

आयकर अपीलीय अधिकरण, न्यायपीठ PATNA
IN THE INCOME TAX APPELLATE TRIBUNAL,
PATNA BENCH, PATNA

श्री. ए. डी. जैन, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI A.D. JAIN (JM) AND SHRI SANJAY ARORA (AM)

आयकर अपील सं./I.T.A. Nos. 194 to 196/Pat/2012
(निर्धारण वर्ष / Assessment Years: 2007-08 to 2009-10)

Darbhanga Divisional Muslim Welfare Society, Flat No. 401, Feroz Palace, Samanpura, Raja Bazar, Bailey Road, Patna	बनाम/ Vs.	Dy. CIT, Circle-1, Patna
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri S. C. Sannigrahi, FCA.
प्रत्यर्थी की ओर से/Respondent by	:	Shri Rishi Raj Sinha, Sr.S.C.
सुनवाई की तारीख / Date of Hearing	:	24.04.2015
घोषणा की तारीख / Date of Pronouncement	:	28.05.2015

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is a set of three Appeals, for three consecutive years, being assessment years (A.Y.) 2007-08 to 2009-10, passed by the Commissioner of Income Tax (Appeals)-Dhanbad ('CIT(A)' for short), vide his common, consolidated order dated 08.10.2012, upholding the denial of exemption of its income u/ss. 11 and 12 of the Income Tax Act, 1961 ('the Act' hereinafter) to the assessee in the assessments u/s. 143(3) of the Act for the said years.

2. Explaining the assessee's case, it was submitted by the Id. Authorized Representative (AR), the assessee's counsel, that the principal reason for denying the assessee exemption on its income, taking us through the relevant part of the assessment order as well as the impugned order, common for all the years, was the non-grant of registration u/s. 12AA of the Act in-as-much as the assessee's application there-under was outstanding with the competent authority, the Commissioner of Income tax (CIT), Patna, at the relevant time. The same has since been granted w.e.f. A.Y. 2008-09, placing on record the copy of the order u/s.12AA dated 13.12.2013 by the Id. CIT in the assessee's case to substantiate the same. In view thereof, it was pleaded that there ought to be no hurdle or impediment in allowing the assessee exemption from tax u/s.11 r/w s. 12 of the Act. On being pointed out by the Bench that the Id. CIT(A) had, vide the operating part (para 4 of his order), also found violation of section 13(1)(b), and cited the same as a reason for the non-allowance of exemption u/ss. 11 and 12 of the Act, he would reply that the said objection is not valid in-as-much as the assessee is not a religious trust/society. The assessee is also not a minority institute nor denominated as such, with, in fact, 80% of its students and staff (of the Dental College being run by it), being non-muslims, even as stated before the Id. CIT(A). The Id. Departmental Representative (DR), on the other hand, would rely on the orders by the Revenue authorities, stating them to be clear and explicit in the matter.

3. We have heard the parties, and perused the material on record.

3.1 The A.O. has denied the assessee benefit of exemption u/ss. 11 and 12 on its income on the ground of non-application of the said sections in view of section 12A of the Act, which prescribes the condition of registration there-under or, as the case may be, u/s.12AA, as the condition precedent for the application thereof (section 12A(1)(a)), reproduced in the assessment order itself. The Id. CIT(A), in addition, reproducing the several object clauses, found the provision of section 13(1)(b) of the Act as attracted in the present case. Our first observation in the matter is that there has been thus no

examination of the actual application of the assessee's income for the relevant years for charitable purpose/s in-as-much as there has been admittedly no application for accumulation of income u/s.11(2) by it nor a finding by either of the authorities below *qua* a satisfaction of the condition of section 11(1)(a), i.e., towards the application of the income to the extent of at least 85% for charitable purposes. We state so as, without doubt, exemption u/s.11 is not automatic, but only upon the application of the income of an eligible institution by it for charitable purposes. The same was not examined by the Revenue authorities as they found the assessee as not satisfying the condition precedent for exemption u/ss. 11 and 12 as contained u/ss.12A(1)(a) and 13(1)(b), as would be evident upon reading of para 4 of the impugned order:

‘4. I have considered the facts of the case. In view of facts stated in the assessment order, it is seen that the appellant could not produce evidence of filing of application for condonation of delay. The object clauses of the appellant are prima-facie in violation of section 13(1)(b) of the Income-tax Act, 1961. It is not necessary for the AO to show that any benefit has actually been extended to any particular community when the object clauses itself say so. If the appellant claims that no such benefit is being extended, it would mean that it is not working according to its objet clauses. I also agree with the observation of the AO that benefit of exemption under section 11 and 12 of the Income-tax Act, 1961 cannot be given to the appellant till the time it is actually granted registration under section 12A of the Income-tax Act, 1961. Therefore, the action of the AO in all these three appeals in not allowing exemption under section 11 and 12 of the I.T. Act, 1961 is upheld. If in case, registration is granted to the appellant afterwards in any of these assessment years, the A.O. may take action as per law.’

As such, in the event of our finding the two conditions as satisfied, as indeed is the first condition for A.Ys. 2008-09 and 2009-10, in view of the registration u/s.12AA, the matter would have to necessarily travel back to the file of the A.O. for an examination of the question of quantification of income exempt u/s.11 r/w s. 12 of the Act.

3.2 We may next examine the issue on merits. The condition of section 12A(1)(a) is admittedly not met for A.Y. 2007-08, so that there is no question for the applicability of

sections 11 or 12 for that year. The condition of section 13(1)(b), which reads as under, as been found by the Revenue to obtain for all the years under reference:

‘Section 11 not to apply in certain cases.

13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(a)

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any *particular religious community* or caste.’

[emphasis, ours]

The offending clauses of the object clause of the assessee’s memorandum reproduced in the impugned order itself, are as under:

- I. To establish Islamic brotherhood and unity *amongst the Muslims* of Darbhanga Division.
- II.
- III. To strive for upliftment and improving the condition of economically socially..... weak, helpless, resources less *muslims of Darbhanga Division*.
- IV. To conduct different kinds of scheme for better livelihood of *Muslim widows*.....
- V. To help the parents of marriageable girls of economical down trodden and helpless *Muslim families*.....
- VI. To establish such educational and technical institution and training centers in which by rendering vocational teachings and training as would enable the members of the *Muslim families* to be self supporting and fit to take part in the progressive and constructive programs of the nation.
- VII.
- VIII. To provide monetary help to promising *Muslim students* (Boys & Girls).

[emphasis, ours]

The objects of the assessee society, which would qualify to be an institute, are clearly charitable in nature. We, therefore, find nothing amiss in it being granted

registration as a charitable institution u/s.12AA of the Act by the competent authority. No doubt, the same has been made explicitly applicable to muslims. As explained time and again by the apex court, public does not imply or extend to the entire mankind, and any cross-section of public, recognized and identifiable by any bond, impersonal in nature, (say) of religion, community or caste, would not operate to shed its public character. We are, however, unable to see as to how the provision of section 13(1)(b) is not attracted in the present case; the assessee being a society registered under the Societies Act on 15.06.1982, i.e., after the commencement of the Act. The decision in the case of *CIT vs. Arya Vysya Kalyana Nilaya Sangam* [1986] 159 ITR 324 (AP); *CIT vs. Saraswath Poor Students Fund* [1984] 150 ITR 142 (Kar) and *CIT vs. Maheshwari Agarwal Marwari Panchayat* [1982] 136 ITR 556 (MP), cited by it before the Id. CIT(A), would thus not hold.

The assessee, which runs a dental college by the name, Mithila Minority Dental College & Hospital, at Laherasarai, states of 80% of its staff and students as being non muslims. There is, firstly, no examination and, consequently, no finding in the matter by either of the Revenue authorities. Two, and equally importantly, the said fact is of little consequence. What all is relevant is the existence of the power and not necessarily the exercise thereof. As explained by the hon'ble apex court in *Delhi Stock Exchange Association Ltd. vs. CIT* [1997] 225 ITR 235 (SC), what is required that there must be an obligation to spend the money exclusively and essentially on charity. Confirming the decision by the tribunal and the hon'ble high court that the actual non-spending of the profits for objects other than charitable or the non-distribution of its profits by way of dividend was itself not relevant. But the fact that the assessee-appellant was at liberty to deal with its profit in the manner it likes. Even assuming that all the objects of the assessee were charitable, the claim of the assessee for exemption had to fail for the reason that there was no trust or legal obligation compelling the assessee to apply its income only for charitable purposes. Reference in this context may also be made to the decision in the case of *CIT vs. Palghat Shadimahall Trust* [2002] 254 ITR 212 (SC), emphasizing the primacy of the terms of the trust deed, which alone are relevant, expressing the

assessee's objects, its powers and obligations, which are thus to be discerned there-from. In the present case, the assessee society is under no obligation to admit or extend the facilities or use its property or its income for the benefit of non-muslims, being obliged to do so for Muslims. That it does not do so in practice is another matter and not relevant. There could be compelling (or otherwise) reasons for the same. Section 13(1)(b) creates a legal bar for exemption u/s. 11 where a charitable trust or institution is established for the benefit of a particular religious community or caste. Whether the same is in minority or not is again irrelevant; where the defined public or class thereof, for the benefit of which the entity is established, extends to or is identifiable on the basis of religion or caste (which could include more than one such religion or caste), notwithstanding its character as a public institution, it loses the benefit of tax on its income, i.e., upon application for its objects, u/ss. 11 and 12 of the Act. The disqualification of section 13(1)(b) is patent and valid for all the years in the present case. The only manner, therefore, for meeting the condition of section 13(1)(b) is to rewrite its offending object clauses, which we find to represent its character, in harmony and consistence with the provision of the said section, and toward which we may refer to the decisions in the case of *Nizam's Pilgrimage Money Trust vs. CIT* [2000] 243 ITR 676 (SC) and *Palghat Shadimahhal Trust* (supra).

3.3 In view of the foregoing, we have no hesitation in upholding the impugned order, confirming the inclusion of the income for computing its total income under the Act. Apart from the clear provision of law as well as the decisions afore-stated, we also rely on the decision in the case of *L. Kunhamu Haji v. State of Kerala* [1985] 155 ITR 516 (Ker), cited by the assessee itself before the Id. CIT(A), wherein similar exemption was denied for attraction of clauses (a) and (b) of section 4(3) of Kerala Income Tax Act, 1950, with clause (b) prescribing the same condition as stated in section 13(1)(b) of the Act. We decide accordingly.

4. In the result, the assessee's appeals are dismissed.

परिणामतः निर्धारिती की अपीलें खारिज की जाती हैं ।

Order pronounced by listing the result on the Notice Board of the Bench under Rule 34(4) of the Appellate Tribunal Rules, 1963.

Sd/-
(A. D. Jain)

न्यायिक सदस्य / Judicial Member

Sd/-
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 28.05.2015

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai