

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 159 of 2017

- Commissioner Of Income Tax Central Revenue Building, Civil Lines, Raipur, Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

- Chhattisgarh Urology Society B-04, Jaglivan Urology Centre, Main Road, Samta Colony, Raipur, Chhattisgarh., Chhattisgarh

---- Respondent

For Petitioner Ms Naushina Afrin Ali, Advocate.

For Respondent None

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

by Hon'ble Prashant Kumar Mishra J.

17/01/2018

1. Heard.

2. Revenue has preferred this appeal under Section 260-A of the Income Tax Act, 1961 (henceforth 'the Act, 1961') assailing the legality and validity of the order passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur, whereby the appeal preferred by the respondent has been allowed and consequently the respondent has been directed to be registered under Section 12A of the Act, 1961 for the applicability of Sections 11 and 12 thereof.

3. The short question arising in this appeal is whether the Appellate Tribunal has rightly allowed the respondent's appeal to grant registration under Section 12A despite the fact that before the Commissioner of Income Tax (CIT), the respondent has failed to produce books of accounts for FY 2013-14.

4. A perusal of the record would indicate that the respondent moved an application for grant of approval under Section 12A of the Act, 1961 on 18.10.2013. On scrutiny of the application and for its further processing, the CIT issued notice to the respondent to produce copies of audited accounts and other documents together with the books of accounts for FY 2013-14. Despite show cause notice for production of books of accounts, the respondent failed to produce the account, therefore, by order dated 29.09.2014, the CIT rejected the respondent's application under Section 12A of the Act.

5. The Appellate Tribunal has allowed the appeal on the ground that it was not open for the CIT to consider whether the objects of the trust are charitable or not. Similarly, it has held that at the stage of Section 12A, the CIT is not required to examine the application of income or carrying on any activity by trust or institution.

6. It is argued that even if the books of accounts or income is not to be seen at this stage, the real intent of the registration of the trust itself may be a relevant factor for determining as to whether the application is genuinely filed or the object of

the trust is infact charitable or not, therefore, the Tribunal has not appreciated the issue vis-a-vis the requirement under Section 12A of the Act, 1961.

7. Sections 11 and 12 of the Act, 1961 provides for exemption of income of charitable trust for the purpose of levy of income tax. Section 12A makes provision for conditions for applicability of Sections 11 and 12 further prescribing the mode and manner in which such application for registration can be moved. The registration under Section 12A is a pre-condition for availing all the benefit under Sections 11 and 12. The application for registration under Section 12A has to be made in Form No. 10A of the Act 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.

8. Indisputably, the respondent has moved the application before the expiry of one year from the date of its creation. In course of processing of the application, the trust was noticed to submit the books of accounts for FY 2013-14. While rejecting the application, the CIT has opined that the trust having failed to produce the books of accounts and further that the charitable activity is for promoting the Urologist so that more and more patients visit these Urologists, therefore, the society is basically in the nature of club of Urologist Doctors for the mutual benefit of Doctors who are its members, it is not entitled for registration.

9. As against the above findings, the Appellate Tribunal has referred in paragraph 6 of its impugned order, the aims and objects for which the association is established. The aims and objects categorically refer to conduct of pre-medical checkup camps for public at large without discriminating on the basis of caste, creed, community and religion and to reach out public at large to educate them about healthy life and benefit of cleanliness, amongst other objects.

10. The provision contained under Section 12A nowhere empowers the CIT to assess the objects vis-a-vis the books of accounts. Even otherwise, it is not to be seen at this stage as

to whether the fulfillment of the charitable trust would eventually benefit the members of the society. If the constituent of the trust engage in some genuine charitable activity which may benefit them in some other aspect of their personality which may include their vocation in life, it would not affect the genuineness of the objects of the trust. A person does not engage in charity for not doing anything in the other walks of life. A charity for one particular object is not for destroying the career for an individual which he is otherwise entitled to profess. If this ground is considered to be affecting the genuineness of the trust, people successful in different walks of life would never engage in charitable activity.

11. In the matters of **Commissioner of Income Tax vs Vijay Vargiya Vani Charitable Trust 1 and Fifth Generation Education vs Commissioner Income Tax 2**, it is held that at the stage of Section 12A, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of

1 (2014) 271 CTR 0698 (Raj)

2 (1990) 185 ITR 634 All

Section 12A read with Rule 17A and whether Form No.10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this State, it is not proper to examine the application of income.

12. In the case at hand, the order passed by the CIT does not say in definite terms, that the objects of the society are not charitable in nature. Merely because the trust consists of Urologist Doctors and the charitable activity may mutually benefit those members, the object itself would not cease to be charitable in nature.

13. For the foregoing, we are satisfied that the Appellate Tribunal has rightly interfered with the order passed by the CIT. No substantial question of law arises in this appeal for determination in view of the plain language of Section 12A of the Act, 1961. The appeal being sans substance, it deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma

Akhilesh