

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 11TH DAY OF FEBRUARY 2016/22ND MAGHA, 1937

ITA.No. 17 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN ITA 85/2012 of I.T.A.TRIBUNAL, COCHIN
BENCH DATED 14-08-2014

APPELLANT(S) :

MS.SREE ANJANEYA MEDICAL TRUST,
KANCHAS BUILDING, OPP:INDOOR STADIUM, KOZHIKODE
BY ANIL KUMAR, CHAIRMAN & MANAGING TRUSTEE.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENT(S) :

THE COMMISSIONER OF INCOME TAX,
KOZHIKODE - 673 006.

R1 BY ADV. SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)
R1 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
29.1.2016, THE COURT ON 11-02-2016 DELIVERED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

Income Tax Appeal.No.17 of 2015

Dated this the 11th February, 2016

JUDGMENT

Anu Sivaraman, J.

The challenge in this appeal under Section 260A of the Income Tax Act is against the order of the Income Tax Appellate Tribunal rejecting the appeal preferred against the order of the Commissioner of Income Tax refusing to register a Trust under Section 12AA of the Income Tax Act (hereinafter referred to as 'the Act'). It is the contention of the appellant, Sree Anjaneya Medical Trust, that the Trust was registered on 27.05.2005 with education and relief of the poor as its principal objects and had made an application dated 12.12.2008 for registration of the same under the Act to avail the benefits of Sections 11 and 12 of the Act. Pursuant to the application, a survey was conducted in the premises of the Trust in terms of Section 133A of the Act on 19.03.2009. Pursuant to the directions issued by the authorities under the Act, a deed of modification was also executed on 18.06.2009. However, on 25.06.2009 the application was rejected relying on the survey conducted on 19.03.2009. It was found that the Trust had received contributions prior to registration and the expenditure of the Trust was not verifiable. On the ground that "the

Trust is involved in continuous violation of the provisions of the I.T Act, eg., not filing the returns in time, not paying the tax etc. and also because Trust deed has no provision to the effect that it is not for profit”, it was found that the Trust cannot be granted registration. On appeal, the Tribunal found that the reasons stated by the registering authority for refusal of registration are not relevant for the purpose of registration. It was held that the findings of the Commissioner of Income Tax, in so far as they relate to activities of the Trust, are germane and relevant. It was further held that the acceptance of amounts from prospective students towards tuition fee cannot by itself be a relevant ground, unless it is shown that what was collected was not tuition fees at all, but capitation fee. The factual aspect of the matter was directed to be ascertained with notice to the appellant. It was also held that the presence of profit by itself would not disentitle the Trust for registration under the Act, since “there is no question of exemption, if there is no scope of income”. The matter was thus remanded to the Commissioner of Income Tax to examine the assessee's case in its proper perspective after hearing the appellant as also considering the deed of modification of Trust executed on 18.06.2009.

2. The Commissioner of Income Tax thereupon took up the matter and considered the materials on record including the deed of modification and reiterated the findings in the earlier order that the

survey has revealed unethical methods used by the Trust for collection of funds especially from prospective employees and students. It was therefore deduced that the activities of the Trust are purely commercial in nature. It was also stated in the order that imparting education *per se* cannot be termed as a charitable purpose unless it has a public character. Thus, finding that no charitable activities have been carried out by the Trust, the Commissioner of Income Tax rejected the application for registration yet again. This was taken in appeal by the Trust which has resulted in the impugned order. The appellate authority also found that the assessee Trust had collected money from various persons on the assurance of employment and admission for medical education. On the ground that the objective of registration under Section 12AA of the Act and exemption under Sections 11 and 12 is to encourage non governmental organizations to establish educational institutions and to run the same in a charitable manner and relying on precedents, the Tribunal rejected the appeal.

3. Heard Sri. Arshad Hidayathullah, learned Senior Counsel appearing for the appellant and Sri.P.K.Ravindranatha Menon, learned Senior Counsel appearing for the Revenue. We have heard the learned counsel on the specific question as to the nature of consideration required for the purpose of registration of a Trust under Section 12A of the Income Tax Act.

4. It is urged by the learned Senior Counsel appearing for the appellant that the question whether the activities of the Trust, which was formed with the specific intention of imparting education and relief to the poor, are actually charitable in nature or not would not arise for consideration at the stage of grant of registration to the Trust under Section 12AA of the Act. Going by the specific wordings in Section 12AA of the Act, what is germane to the issue is only as to the genuineness of the Trust and its activities. It is therefore argued that what is to be considered is only whether the Trust is a genuine registered legal entity and whether it is capable of carrying out its professed object. The question with regard to the nature of its activities would become relevant only at the time of assessment of contributions made to it or with regard to the application of its income. In the above view of the matter, it is argued that the reliance placed by the Revenue on the survey report as well as the sworn statement of the Managing Trustee to state that the Trust had profit as its motive was misconceived. It is further contended that going by the definition of the word 'charitable purpose' contained in Section 2(15) of the Act, the purposes of the Trust being relief to the poor and education, the question whether there is an element of profit involved in the activities of the Trust would not arise. Education being a charity *per se*, included in the first limb of the definition clause in Section 2(15) of the Act, the question of profit would be irrelevant, it is urged.

5. Learned counsel for the appellant relied on the decisions of the apex court reported in ***Aditanar Educational Institution v. Addl.C.I.T*** [(1997)224 ITR 310], ***Additional Commissioner of Income-Tax, Gujarat v. Surat Art Silk Cloth Manufacturers Association*** [(1980)121 ITR 1) to contend that where the object of the Trust is establishing, running and managing of educational institutions it would be entitled to registration under Section 12A of the Act. It is contended that a five member bench of the Apex Court had, in ***Surat Art Silk Cloth Manufacturers Association's case (supra)*** specifically held that clause 15 of Section 2 of the Income Tax Act provides that charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. It is stated that it is well settled as a result of the decision of the apex court in ***Dharmadeepti v. Commissioner of Income Tax, Kerala*** [(1978) 114 ITR 454] that the words “not involving the carrying on of any activity for profit” qualify or govern only the last head of charitable purpose and not the earlier three heads. It has therefore been held that where the purpose of a Trust is relief of the poor, education or medical relief, the requirement of the definition of “charitable purpose” would be fully satisfied, even if an activity for profit is carried on in the course of carrying out the primary purpose of the Trust. The learned counsel also relied on the decision of the Delhi High Court in ***Income***

Tax v. Foundation of Ophthalmic & Optometry Research Education Centre [(2013)355 ITR 361] to contend that while examining an application under Section 12AA(1)(b) read with Section 12A, the concerned Commissioner is not required to examine the question whether the Trust has actually commenced and has, in fact, carried on charitable activities. It was held that the statute does not prohibit the Commissioner from registering a Trust solely based on its objects, without any activity and that the Court or tax authority ought not to impose restrictions which have not contained in the statute. This proposition has been reiterated by the Madras High Court in **Director of Exemptions Vs Sreevi Samaj Tambaram Trust**. [(2014)362 ITR 199] as well. The learned counsel also placed reliance on a bench decision of the Karnataka High Court in **Director of Income Tax (Exemptions) v. Meenakshi Amma Endowment Trust** [(2013)354 ITR 219] to contend that the objects of the Trust as contained in the Trust deed have to be taken into consideration by the authority while considering an application for registration. In the subsequent returns filed by the Trust, if the Revenue finds that the Trust had not conducted any charitable activities, it is open to the authorities concerned to withdraw the registration already granted under Section 12AA(3) of the Act. In that case, the authority was directed to consider the application made by the Trust within eight months of its formation without insisting on evidence of charitable activities conducted by it.

6. Per contra, the learned Senior Counsel appearing for the Revenue would contend that there is no rationale in the argument advanced on behalf of the appellant that registration to a Trust has to be granted without looking into the genuineness of its activities or objects and contending that in case it is found in future that the Trust is not applying its income to charitable purposes, the registration already granted can be withdrawn. It is pointed out by the learned counsel that the requirements contained in Section 12AA of the Act for grant of registration and the negative prescriptions in Section 12A(3) for withdrawal or cancellation of registration are almost identical in nature and therefore no useful purpose would be served by first granting registration without considering the objects of the Trust or the genuineness of its activities and then cancelling the same on finding that the activities are in fact not genuine. It is contended that such a two way traffic would be a futile exercise and it is more conducive to logic and reason that the genuineness of the activities of the Trust and its objects should be looked into at the stage of grant of registration itself. The learned senior counsel would contend that registration was refused to the Trust on the basis of a survey conducted in its premises and the sworn statement of its Managing Trustee admitting to collection of huge amounts as deposits from intending employees to find funds for the institution as well as collection of capitation fee from four intending NRI students even before recognition was granted for its

medical college. It is contended that such an institution was evidently engaging in education only as a commercial activity and there is no element of charity involved in the instant case. Going by the provisions of Section 12AA of the Act, it is clear that what has been conducted was an inspection as to the objects of the Trust and into the genuineness of its activities. The registering authority was not satisfied about the objects of the Trust or about the genuineness of its activities and had therefore passed an order refusing to register the Trust or institution. In appeal, the Appellate Tribunal had examined the contentions raised by the appellant also in detail and had come to the conclusion that the Trust was not entitled for registration in terms of Section 12AA of the Act. In the above circumstances, it is contended that no substantial question of law arises for consideration in this appeal under Section 260A of the Act and hence the appeal is liable to be dismissed. The learned counsel also relied on the decisions of this Court in ***Self Employers Service Society v. Commissioner of Income-Tax*** [(2001)247 ITR 18], ***Dawn Educational Charitable Trust v. Commissioner of Income-Tax*** [(2015)370 ITR 724], ***Travancore Education Society v. Commissioner of Income-Tax*** [(2014)369 ITR 534]. Reliance is placed on the dictum of the apex court in ***J.B.Boda and Co. Pvt.Ltd. v. Central Board of Direct Taxes*** [(1997)223 ITR 271(SC)] to contend that a formal remittance and a receipt of refund of the self same amount would be an empty

formality. In **Commissioner of Income-Tax v. National Institute of Aeronautical Engineering Educational Society** [2009]315 ITR 428] a Division Bench of the Uttarkhand High Court held that where a Trust or charitable society is clearly an organisation floated with blatant profit making as its object and indulges in illegal activities including collection of capitation fee, there is absolutely no error of law in a registering authority refusing registration under Section 12A of the Act.

7. We have considered the arguments raised on either side as well as the materials on record. It is pertinent to note that the wording in Sections 12A and 12AA of the Act does not make any reference to 'charity' or 'charitable purpose'. Section 2(15) of the Act defines 'charitable purpose'. At the relevant time Section 2(15) reads as follows:

“(15) 'Charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.”

8. As stated earlier, it has been held that where the purpose of the Trust is one of the three declared charities, no question of examination of profit motive is required. Circular No.11 of 2008 dated 19.12.2008 issued by the Department also provides that the proviso to Section 2(15) of the Act does not apply in respect of the first three limbs of Section 2(15). Where purpose of Trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves carrying on of commercial activities. Though a contra view is taken by a division bench of this

Court in ***Dawn Educational Charitable Trust's case (supra)*** as well as the Uttarkhand High Court in ***Commissioner of Income-Tax v. National Institute of Aeronautical Engineering Educational Society*** [(2009)315 ITR 428], we are of the view that the actual functioning of the Trust can be a relevant consideration only at a later stage.

9. Sections 12A and 12AA of the Act read as under:

“12A. Conditions for applicability of Sections 11 and 12.

(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA:

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,-

(i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied:

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to

the Commissioner and such trust or institution is registered under section 12AA;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

12AA. Procedure for registration.

(1) The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1) of section 12A, shall-

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he-

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant:

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may

proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the 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.”

10. It is clear from a plain reading of Sections 12A and 12AA of the Act that what is intended thereby is only a registration simpliciter of the entity of a trust. This has been made a condition precedent for the claiming of benefits under the other provisions of the Act regarding exemption of income, contribution, etc. No examination of the modus of the application of the funds of the Trust or an examination of the ethical background of its settlers is called for while considering an application for registration. The stage for consideration of the relevance of the object of the Trust and the application of its funds arises at the time of the assessment. Where benefits are claimed by assesseees in terms of Sections 11 and 12 of the Act, the question as to the nature of such contribution and income can be looked into. At the time of registration of the Trust, going by the binding judgments of the

apex court , what is to be looked into is whether the Trust is a genuine one and whether it is a sham institution floated only to avail the benefits of exemption under the Act. There is no such finding in the impugned order.

11. On merits also, it is contended that the amount allegedly collected as capitation fee from four prospective students was actually collected as tuition fee on the basis of the valid agreements entered into by the Trust undertaking to return the same in case admission under the NRI quota could not be made available to the concerned students. The amount so collected represented only a portion of the tuition fees which the Government had permitted the recognized medical colleges to collect during the relevant academic year and the agreement specified that the amounts could be adjusted towards the tuition fees payable by the students under the NRI quota. It is further stated that even with regard to amounts collected from employees, the same were voluntary deposits made by employees and no action had been taken by any authority against the Trust, since there was no compulsion or illegality in the matter.

12. It is clear that taxing statutes are liable to be interpreted strictly. The court cannot supply or detract from the provisions contained in the statute. Where the provisions of the Act are clear, courts have no power to examine the purpose behind the enactment. The projected futility and inconvenience that may arise out of the

application of a provision of law cannot, in a taxing statute, be a ground to deny a benefit which is evident from a plain reading of the statute.

13. Going by the provisions of Sections 12A and 12AA of the Income Tax Act, we hold that the grounds raised by the registering authority and upheld by the appellate authority for rejection of registration to the appellant Trust cannot be sustained. The authorities could have examined only the genuineness of the Trust and its activities. They did not have material to hold that the Trust was either not genuine or its activities were not what was professed in the deed of Trust.

Resultantly, In the light of the above findings, the impugned order is set aside. The respondent Commissioner of Income Tax is directed to grant registration as requested by the appellant Trust in terms of Section 12A of the Act. It is made clear that the Revenue is at liberty to pass appropriate orders in accordance with law in assessment on the returns to be filed by the Trust or persons making contributions to it in terms of Sections 10, 11 and 12 of the Act. The appeal is ordered accordingly .

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

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