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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 23.10.2017

+ **ITA 830/2017**

U.P. DISTILLERS ASSOCIATION Appellant

versus

COMMISSIONER OF INCOME TAX Respondent

Advocates who appeared in this case:

For the Appellant : Mr S.Krishnan, Advocate.

For the Respondent : Mr Asheesh Jain, Advocate for Income Tax Deptt.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

ITA 830/2017 & CM No.35731/2017(delay in re-filing the appeal for 15 days)

1. The Assessee is aggrieved by an order of the Income-Tax Appellate Tribunal (ITAT) upholding the C.I.T's determination that it was disentitled to registration under Section 12AA as a Charitable Trust under the Income-Tax Act, 1961 (hereinafter referred to as the Act).

2. The facts are that a search took place on 14.02.2006 in the premises of one Mr R.K.Miglani – who was the Secretary General of

the UPDA/Assessee.

3. During the course of search, the statement of Shri Miglani was recorded under Section 132(4) of the Act. The statement was retracted but the retraction letter was filed after a considerable period of time, i.e., after two years on 03.03.2008.

4. In the meanwhile, the CIT cancelled the registration under Section 12AA (3), initially granted to the assessee, after considering the seized material and statements. That order was upheld by the ITAT.

5. Mr. S.Krishnan, learned counsel appearing on behalf of the Assessee firstly urged that the statement of Mr Miglani was made in the course of a search in respect of his own premises and not that of the Assessee/Association. It was submitted that in such an event, the statement could not be attributable to the assessee nor could the materials indicated by Mr Miglani or the facts disclosed by him be the basis of the order cancelling the registration under Section 12AA.

6. Mr Krishnan also relied upon the judgment of this Court in *Commissioner of Income Tax Central III versus M/s. Radico Khaitan Limited*, W.P.(C) No.7207/2008 decided on 13.07.2017 and the ITAT decision – pursuant to a remand order of this Court, rendered subsequently i.e. on 01.08.2017 in *Mohan Meakin Limited versus Assistant Commissioner of Income Tax* (ITA No.3787/Del/2008 and connected batch of cases).

7. *Radico Khaitan* and *Mohan Meakin* were two assessees – ITAT dealt with the case of the *Mohan Meakin* in the batch of cases decided on 01.08.2017.

8. *Radico Khaitan*, on the other hand, approached the Settlement Commission, which had accepted his submissions surely but proceeded on some income basis of the search and seizure operation.

9. The Assessee urges that the ITAT has returned findings that the documents seized A – 1 to A – 10 series - and relied upon were “dumb documents” and, therefore, indebteding credence to them, it was submitted that since in *Radico* and in *Mohan Meakin*, the approach of this Court and the Tribunal has been one of scepticism and disbelief, the Assessee/Association’s case too has to be treated similarly and the cancellation of its registration as a Charitable Trust under Section 12AA was unjustified.

10. It is lastly urged that, in any event, the cancellation could not have been from inception but only from the date Parliament amended Section 12AA, i.e. from 01.10.2004.

11. This Court has noticed that findings of the lower authorities are concurrent as to the submission that the statement was recorded in the course of search and seizure that did not concern the Assessee, the findings of the ITAT as well as the CIT are clearly to the contrary.

12. Although the premises in which the search took place belongs to Mr Miglani, there is no gainsaying the fact that he virtually ran the

assessee's activities as it is from the same premises. The information, which he provided in the course of the statement recorded on 14.02.2006, clearly pointed out to the activities of the Association and not his. Therefore, this Court is of the opinion that there is no infirmity with the findings recorded by the lower authorities.

13. So far as the reliance of the Assessee with respect to the findings in *Radico* are concerned, at the outset, what can be noticed is that the Court, therefore, was examining the findings of the Settlement Commission in writ proceedings. The jurisdiction of the Writ Court in such cases to intervene in proceedings in determination of the decision of the Settlement Commission, which are statutorily final are necessarily sacrosanct in terms of the various judgments of this Court, as noticed in that judgment, therefore, that decision does not confer any power to the Court in this case.

14. So far as the decision in *Mohan Meakin* with respect to the documents being characterized as “dumbed case” is concerned, the Court notices that some of them may overlap with the documents of the Assessee, but that itself is not determinative of their character or their credibility. The Court, based upon the materials on that case, so far as the *Mohan Meakin* is concerned, rendered its findings in the context of the facts of that case. Further, in paragraph 56 of that order, the Tribunal had expressly recorded that search proceedings took place in the context of Section 153A, in the very premises of Mr. Miglani, i.e. with respect to the Assessee.

15. In light of the above observations, the Court is of the opinion that there is no merit in the Appeal. However, it is clarified that the cancellation of registration in this case could have related back only from the date of introduction of Section 12AA(3) i.e. with effect from 01.10.2014 and not earlier.

16. The Appeal is dismissed but in terms of the above observations.



**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

OCTOBER 23, 2017

‘Sd’