AFR

Court No. - 34

Case :- INCOME TAX APPEAL No. - 489 of 2007
Appellant :- Institute of Psychological And Educational Measurement (IPEM)
Respondent :- Commissioner of Income Tax
Counsel for Appellant :- S.D. Singh,Harsh Vardhan Gupta
Counsel for Respondent :- A. Kumar,B.J.Agarwal, Gaurav Mahajan

Hon'ble Sudhir Agarwal,J.
Hon'ble Dr. Kaushal Jayendra Thaker,J.

1. Heard Sri S.D. Singh, learned Senior Counsel for appellant and Sri Gaurav Mahajan, counsel for respondent.

2. This appeal under Section 260A of Income Tax Act, 1961 has arisen from the judgment and order dated 03.09.2007 passed by Income Tax Appellate Tribunal, S.M.C. Bench, Allahabad (hereinafter referred to as the "Tribunal") in Appeal No. 431(Alld)/2006.

3. Appellant was granted registration under Section 12A(a) of Income Tax Act, 1961 (hereinafter referred to as 'Act 1961') vide certificate dated 10.08.1979 issued by Commissioner of Income Tax, Allahabad.

4. Section 12A was inserted in Act, 1961 vide Section 6 of Finance Act, 1972 (hereinafter referred to as "Act, 1972") and came into force with effect from 01.04.1973. Initial Section 12A as inserted with effect from 01.04.1973 read as under:

> "*12A. Conditions as to registration of trusts, etc. - 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 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,* ***whichever is later*** *:*
>
> > *Provided that the* ***Commissioner may****, in his* ***discretion****,* ***admit*** *an application for the registration of any trust or institution* ***after the expiry of the period aforesaid****;*
>
> *(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds twenty-five thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed."*
>
> *(emphasis added)*

5. Before the word "Commissioner" occurring in Section 12A(a) and proviso thereto, words "Chief Commissioner or" were inserted by Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1988.

6. Section 12A was omitted by Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989 and was reintroduced by Direct Tax Laws (Amendment) Act, 1989 with effect from the same date i.e. 01.04.1989.

7. Proviso to Section 12A was substituted by Section 7 of Finance (No. 2) Act, 1991 with effect from 01.10.1991 and initial provision stood substituted by the following:

Earlier proviso	Changed proviso
Provided that the Chief Commissioner or Commissioner may, in his discretion, admit an application for the registration	*Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of Sections 11 and 12*

of any trust or institution after the expiry of the period aforesaid;	*shall apply in relation to the income of such trust or institution.* ***(i) from the date of the creation of the trust or the establishment of the institution if the Chief Commissioner or Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;*** *(ii) from the first day of the financial year in which the application is made, if the Chief Commissioner or Commissioner is not so satisfied;* *(emphasis added)*

8. Further, the words "twenty-five thousand" occurring in Sub-clause (b) of Section 12A was substituted as "fifty thousand" vide Section 8 of Finance Act, 1994 with effect from 01.04.1995.

9. The words "Chief Commissioner or" inserted before the word "Commissioner" occurring in Section 12A(a) and proviso thereto by Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1988 were omitted by Finance Act, 1999 with effect from 01.06.1999.

10. The words "whichever is later" occurring in Section 12A(a) were substituted with "whichever is later and such trust or institution is registered under Section 12AA" by Finance (No. 2) Act, 1996 with effect from 01.04.1997.

11. In Section 12A, Clause (c) was inserted by Finance Act, 2001 with effect from 01.04.2002, which read as under:

> *"(c) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds one crore rupees in any previous year, the trust or*

institution-

(i) publishes its accounts in a local newspaper, before the due date for furnishing the return of income under sub-section (4A) of section 139; and

(ii) furnishes a copy of such newspaper along with such return."

12. Aforesaid Clause (c) was omitted by Finance Act, 2002 with effect from 01.04.2002.

13. Vide Finance (No. 2) Act, 1996 and with effect from 01.04.1997, Section 12AA under heading "Procedure for Registration" was inserted and it reads as under:

" ***Procedure for registration.***

12AA. (1) The Chief Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) 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) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six

months from the end of the month in which the application was received under clause (a) of section 12A."

14. Words "Chief Commissioner or" occurring in Section 12AA (1) were omitted by Finance Act, 1999 with effect from 01.06.1999.

15. Further, Sub-Section 1(A) was inserted in Section 12AA by Finance Act, 1999 with effect from 01.06.1999 and the same reads as under:

> "*(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.*".

16. Further, in Sub-section 2 of Section 12AA the words "or clause (aa) of sub-section (1)" were inserted by Finance Act, 2007 with effect from 01.06.2007.

17. Sub-Section (3) in Section 12AA was inserted by Finance (No. 2) Act, 2004 with effect from 01.10.2004 and the same reads as under:

> "*(3) Where 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:*
>
> ***Provided** that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."*

18. Vide Finance Act, 2010 with effect from 01.06.2010, the words "or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of

1996)]" were inserted. But the aforesaid insertion is not applicable in the case in hand since the order impugned in the case was passed on 25.07.2006.

19. The appeal was admitted on following substantial questions of law:

> *1. Whether, withdrawal of applicant's registration under Section 12-A of the Act is wholly without jurisdiction, illegal, arbitrary and perverse?*
>
> *2. Whether, the registration under Section 12-A of the Act could be withdrawn retrospectively?*

20. Sri S.D. Singh, learned counsel for appellant at the outset stated that Section 12AA(3) as inserted w.e.f. 01.10.2004 did not confer power upon Commissioner to cancel registration granted under Section 12A(a) and in the present case since appellant's registration was under Section 12A(a), hence impugned order of cancellation is patently without jurisdiction. He further submitted that under Section 12AA(3) as initially inserted in 2004, confers power on Commissioner to cancel registration only on the conditions that subsequent activities of institution or trust are not genuine or in accordance with objects of trust/institution, which show that cancellation could not have been retrospective on the ground that registration was wrongly granted.

21. We find substance in the aforesaid submission, Firstly, Section 12AA(3) as it was inserted in 2004 did not apply to Section 12A(a). In any case that it was/is not retrospective. Moreover, the factum that registration was wrongly granted is not germane to attract Section 12AA (3) as was on the date of impugned order.

22. Hence, both questions are answered in favour of Assessee.

23. Appeal is allowed. Impugned order passed by Tribunal dated 03.09.2007 as well as order dated 16.10.2006 passed by Commissioner of Income Tax are hereby set aside.

Order Date :- 5.10.2016
Pravin