects. The assessee preferred an appeal before the Tribunal in ITA No. 583/PN/2008. The Co-ordinate Bench of the Tribunal vide order dated 31-08-2009 remitted the matter back to the Commissioner of Income Tax to re-consider the case of the assessee for grant of registration. Again, the Commissioner of Income Tax vide impugned order rejected the application of assessee for grant of registration. The Commissioner of Income Tax held that the objects of the assessee fall under the category of 'general public utility'. The assessee is charging fee in lieu of services rendered. In view of the amended provisions of section 2(15), the activities of the assessee/Board are not in the nature of charity.

Aggrieved by the order of Commissioner of Income Tax, the assessee has come in appeal before the Tribunal.

3. Shri Sharad Shah appearing on behalf of the assessee submitted that the case of the assessee is identical to the case decided by the Co-ordinate Bench of the Tribunal in ITA No. 1379/PN/2010 in the case of Nashik District Security Guards Board Vs. CIT decided on 20-02-2015. The Tribunal in the said case directed Commissioner of Income Tax to grant registration to the assessee-appellant.

4. On the other hand Ms. M.S. Verma representing the Department supported the order of Commissioner of Income Tax and prayed for dismissing the appeal of the assessee.

5. We have heard the submissions made by the representatives of rival sides and have perused the impugned order. We have also

examined the order of the Tribunal on which the ld. AR has placed reliance.

6. The assessee Board has been established for regulating employment of Private Security Guards employed in factories and establishment. The assessee is working for the welfare of the aforesaid Private Security Guards. The Commissioner of Income Tax has admitted the fact that the assessee has been established for charitable purpose and the nature of activities carried out fall under the category 'general public utility'. The Commissioner of Income Tax declined to grant registration u/s. 12AA of the Act on the ground that the assessee is providing services in lieu of fee. Since, the activities carried out by the assessee fall under the last limb i.e. 'advancement of general public utility' of 'charitable purpose' as defined u/s. 2(15) of the Act, the assessee ceases to be a charitable organization.

7. We find that identical issue had come up before the Co-ordinate Bench of the Tribunal in the case of Nashik District Security Guards Board Vs. CIT (supra). The Bench held that even if the assessee is charging fee which is very nominal, the assessee deserves to be registered u/s. 12AA of the Act. The findings of the Tribunal are as under:

8. Further, the Commissioner has referred to the first proviso to section 2(15) of the Act which has been inserted by the Finance (No.2) Act, 2009 w.r.e.f. 01.04.2009. In terms of the said proviso where the object is of advancement of general public utility, it shall not be a charitable purpose if it involves the carrying on of any activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of the income from

such activities. On the basis of the aforesaid proviso to section 2(15) of the Act, it is sought to be made out by the Commissioner that since the assessee Board is to collect a levy from the companies/establishments registered with it, therefore, its activities can no longer be taken as for 'charitable purpose'.

9. We have considered the aforesaid objection and find that the activities of the assessee Board have not been appreciated by the Commissioner in its correct perspective. It is abundantly clear as per the provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 that the said legislation is intended to regulate the employment of private security guards employed in factories and establishments in the State of Maharashtra for making better provisions in the terms and conditions of their employment and welfare through the establishment of the Boards. The applicant Board before us is with regard to the Nashik District in Maharashtra. The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 further prescribes that the State Government by means of a scheme provide for the registration of the employers and security guards. The said statute also provides for deciding the rate of services, payment, overtime payment, leave with wages, gratuity, etc.. The statute also provides for deciding the time within which should be registered principal employer are to remit the wages payable to the registered security guards. The statute also provides for constitution of any fund or funds including, Provident Fund for the security guards. The statute also provides for the scheme by which the cost of operating the scheme is to be defrayed. The Government of Maharashtra is also empowered to provide for constituting the authority who shall be responsible for the administration of the scheme. The statute also provides for establishment of Boards, who are under the superintendence and control of the Government of Maharashtra. In-fact, the statute also provides the manner in which the property, funds and assets of the Board are to be held and applied subject to the provisions and for the purposes of the scheme formulated under the said statute. We are enumerating the aforesaid clauses of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 only to point out that the legislature has enacted the aforesaid

statute not with the purpose of carrying out of any trade, commerce or business or any activity of rendering any services in relation to any trade, commerce or business. Ostensibly, the said objectives are for regulating the employment of private security guards employed in factories and establishments in the State of Maharashtra and for making better provision for terms and conditions of their employment and welfare. Clearly, it is a welfare measure of the Government of Maharashtra and in our view, the activities of the Board cannot be said to be falling foul of the proviso to section 2(15) of the Act, as contended by the Commissioner. We are unable to affirm the aforesaid stand of the Commissioner.

10. At the time of hearing, the Ld. Representative pointed out that similar to the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, the State of Maharashtra also enacted the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 under which Amravati Mathadi and Unprotected Labour Board, Amravati was constituted. The Ld. Representative pointed out that the two statutes enacted by the State of Maharashtra are similar, as one of them deals with the private security guards employed in factories and establishment in the State of Maharashtra and other deals with unprotected manual workers employed in certain employments in the State of Maharashtra. It was pointed out that both the statutes are pari-materia. The Ld. Representative pointed out that Amravati Mathadi and Unprotected Labour Board, Amravati constituted by Government of Maharashtra u/s 6 of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 was granted registration by the Commissioner of Income Tax-III, Nagpur u/s 12AA of the Act vide order dated 27.09.2012. It has also been pointed out that the Akola-Washim-Buldhana District Mathadi and Unprotected Labour Board constituted u/s 6 of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 was also granted the registration by the Commissioner of Income Tax-I, Nagpur vide order dated 05.09.2012, copies of which has been placed on record. It was, therefore, contended that in similar situation the impugned passed by the Commissioner is unsustainable.

11. In our considered opinion, the objections raised by the Commissioner are not germane to reject the assessee's plea for registration u/s 12A(1)(a) of the Act. In view of the aforesaid discussion and having regard to the entirety of facts and circumstances of the case, we hereby set-aside the impugned order of the Commissioner and direct him to allow registration to the assessee u/s 12A(1)(a) of the Act in terms of the application moved by the assessee before him on 31.03.2010.

8. The Ld. DR has not been able to controvert the decision of the Tribunal rendered in the case of Nashik District Security Guards Board Vs. CIT (supra). Respectfully following the same, we set aside the impugned order and direct the Commissioner to grant registration to the assessee u/s. 12AA of the Act on the application already filed by it. The appeal of the assessee is allowed.

Order pronounced on Wednesday, the 10th day of June, 2015

at Pune

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Pune, Dated: 10th June, 2015
RK/PS

Copy to

- 1 Assessee
- 2 Department
- 3 The CIT-V, Pune
- 4 The DR, ITAT, "A" Bench, Pune.
- 5 Guard file.

//True Copy//

By Order

Private Secretary,
Income Tax Appellate Tribunal,
Pune