

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "T", MUMBAI**

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.308/Mum/2012
Asst.Year : 2009-2010**

Indian Plastic Institute, 30, Sarvoday Industrial Estate, Off Mahakali Caves Road, Near Paper Box Factory, Andheri (East) Mumbai- 400 093 PAN : AAAT10215K	Vs.	The Director Income Tax (Exemption), Mumbai.
(Appellant)		(Respondent)

Appellant By : B.V. Jhaveri
Respondent By : Shri S.D. Shrivastva

Date of Hearing : 18.02.2014	Date of Pronouncement :21.02.2014
------------------------------	-----------------------------------

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been filed by the assessee against the order dated 16.12.2011 of the Director of Income tax (Exemp.), Mumbai, passed u/s. 12AA(3) of the Income tax Act, cancelling the registration granted to the assessee u/s. 12A of the Act.

2. The assessee was registered as a charitable trust u/s 12 A of the Act. The DIT(E) noticed that the assessee was carrying out activities in the nature of trade, commerce or business etc., and gross receipts there from were in excess of Rs.10.00 lacs. So by taking resort to the newly added proviso w.e.f. 01.04.2009 to

section 2(15) of the Income tax Act, he cancelled the registration of assessee. The assessee is thus in appeal before us.

3. The main thrust of arguments of the Id. AR has been on the two grounds, firstly that the DIT (E) had no jurisdiction to cancel the registration of the assessee trust u/s. 12A of the Act for A.Y. 2009-10 and secondly, that the receipts of income of the assessee were not in the nature of business income and therefore, proviso to section 2(15) are not attracted to the case of the assessee. He has further submitted that the objects of the assessee being charitable in nature, therefore, the registration earlier granted has been wrongly cancelled by the DIT(E). It has been further submitted that the CBDT has issued a Circular No.1/2011 dated 06.04.2011 stating therein that the registration granted u/s 12A of the Act can be cancelled by invoking the amended provisions of section 12AA(3) of the Act for the assessment year 2011-2012 and subsequent assessment years, therefore, the cancellation of registration u/s 12AA(3) of the Act for the assessment year 2009- 2010 was not justified.

In his rival submission, the learned Departmental Representative supported the order of the learned DIT(E). He has further relied upon section 21 of General Clauses Act to submit that the power of the DIT(E) to grant registration was inclusive of power to cancel the registration.

4. We have heard the Id. representatives of the parties and have also gone through the record. So far the contention of the Ld. AR that the DIT (E) had no jurisdiction to cancel the registration of the assessee trust u/s. 12A of the Act for A.Y. 2009-10 is concerned, it may be observed that the issue came for consideration before the co-ordinate bench of this tribunal and the tribunal vide order dated 04.02.2014 passed in ITA No. 496/Mum/2012 (one of us being party to that order) has observed as under:

“8. We have considered the submissions of both the parties and carefully gone through the material available on record. In the instant case it is an admitted fact that the registration was earlier granted to the assessee u/s 12A of the Act and the learned DIT(E) by invoking the provisions of section 12AA(3) of the Act cancelled the registration considering the activity of the assessee in the nature of commerce and trade. In this regard the CBDT has issued a Circular No.1/2011 dated 06.04.2011 stating therein as under:-

"Section 12AA provides the procedure relating to registration of a trust or institution engaged in charitable activities. Section 12AA(3) previously provided that if the activities of the trust or institution are found to be non- genuine or its activities are not in accordance with the objects for which such trust or institution was established, the registration granted under section 12AA can be cancelled by the Commissioner after providing the trust or institution an opportunity of being heard.

The power of cancellation of registration is inherent and flows from the authority of granting registration. However, judicial rulings in some cases have held that the Commissioner does not have the power to cancel the registration which was obtained earlier by any trust or institution under provisions of section 12A as it is not specifically mentioned in section 12AA.

Therefore, section 12AA has been amended to provide that the Commissioner can also cancel the registration obtained under section 12A as it stood before amendment by Finance (No.2) Act, 1996.

Applicability - This amendment has been made applicable with effect from 1st June, 2010 and shall accordingly apply for assessment year 2011-12 and subsequent assessment years."

9. Further, the ITAT Agra Bench in the case of Agra Development Authority v. CIT-1 (supra), by considering the provisions of section 12AA(3) of the Act, which were brought on the statute with effect from 01.06.2010, held as under :-

"20. In the light of above discussion, If we consider the facts of the case under consideration as discussed above, we find that the CIT is not correct in cancelling the registration under section 12AA(3) of the Act which has been granted under section 12A of the Act on the following grounds and reasons:-

(i)Section 12AA(3) of the Act empowers the CIT to cancel such registration if he satisfy that activities of the trust or institutions are not genuine or are not being carried out in accordance

with objects of the trust or institution as the case may be. The combined reading of both the sections makes it clear that before 01.06.2010 registration can be cancelled only on those cases where the registration has been granted under section of the Act. Before 01.06.2010 this section 12AA(3) nowhere empowers the CIT to cancel or withdraw registration under section 12A of the Act. In absence of such power the registration granted under section 12A cannot be withdrawn or cancelled before 1.6.2010. The power of cancellation of registration under section 12A of the Act came to be incorporated by way of amendment introduced by Finance Act 2010 w.e.f. 01.06.2010. The C.B.D.T. Circular No.1/2011 dated 06.04.2011 explains that this amendment will apply for A.Y. 2011-12 and subsequent years. Whereas, in the case under consideration, the CIT cancelled registration under 'section 12A of the Act for A.Y. 2009-10 which is not in accordance with the law. This view is fortified by the judgment of Hon'ble Delhi High Court In the case of DIT(E) v. Mool Chand Khairati Ram Trust (supra) and order of I.T.A.T. in the case of N.H. Kapadia Education Trust (supra) wherein the I.T.A.T., Ahmedabad has followed the judgment of Hon'ble Delhi High Court.

(ii) Even otherwise also, as we notice that registration under section 12A/12AA can be cancelled in the circumstances provided in section 12AA(3) of the Act of which detail has been discussed above in Para no 19 of this order. If we apply the said condition stipulated in section 12AA(3), we find that there is no finding of the CIT that activities of the assessee, Agra Development Authority are non-genuine or not being carried out in accordance with the object of the assessee, Agra Development Authority. Even for the sake of argument if we accept the view of CIT. there may be a case of activities which are not charitable but it cannot be said that those activities of the assessee, Agra Development Authority, are non-genuine or not being carried out in accordance with the object of the assessee. The activities and objects of the assessee, Agra Development Authority are the same which were there at the time of granting registration under section 12A of the Act and at the time when CIT cancelled the registration granted under section 12A w.e. from 2009-2010. Thus, we find that this condition of cancellation of registration already granted under section 12A has not been satisfied. Where the condition stipulated under section 12AA (3) is not satisfied, the CIT cannot cancel or withdraw registration granted under section 12A of the Act. In the case under consideration, the condition stipulated in section 12AA(3), that activities of the assessee, Agra Development Authority are non-genuine or not being carried out in accordance with the object of the assessee, Agra Development Authority is not satisfied. The CIT by his own motion added one more condition in section 12AA (3) that the object of the assessee, Agra Development Authority is not charitable as per amended provisions

of section 2(15) of the Act for which the CIT is not empowered to add such own condition in the statute. Similar view has been taken by the I.T.A.T., Ahmedabad in the case of Ahmadabad Urban Development Authority v. DIT, ITA No.754/Ahd/ 2010, order dated 21.5.2010.

10. In the present case also the registration was granted u/s 12A of the Act. As per the Circular issued by the CBDT, which is binding on the Income-tax department, the registration already granted u/s 12A of the Act can be cancelled only for assessment year 2011-2012 and subsequent assessment years by considering the amended provision which is applicable from 01.06.2010. However, the assessment year involved in this case is assessment year 2009-2010, therefore, the registration cancelled by the DIT(E) was not justified.”

5. Since the assessment year involved in the case in hand is also 2009-10, hence respectfully following the above decision of the Tribunal, it is held that the DIT(E) had no jurisdiction to cancel the registration in this case.

6. So far so, the contention of the Id. AR that the objects of the assessee trust being charitable in nature, hence the proviso to section 2(15) are not attracted in this case is concerned, it may be observed that the assessee had made the following written submissions before the Id. CIT(A) as have been reproduced in his order:

“[1] The assessee trust is engaged in international conference, sale of publication etc. The objects for which the Institute is established are :-

[a]To advance and develop for the benefit of its members and the public, the art, science, technology and engineering of plastics, natural and synthetic high polymers and other related materials.

[b] To form and organize a strong professional (advisory, guiding & technical) body of those connected or concerned with plastics, natural and synthetic high polymers and other related materials.

[c] To institute, supervise, advice upon and advance the standard and methods of education and training at all levels in the fields of plastics, natural and synthetic high polymers and related materials and in related technical and non technical subjects, including finance and management thereof.

[d]To project plastics, natural and synthetic high polymers and other related materials as eco friendly materials with excellent recyclability and their contribution in conserving natural resources and saving energy.

[e] To project the vital contribution of plastics, natural and synthetic high polymers and related materials in various fields of national economy and the role they play in improving agricultural productivity and in cost effective protection, preservation, storage and handling of products in infrastructure development, in economizing construction costs, in providing affordable healthcare.

[f]To disseminate for public awareness all relevant information about plastics, natural and synthetic high polymers and related materials so as to remove myths and misconceptions arising out of ignorance and to educate public, NGOs and policy makers and the media about the beneficial role plastics play in improving overall quality of life.

[2] Assessee's main activities are Education, Training and Manpower Development for the Plastics Industry — achieved through regular technical Lectures, Seminars and Workshops on topical interest, organized by the local Chapters. Memorial/Endowment Lectures are organized by the Head Quarters and rotated to different centres year after year. HQ also organise national and international Conferences / Seminars at major Centres in India.

[3] The assessee is imparting education in plastics by different ways and means like holding courses, holding conferences, holding lectures, publishing literature on new subjects, publishing its journal etc. Thus the activities of the assessee trust are purely of a general public utility in as much as it helps all those classes of persons connected with the plastics and its application with a useful knowledge and information from time to time.

4] The international conference held in the month September, 2008 prove beyond doubt that the said topics were held mainly to educate and pass on the latest information on the subject of plastic to the members of the assessee trust. Thus, the international conference held by the assessee trust has a tremendous educational value as the international conference is meant for education and disseminating information and the latest technology on the subject of plastic to the members of the assessee trust."

7. After perusal of the submissions as well objects of the assessee trust and also after going through the documents on record, we may observe that the

objects and the activities of the assessee trust does not strictly fall in the definition of “education” being charitable purpose but “for advancement of any other object of general public utility” as also pleaded by the assessee in para [3] of its submissions as reproduced above. The assessee trust is not only offering services in relation to the trade and business of Plastic Industry but is also accepting fees, cess or other consideration for providing such services. The assessee trust is also accumulating the income and as such is also getting a good interest income on it. Apart from that it is also getting income by way of offering space for advertisement on its website. Therefore the Id. DIT(E) has rightly observed that in the assessee’s case there have been receipts of huge amounts on account of holding international conferences at Rs.21,19,861/- and interest on deposits at Rs.16,14,824/- which have been in the nature of business income and these receipts wherein excess of monitory limit as laid down in the proviso to Section 2(15) of the act which has come into effect from A.Y. 2009-10 and further that the assessee has been in receipt of such income regularly over the years. The decision of the co-ordinate bench of the tribunal in the case of “M/s Bombay Presidency Golf club Ltd.” 149 TTJ 471(Mum), relied upon by the Id. AR in this respect, is quite distinguishable on its own facts and circumstances and is not applicable to the facts and circumstances of the case in hand.

8. The next contention of the Id. AR has been that even if the objects of the trust fall in the category of "advancement of any other objects of general public utility" as per definition of charitable purpose given u/s. 2(15) of the Income tax Act. Even then the registration once granted to the assessee being a charitable institution cannot be cancelled or taken away because of the newly inserted proviso to section 2(15) of the Income tax Act. He has also relied upon various case laws in support of his contention. On the other hand, the learned DR has submitted that the registration of the assessee has rightly been cancelled by the DIT(E) being hit by the proviso to section 2(15) of the Act. We have considered the submissions of the Id. representatives of the parties. It may be observed that the

identical issue came into consideration of the co ordinate bench of the tribunal in the case of “The Cotton Textiles Exports Promotion Council vs. DIT(E)” ITA No.325/Mum/2012 decided on 12.02.2014, (One of us being party to the decision) wherein the tribunal while adjudicating upon the issue has observed as under:

“4. We have heard the learned counsel for the assessee and the learned Departmental Representative. It may be observed that identical issue came for adjudication before the Co-ordinate Bench of the Tribunal in the case of “Ghatkopar Jolly Gymkhana vs. DIT” [2013] 40 taxmann.com 207 ITA No.882/Mum/2012 decided on 23.10.2013, (present Judicial Member being party to that order) and while dealing with the issue, the bench observed as under:

“5. We have considered the submissions of the Id. Representative of the parties. It may be observed that the first proviso to section 2(15) is a very rigorous provision which excludes the institution or trust from the definition of charitable trust, if such trust carries activities in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. So before the insertion of the second proviso from 01.04.2009, the definition of charitable purpose when read with first proviso was very restrictive. However, by the insertion of the second proviso w.e.f. 01.04.2009 the rigour of the first proviso has been diluted and the first proviso has not been made applicable even if the trust carries on business activities and the gross receipts from such activities is Rs.10.00 lacs or less than Rs.10.00 lacs in the previous year. Hence, from 01.04.2009 the carrying out of the activities of trade, commerce or business even by charitable trust is not barred so as to exclude its activities from the definition of charitable purposes. However, a limitation has been imposed to the effect that the gross receipts from such activities should not increase Rs.10.00 lacs. The DIT(E) has cancelled the registration on the ground that the total receipts of the Assessee trust has exceeded Rs.10.00 lacs during the previous year.....”

5. The Tribunal while dealing with the applicability of section 12AA(3) of the Act to the trusts which were already registered, in the light of the newly added proviso w.e.f. 01.04.2009 to section 2(15) of the Income Tax Act, observed as under:

“5.2 We may observe that the tax exemption or benefits are granted to a trust or institution because its activities fall within the definition of charitable purposes as defined u/s. 2(15) of the Act. Under section 12AA(3) the registration of such trust/institution can be

cancelled if its activities have become non genuine or it is not carrying out activities as per objects of the institution. Once the activities of a registered charitable institution cease to be charitable or do not fall within the purview of definition of 'charitable purpose' as per the relevant provisions/definitions given under the Act, then, such institution would not be entitled to tax exemption or benefits granted under the Act. Even despite the fact that such an institution, otherwise, is carrying out charitable activities.

5.3 Now, the question before us is as to whether the registration of the Assessee as a charitable institution is liable to be cancelled because of the reason that the total receipts exceeded the limit of Rs.10.00 lacs as provided under the second proviso to section 2(15) of the Act. In our view the word "previous year" mentioned in the second proviso to section 2(15) is more relevant. It has not been mentioned that the first proviso, which as observed is a rigorous proviso, will not apply if the total receipts from the charitable activities exceeds the limit of Rs.10.00 lacs during "any year" rather, the word is "previous year" . That means the benefits will not be available to the Assessee for the assessment year in which the gross receipts of income exceeds the limit of Rs.10.00 lacs, however, that does not mean that such benefits will not be available to the institution for all other assessment years during which its receipts does not cross the limit of Rs.10.00 lacs. The word "previous year" mentioned in the second proviso makes it liberal to get an interpretation that it is not the registration of the institution as charitable institution which is affected, rather, it is the eligibility of the said institution to get tax exemption/ benefits which is affected that too for the relevant year during which the gross receipts of the institutions cross the limit of Rs.10.00 lacs. The insertion of second proviso has not made the definition restrictive or rigorous rather with the insertion of second proviso to section 2(15) of the Act, the rigour or restrictive nature of the definition has been diluted and has been made wide enough to include related business activities of the trust/institution, as described the first proviso to section 2(15) of the Act, also within the scope of definition of charitable purposes. The limit of receipt upto Rs.10.00 lacs during the 'previous year' as mentioned in the second proviso, has made the section further liberal mandating to observe the charitable character of the concerned trust/ institution from year to year basis. For the previous year, during which the gross receipt income crosses limit of Rs.10.00 lacs, the trust will not get exemption or benefit of its being charitable in nature despite its carrying out charitable activities. However, it will get such benefit if it is registered as charitable institution and income from business activities, as mentioned in first proviso to section 2(15), does not cross limit of Rs.10.00 lacs.

Our view in this respect is fortified from the judgment of the co-ordinate Bench decision of the Tribunal in the case of Rajasthan Housing Board vs. CIT (2012)21 Taxmann.com 77(Jp).

5.4 Thus, the action of the CIT(A) relying upon the newly inserted proviso from 01.04.2009 in cancelling the registration of the trust, in our view, is not correct or justified. The only effect will be that the Assessee will not be entitled for exemption or tax benefits which otherwise would have been available to it being registered as charitable institution, for the relevant year during which its income has crossed the limit of Rs.10.00 lacs. Subject to our above observations cancellation of registration granted to Assessee u/s. 12A is hereby set aside and same is hereby ordered to be restored.”

6. Similar issue came into consideration before the Hon’ble Madras High Court in the case of “Tamil Nadu Cricket Association vs. DIT”[2013]40 taxmann.com 250(Madras). The Hon’ble Madras High Court in para 34 of the above said judgment, observed as under:

“34. Thus, when the assessee is in receipt of income from activities, which fits in with Sections 11 and 12 of the Act as well as from sources which do not fall strictly with the objects of the trust, would not go for cancellation of registration under Section 12AA of the Act on the sole ground that the assessee is in receipt of income which does not qualify for exemption straight away by itself. All that ultimately would arise in such cases is the question of considering whether Section 11 of the Act would at all apply to exempt these income from liability. These are matters of assessment and has nothing to do with the genuineness of the activity or the activities not in conformity with the objects of the trust. As rightly pointed out by learned Senior counsel appearing for the assessee, as is evident from the reading of Circular No.11 of 2008 dated 19.12.2008, the object of the insertion of first proviso to Section 2(15) of the Act was only to curtail institution, which under the garb of 'general public utility', carry on business or commercial activity only to escape the liability under the Act thereby gain unmerited exemption under Section 11 of the Act.”

7. The Hon’ble Madras High Court further in ‘para 45’ of the above judgment observed that if a particular activity of the institution appeared to be commercial in character, and it is not dominant, then it is for the Assessing Officer to consider the effect of Section 11 of the Act in the matter of granting exemption on particular head of receipt. The mere fact that the said income does not fit in with Section 11 of the Act would not, by itself, herein lead to the conclusion that the registration granted under Section 12AA is bad and hence, to be cancelled.

Hon'ble Madras High Court further in 'para 48' of the judgment observed that the only possible enquiry under Section 12AA of the Act for cancellation is to find out whether the activities of the trust are genuine or in accordance with the objects of the trust. If any of the income arising from the activities are not in accordance with the objects of the trust, the assessee's income, at best, may not get the exemption under Section 11 of the Act. But this, by itself, does not result in straight rejection of the registration as 'Trust' under Section 12AA of the Act. The Hon'ble Madras High Court further in 'para 56' of the judgment observed that for invoking Section 12AA read with Section 2(15) of the Act, Revenue has to show that the activities are not fitting with the objects of the Association and that the dominant activities are in the nature of trade, commerce and business. Merely by the volume of receipt one cannot draw the inference that the activity is commercial.

8. It is not the case of the revenue before us that the dominant activities of the assessee are not fitting with the objects of the Council and that the dominant activities in the nature of trade, commerce and business or that the councils dominant activities have ceased to be for the purpose of advancement of any other objects of general public utility. Merely because the income of the assessee has crossed prescribed limit of Rs. 10 lakhs, that itself cannot be ground for cancellation of its registration invoking section 12AA(3) of the Act. If any of the income arising on the activities is not in accordance with the objects of the trust, the assessee's income, at best, may not get the exemption under Section 11 of the Act. Further for the previous year, during which the gross receipt income crosses limit of Rs.10.00 lacs, the trust will not get exemption or benefit of its being charitable in nature despite its carrying out charitable activities. However, it will get such benefit if it is registered as charitable institution and income from business activities, as mentioned in first proviso to section 2(15), does not cross limit of Rs.10.00 lacs.

9. Subject to our above observations, the impugned order of the DIT(exemptions) is hereby set aside and the registration to the assessee council granted under section 12A of the Act is hereby ordered to be restored.”

9. Respectfully following the decision of the co-ordinate bench of the tribunal and also subject to the observations made by the co-ordinate bench of the Tribunal, this issue is decided accordingly. Before parting with the order, we may

notice that the Ld. DR has relied upon the decision of the Panaji Bench of the Tribunal in the case of “The Belgaum Urban Development Authority” dated 15.6.2012. A perusal of the said order reveals that neither the issue involved nor the proposition of law laid down in the said case fits into the facts and circumstances of the case in hand. Thus the said case law is of no help to the Department being not relevant.

10. The appeal of the assessee thus is treated as allowed and the registration of the trust which was granted u/s 12 A is accordingly hereby ordered to be restored.

Pronounced in open court on 21.02.2014

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER
Mumbai, Dt : 21st February, 2014

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Copy forwarded to :

1. The Appellant
2. The Respondent
3. The C.I.T. concerned Mumbai
4. The CIT (A) concerned Mumbai
5. The DR, “I” - Bench, ITAT, Mumbai

//True Copy//

BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai