

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1381 OF 2019

[Arising out of S.L.P.(C)No. 17428 of 2018]

**Commissioner of Income Tax
(Exemptions), Kolkata** ... Appellant

Versus

Jagannath Gupta Family Trust ... Respondent

J U D G M E N T

R. Subhash Reddy, J.

1. Leave granted.
2. This civil appeal is filed by the appellant, i.e., the Commissioner of Income tax (Exemptions), Kolkata, aggrieved by the Order dated 18.09.2017 passed by the High Court of Calcutta in I.T.A No.7 of 2017.
3. The respondent herein, M/s. Jagannath Gupta Family Trust, is a registered Trust under Section 12AA of the Income Tax Act, 1961, (for short 'the Act') and also

approved under Section 80G(5)(vi) of the Act vide proceedings dated 16.08.2010. The trust was created with an avowed object of public and charitable purposes, namely, medical relief, education, any other causes of public utility etc. It is stated that the respondent-trust is running an Engineering College.

4. A survey was conducted under Section 133A of the Act, in the premises of School of Human Genetics and Population Health (SHGPH), Kolkata by the Investigation Wing on 27.01.2014. It appears, during the said survey the appellant has noticed a donation entry of Rs.37,00,000/- (Rupees Thirty-Seven Lacs) in two tranches in the months of February and March, 2013. It is the allegation of the appellant that such donation given to the respondent-trust is bogus and sham. It is the case of the appellant that the donor did not actually donate such amount, such entry was shown by receiving the amount in cash from the respondent, by retaining commission.

5. In view of such allegation, the appellant herein has initiated the proceedings for cancellation of registration and issued a show-cause notice to the respondent

on 04.12.2015. The respondent has replied to the same and contested the proceedings. The main plank of the defence was that the procedure adopted by the appellant was contrary to the principles of natural justice. It was also the case of the respondent, that though a statement of the representative of the donor was recorded and on the said basis proceedings were initiated for cancellation of registration, but the respondent was not given any opportunity, to cross examine such representative.

6. After receipt of the explanation to the show-cause notice, alleging that the activities of the respondent-trust are neither genuine nor as per the objects of the trust, further alleging that the transaction in question was only a money laundering, therefore, receipt of donation in lieu of cash was never the object of the trust and as such it is to be treated as ingenuine and illegal activity. It is also held that such activities are carried out by the respondent-assessee not only in one year but in several years.

7. By recording the aforesaid findings, the primary authority, by order dated 15.03.2016, in exercise of power

under Section 12AA(3) of the Act, has cancelled the registration of the respondent-trust. The inference drawn and as mentioned in paragraphs 7.3 and 8 of the order reads as under:

"7.3 Based on the facts and circumstantial evidences as discussed in Para 1 to 6, it can be inferred:

a)The assessee trust had allegedly received huge sum over a period of seven years starting from A.Y. 2009-10 to A.Y. 2015-16 in the garb of corpus/non-corpus donation. In reality the donors were returned back the money in cash. This was done through web of financial transactions. All evidences show that through these alleged donations the assessee trust actively helped in pumping unaccounted money of its group concerns into the trust and simultaneously also allowing individual donors to claim benefit u/s.80G on such alleged donation.

b) Further, the assessee trust has paid commission to the agents to lure prospective students to take admission in its college. This is not disallowed as per AICTE rules. Therefore, in this respect also the assessee trust has violated the law of the land.

c) By doing these things the assessee trust has participated actively in ingenuine activities and also acted beyond the stated objectives of the trust.

d) They have violated the objects of the trust by channelizing unaccounted cash through bogus donations.

e) Donations received whether corpus or non-corpus are not voluntary, merely accommodation entries and fictitious.

f) Society/Trust has grossly misused the provision of Section 12AA and 80G(5)(vi). These approvals were not for cash channelizing through donations.

g) Activities of the trust are not genuine as well as not being carried out in accordance with its declared objects, Assessee's case is covered within the both limbs of Section 12AA(3).

h) Even ingenuine and illegal activities carried on by assessee through money laundering do not come within the conceptual framework of charity vis-a-vis activity of general public utility envisaged by the Income Tax Act as laid down in Section-2(15).

8. Keeping in view the above, provision of Section 12AA(3) is invoked and registration granted u/s 12AA is withdrawn/cancelled w.e.f 01.04.2008 from the starting of financial year, when the society was found to be involved in money laundering through receipt of bogus donation, ingenuine activities and not carrying out activities as per object of the trust."

8. Aggrieved by the order of cancellation dated 15.03.2016, the respondent-assessee has filed an appeal before the Income Tax Appellate Tribunal, at Kolkata 'B' Bench in Income Tax Appeal No.597/KOL/2016. The appellate authority, by recording a finding that, though the statement of the donor was made basis for initiating

proceedings for cancellation of registration of the respondent-trust, but the respondent was not given an opportunity to cross-examine the representative, has held that an opportunity of cross-examination of the representative of the donor is to be given to the respondent. By recording the aforesaid finding, the appellate-authority has set aside the order dated 15.03.2016 and remanded the matter for fresh consideration by primary authority.

9. Aggrieved by the order of the appellate authority dated 10.04.2017, the respondent-assessee has filed an appeal, i.e., Income Tax Appeal No. 7 of 2017 before the High Court of Calcutta. By the impugned order, the High Court has allowed the appeal by order dated 18.09.2017 and quashed the order of cancellation of registration. The High Court has held that while it is possible that a particular donation may be bogus or fictitious and, the assessee may be assessed to tax therefor and other steps can be taken but the single donation which is allegedly bogus, would not establish that the activities of the trust are not genuine and not being carried out in

accordance with the objects of the trust. It is also held that if there are multiple bogus transactions of similar kind, it may lead to reasonable assessment for the Competent Authority to hold that the trust is engaged in such activities which can be said to be not genuine or not in conformity with the objects of the trust.

10. In this appeal, we have heard Mr. S.A. Haseeb, learned counsel for the appellant and Mr. N.K. Poddar, learned Senior counsel for the respondent.

11. It is contended by the learned counsel for the appellant that there is a serious allegation against the respondent-assessee in indulging in money laundering. It is submitted that the alleged donation from School of Human Genetics and Population Health (SHGPH) is absolutely bogus and it is clear from the evidence gathered during the survey that the said donation is made by collecting the amount in cash from the respondent-assessee. It is submitted that in view of the allegations made by the respondent-assessee that it was not given the opportunity to cross-examine the representative of the donor whose statement was relied upon in cancellation

proceedings, only to give an opportunity, the appellate tribunal has remanded the matter to the primary authority. In spite of such an order passed by the appellate tribunal, the respondent has further filed an appeal before the High Court and the High Court has set aside the order of cancellation only on the ground that one bogus donation would establish that the activities of the trust are not genuine and the finding recorded by the High Court is erroneous and the High Court has committed error in recording such a finding which will run contrary to the plain language of Section 12AA(3) of the Act. It is submitted by learned counsel that the said revolving transaction of money through donor is nothing but money laundering which will run contrary to the objects of the trust.

12. On the other hand, it is contended by learned senior counsel for the respondent-assessee that merely based on the survey conducted in the office of the donor, proceedings are initiated for cancellation of registration. It is contended that though there was a survey conducted on the respondent-assessee, but nothing

adverse was found during such survey. It is submitted, based on the ex-parte statement of the representative of the donor, proceedings were initiated and order cancelling the registration was passed. Further, it is contended that reasons, as assigned by the High Court, are valid and there are no grounds to interfere with such an order passed by the High Court. Learned counsel has also brought to our notice the various relevant provisions in the Income Tax Act, 1961, pleading that every donation is not exempted and the respondent-assessee has used all the donations for the purpose of promoting the objects of the trust.

13. Having heard the learned counsel for the parties, we have perused the order passed by the Commissioner of Income Tax (Exemptions), Kolkata; the appellate-authority and the order impugned in this appeal. In the proceedings initiated for the cancellation of registration, mainly it was the case of the respondent-assessee that proceedings for cancellation were initiated only on the ex-parte statement of the representative of the donor, without giving any opportunity to the assessee. It is further

submitted that though a survey was also conducted on the respondent-assessee, but nothing adverse was found during such survey to support the case of the appellant, to cancel the registration. Learned counsel also brought to our notice the various provisions of the Act but, at the same time, in support of the arguments that all donations are not exempted, but having regard to the reasons recorded in the impugned order, it is not necessary for us to delve deep at this stage. From the perusal of the order passed by the High Court, it is clear that the High Court has allowed the Writ Petition mainly on one ground, namely, that one bogus donation would not establish that the activities of the trust are not genuine.

14. We are of the view that such a reason assigned by the High Court is erroneous and runs contrary to the plain language of Section 12AA(3) of the Act. In view of the serious allegations made against the respondent trust, it is a matter for consideration of the issue, after giving opportunity as pleaded by the respondent but the High Court has committed error in entertaining the appeal against the remand order passed by the appellate-

authority, and in quashing the order of cancellation of registration.

15. For the aforesaid reasons, we are of the view that the order impugned is liable to be set aside and the same is, accordingly, hereby quashed and set aside. However, it is made clear that we have not expressed any opinion on merits, and it is open to the Commissioner of Income Tax (Exemptions), Kolkata to consider all the issues on its own merit, uninfluenced by the observations made by the appellate authority, the High Court or in this order by this Court.

16. This appeal is allowed, with directions as indicated above, with no order as to costs.

.....J.
[R. Banumathi]

.....J.
[R. Subhash Reddy]

New Delhi
February 01, 2019.