

(2011) 04 DEL CK 0318

Delhi High Court

Case No: ITA No. 54 of 2011

Director of Income Tax
(Exemptions)

APPELLANT

Vs

Mool Chand Khairati Ram Trust

RESPONDENT

Date of Decision: April 4, 2011

Acts Referred:

- Finance Act, 1972 - Section 12A
- General Clauses Act, 1897 - Section 21
- Income Tax Act, 1961 - Section 11, 12, 12A, 12AA, 12AA(1)

Citation: (2011) 7 AD 392 : (2011) 243 CTR 245 : (2011) 339 ITR 622 : (2011) 199 TAXMAN 1

Hon'ble Judges: M.L. Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Abhishek Maratha, for the Appellant; C.S. Aggarwal and Prakash Kumar, for the Respondent

Judgement

M.L. Mehta, J.

This is an appeal directed against the order dated 12.03.2010 of the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") whereby the order dated 30th June, 2009 of the Director of Income Tax (Exemptions) passed u/s 12AA(1)(b) read with Section 12A of the Income Tax Act, 1961 (for short "the Act") was set aside and the appeal of the Assessee was allowed. By the impugned order, the Tribunal also restored the registration granted to the Assessee u/s 12A of the Act.

2. The facts in brief are like this. The Assessee Trust was created on the basis of the will left behind by the Settler late Lala Ram Khairati Ram. It got registration u/s 12A of the Act in December 1974. Based on this, the Assessee got exemption of the income tax in the assessments u/s 143(3) for the assessment years 1996-97 to 2005-2006. It was in the assessment year 2006-2007, when the Assessee filed return

seeking exemption under Sections 11 and 12 of the Act, that the Additional Director of Income Tax (Exemptions), while proceeding to make assessment u/s 143(3), denied the claim of exemption. The Assessee preferred appeal against the said order before the Commissioner, Income Tax (Appeal) (for short CIT(A)), which is stated to be pending. On 23rd March, 2008, Assessee was served with a show-cause notice u/s 12AA(3) of the Act as to why the registration granted u/s 12A of the Act vide order dated 4th December, 1974 should not be cancelled. The Assessee filed detailed reply contending therein inter alia the action of cancellation to be without jurisdiction. However, the Director of Income Tax (Exemptions) (for short "DIT") cancelled the registration u/s 12AA(3) with effect from December 2002-2003 vide his order dated 30th June, 2009. The Director while passing such an order, reasoned as under:

10. In view of the facts mentioned above, I hold that the activities of the trust are not in accordance with the object of the trust and therefore, the registration granted vide Regn. No. DLI(IT68)/74-75 dated 4.12.1974 is cancelled. It has been observed that the activities of the Assessee have definitely been in violation of the objects of the trust for the past several years (chart for assessment year 2002-03 to 2006-07 is mentioned in the order earlier). Accordingly, registration u/s 12A is cancelled w.e.f. AY 2002-03.

3. Against this order, the Assessee preferred an appeal before the Tribunal, which came to be allowed vide the impugned order dated 12th March, 2010. It is against this order that the Revenue has preferred this appeal. The order was also passed restoring the registration. Since the question of law was raised by the Revenue, the appeal is admitted on the following substantial question of law:

Whether the ITAT was right in holding that the registration granted u/s 12A on 04.12.1974 to the Assessee could not be cancelled/withdrawn by the Authorities u/s 12AA(3) of the Act?

4. With the consent of the counsel of both the parties, we have heard the matter finally. It is admitted case that the Assessee was granted registration u/s 12A(a) of the Act in December 1974. Learned Counsel for the Assessee has drawn our attention to the application for registration of the Assessee as charitable trust/institution u/s 12A(a) of the Act, as made in Form 10A, and also registration granted under the said provision, namely, Section 12A(a) of the Act. That being so, the only question that calls for consideration is, as to whether registration so granted u/s 12A(a) could not be cancelled/withdrawn by the Revenue u/s 12AA(3) of the Act as submitted by the learned Counsel for the Assessee? On the other hand, it was submitted by the learned Counsel for the Revenue that if after the grant of registration u/s 12A(a), the Authority is satisfied that the conditions prescribed under the said Section are not satisfied, registration could be withdrawn u/s 12AA(3) which came to be inserted by Finance (No. 2) Act, 2004 with effect from 1st October, 2004. He submitted that under the law, the Authority, which is entitled to grant

registration, is equally entitled to withdraw such a registration, just as power of granting registration is available so is the power of withdrawing.

5. There is also no dispute that the registration, which is sought to be withdrawn by the Authority, is by virtue of power vested in the Commissioner u/s 12AA(3) of the Act. The order which was passed by the DIT was u/s 12AA(1)(b) read with Section 12A of the Act. For proper appreciation of the rival submissions based on the interpretation of Sections 12A and 12AA(1)(b) and 12AA(3), it would be useful to reproduce relevant parts of these Sections, which are as under:

12A. (Conditions for applicability of Sections 11 and 12.) - The provisions of Section 11 and Section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the 8 (***) Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, 9 (whichever is later and such trust or institution is registered u/s 12AA):

12AA. Procedure for registration. - (1) The 2(***) Commissioner, on receipt of an application for registration of a trust or institution made under Clause (a) (or Clause (aa) of Sub-section (1)) of Section 12A, shall-

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he-

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant:

Provided that no order under Sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(2)

(3) Where a trust or an institution has been granted registration under Clause (b) of Sub-section (1) (or has obtained registration at any time u/s 12A (as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or

institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

6. At the outset, it may be pertinent to note that the title of Section 12A "Conditions for applicability of Sections 11 and 12" was substituted with effect from 1st June, 2007 in place of previous title "Conditions as to registration of the Trusts etc.". It means that prior to 1st June, 2007, this Section itself provided conditions regarding registration of trust etc. It is noted here because with the substitution of the present title, this Section no longer provides for registration of trust etc. A special provision has been enacted in Section 12AA providing for procedure for registration of trust etc. with effect from 1st April, 1997. It is also noted that Section 12A was inserted in the statute book by the Finance Act, 1972 with effect from 1st April, 1973. It was omitted and was again restored with effect from 1st April, 1989. Section 12A, as it stood at the time when it provided for registration of trust, nowhere provided for cancellation of the registration once granted. It is also pertinent to note that the words "such trust or institution is registered u/s 12AA" were also substituted in this Section with effect from 1st April, 1997. In fact, this Section even now nowhere stipulates about the cancellation or withdrawal of the registration, once granted under the said Section. It is only u/s 12AA, which came in the statute book with effect from 1st April, 1997 that a fresh procedure for registration of the trust or institution is prescribed. Even under this Section 12AA, there was no provision for cancellation of registration once granted till the enactment of Sub-section (3) with effect from 1st October, 2004. There is no dispute with regard to this fact that the provision regarding cancellation of registration came to be introduced for the first time by virtue of Sub-section (3) in Section 12AA with effect from 1st October, 2004. This Sub-section (3) provides that when a trust or an institution has been granted registration under Clause (b) of Sub-Section 1 and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution. A plain reading of this provision would show that Section 12AA empowered the CIT to grant the registration in those cases where the Assessee applied for such registration under Sub-section (1) thereof. Sub-section (1) provides that the CIT on receipt of an application for registration of a trust or institution made in Clause (a) or Clause (aa) of Sub-section (1) of Section 12A, shall -

(a)

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, -

(i) shall pass an order in writing registering the trust or institution,

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution.

7. From the conjoint reading of Sub-section (1) Clause (b) and Sub-section (3) of Section 12AA, it would be seen that the cancellation of the registration was provided where the registration was granted under Clause (b) of Sub-section (1). Further cancellation under Sub-section (3) was also provided where the registration was obtained at any time u/s 12A (may be under Clause (a) or Clause (aa) of Sub-section (1) of Section 12A). But this power of cancellation of registration obtained u/s 12A came to be incorporated by way of amendment introduced by the Finance Act, 2010 with effect from 1st June, 2010. That being the interpretation of Sub-section (3), it is amply clear that the power to cancel the registration once granted was only confined to the registration granted under Clause (b) of Sub-Section 1 of Section 12AA till before 1st June, 2010. Of course, now with effect from 1st June, 2010, the power vests with the Commissioner even to cancel the registration granted under any of the clauses of Sub-section (1) of Section 12A. In that view of interpretation, we are of the considered view that there was no power vested with the Commissioner to cancel or withdraw the registration granted to the Assessee u/s 12A(a) in the year 1974.

8. Similar question also arose before the Allahabad High Court in CIT v. Manav Vikas Avam Sewa Sansthan, ITA No. 161/2007 decided on 24th February, 2010, wherein the reliance was placed in the case of Lucknow Bench in [Oxford Academy for Career Development Vs. Chief Commissioner of Income Tax and Others](#), wherein it was held as under:

Regarding cancellation of registration which was granted on 01.04.1999 u/s 12A of the Act, it is true that there was no express provision in Section 12A of the Act for cancellation of the Registration. The applicability of Section 21 of the General Clauses Act, 1897 was discussed by the Uttranchal High Court in the case of Welham Boy's School Society (supra), where it was observed that any order passed by the Commissioner of Income Tax u/s 12A is a quasi-judicial order, which does not fall in the category of 'orders' mentioned in Section 21 of the General Clauses Act, 1897 by relying the ratio laid down in the case of [Ghaurul Hasan and Others Vs. The State of Rajasthan](#). The High Court observed that by virtue of Section 21 of the General Clauses Act, the Commissioner of Income Tax had no power to rescind the order passed earlier by the Commissioner granting registration to the Petitioner's society. It may be mentioned that Section 12AA(3) was incorporated w.e.f. 01.10.2004 to empower the Commissioner to cancel the registration granted to a trust or institution. The same is not applicable retrospectively and in the Assessee's case for the assessment years under consideration. The object of this provision is not clarification or explanatory, so prior to that date, the authorities granting registration had no inherent power to withdraw or revoke the registration already granted. The order cancelling the registration granted to a trust or institution u/s 12AA of the Act being a quasi-judicial order does not fall within the category of orders mentioned u/s 21 of the General Clauses Act, 1897, which provides that the power conferred on an authority empower to issue orders including the power to

rescind such orders and the Commissioner would not have power to rescind the order passed by the Commissioner earlier granting the registration to a trust or institution.

9. Learned Counsel appearing for the Assessee also relied upon the case of *Bharati Vidyapeeth vs. Income Tax Officer*, where it was held as under:

Section 12AA(3) empowers the CIT to cancel such registration if he is satisfied that activities of trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution as the case may be. The combined reading of both the sections makes it clear that registration can be cancelled only in those cases where the registration has been granted under Sub-section (1b) of Section 12AA. This section nowhere empowers the CIT to cancel or withdraw the registration granted u/s 12A. In the absence of such power, in our opinion, the registration granted u/s 12A cannot be withdrawn or cancelled.

10. In addition to this, learned Counsel also relied upon the decision of the Tribunal in the cases of *Guru Nanak Public School v. Director of Income Tax (Exemptions)*, Delhi, in ITA Nos. 3267/Del/2008 & 3268/Del/2008 and the case of (2011) 48 SOT 131. There is no need to reproduce what has been held in these cases as the sum and substance of these cases is also that the Commissioner has no power u/s 12AA(3) to cancel the registration granted earlier u/s 12A(a).

11. In view of our above discussion, we answer the question in affirmative in favour of the Assessee and against the Revenue. The appeal is accordingly dismissed.