Court No. - 35

Case :- INCOME TAX APPEAL No. - 427 of 2008

Appellant :- The Commissioner Of Income Tax-I,Kanpur
Respondent :- Sri Sai Darbar Trust,7/165-A,Swaroop Nagar,Kanpur
Counsel for Appellant :- A. N. Mahajan,D Awasthi
Counsel for Respondent :- Shakeel Ahmad

Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J.

Affidavit filed today, is taken on record.

In view of the statements made in the affidavit, the matter is now proceeding without the benefit of the record.

The record had been summoned in this case in order to find out whether any application for exemption had been filed by the assessee along with the application for registration. An affidavit has been filed by the department, expressing its inability to produce the record. Therefore, there is nothing on record at all to suggest that an application for exemption under Sections 11 and 12 was there at all for consideration at the time of applying for registration. Even otherwise, the question of granting of exemption or not, would be at a secondary stage and it would not have resulted in dismissing the application for registration of a charitable trust for which different aspects are to be examined such as the dominant nature and purposes of the trust.

This is an appeal under Section 260A of the Income Tax Act 1961 by the department against an order dated 4.4.2008 for the assessment year N.A. and the questions of law sought to be answered are hereunder-

***"1.1** Whether on the facts and in the circumstances of the case, the tribunal was justified in law in directing the Commissioner of Income Tax to grant registration under section 12AA of the Act while the main objects as well as the activities of the trust were construction and maintenance of temple and the same were hit by the provisions of section 13(1)(b) of the Income Tax Act, 1961.*

***1.2** In doing so whether tribunal erred in law in taking the view that at the time of grant of registration under section 12A/12AA, the issues covered u/s 13 of the Income Tax Act, 1961 are alien, without appreciating that while recording his satisfaction regarding the objects of the trust at the time of grant of registration u/s 12AA, the Commissioner of Income Tax is required under the law to take into consideration whether the objects of the trust are in conformity with the various provisions of the Income Tax Act, 1961 including the provisions of section 13 of the Act.*

***2.** Whether on the facts and in the circumstances of the case, the tribunal was justified in law in directing the Commissioner of Income Tax to grant registration u/s 12AA of the Act without appreciating the ratio of decision of Hon'ble Supreme Court in the case of **Commissioner of Income Tax versus Palghat Shadi Mahal Trust, 254, ITR 212(SC)** wherein it was held that the trust which attracted the provisions of section 13(1)(b) was not a charitable institution entitled to exemption under section 11 of the Act.*"

The facts of the case are that the assessee trust filed an application in Form No. 10-A on 29.5.2007 before the Commissioner of Income Tax-1, Kanpur for grant of registration under Section 12A of the Act, 1961. The application was filed alongwith certified copy of trust deed registered with Sub Registrar, Zone-4, Kanpur. During the course of proceedings under Section 12A of the Act, it was noticed that the main objects as well as the activities of the trust were construction and maintenance of temple and the same were hit by the provisions of section 13(1)(b) of the Income Tax Act, 1961. Therefore, vide letter dated 1.11.2007, the Commissioner of Income-1, Kanpur required the assessee to explain as to why the application for grant of registration under Section 12A may not be rejected. In response to the query the assessee stated that the institution is a " Public Religious Trust" and as such, there was no violation of the provisions of sections 13(1)(a) or 13(1)(b) of the Income Tax Act 1961. The reply filed by the assessee was not found appropriate by the Commissioner of Income Tax-1, Kanpur and he vide order dated 21.11.2007 rejected the application filed by the assessee for grant of registration under Section 12A of the Act by assigning reasons in para-3 of the order dated 21.11.2007, which is as under:-

"***3.** The written replies submitted in this regard by the assessee vide letters dated 19.11.2007 and 21.11.2007 have been carefully considered. The main thrust of the assessee's submissions is that the said institution is a "Public Religious Trust" and as such there is no violation of the provisions of Section 13(1)(a) or 13(1)(b) of the Income Tax Act, 1961. In this regard it is seen that the main objects as well as the activity of the trust is construction and maintenance of temple. This object is hit by the provisions of Section 13(1)(b) of the Income Tax Act, 1961 as the said object is for the benefit of a particular religious community. As such the conditions of Sections 11 and 12 do not apply to the case of the assessee. It is, therefore, seen that the conditions laid down in Section 12AA(1) are not fulfilled in the case of the assessee. Therefore, the aforesaid application for registration under Section 12A(a) is rejected.*"

The assessee preferred appeal before the tribunal against the order dated 21.11.2007 of the Commissioner of Income Tax-1, Kanpur. The tribunal vide its order dated 4.4.2008 has directed the Commissioner of Income Tax to grant registration to the assessee under section 12AA of the Act. While directing to grant registration under section 12A of the Act to the assessee, the tribunal relied on the decisions of the tribunal, Delhi bench in the case of ***Agarwal Mitra Mandal Trust Vs. DIT*** wherein the reliance was placed on the decision of Hon'ble Supreme Court in the case of ***Ahmedabad Rana Caste Association Vs., CIT, 82 ITR 704***, Allahabad High Court's decision in the case of ***CIT vs. Surjit Devi Kunji Lal Jaipuria Charitbale Trust, 186 ITR 728*** and ***CIT vs. Pt. Ram Shanker Misra Trust, 222 ITR 252 (Alld.).*** Finally in para 9 of the order, the tribunal has observed as under:-

"*So far as the question of granting exemption to the trust on account of it being engaged only in religious activities is concerned, it can be separately examined by the AO while considering the question of giving exemption under Section 11/13. But so far as the question of granting of registration under Sections 12A/12AA is concerned, the issues covered under Section 13 are alien and, therefore, on those basis registration cannot be refused. We, therefore, direct the learned CIT to grant registration to the assessee under section 12AA of the Act.*"

It is this decision which is under challenge before this Court.

We have heard learned counsel for both the sides at length and have no difficulty in answering the questions in favour of the assessee. The assessee had filed an application for registration under Section 12AA of the Act. The question of granting of exemption under Sections 11 and 12 to a trust would only arise when a claim was made by the assessee for the same. The stage in the present case had not yet arrived. No finding has been recorded at any stage of the proceeding that the assessee had made any claim for exemptions. It had simply applied for registration under the provisions of Section 12AA of the Act.

The Hon'ble Apex Court while examining a similar question with regard to the applicability of Sections 215, 11, 12, 12A, 12AA and 13, clearly noted in its judgement, had observed while examining the provisions of Section 13(1)(b) specifically:-

"*We would now proceed to examine the objects under the provisions of Section 13(1)(b) of the Act. It becomes amply clear from the language employed in the provisions that section 13 is in the nature of an exemption from applicability of section 11 or section 12 and the examination of its applicability would only arise at the stage of claim under sections 11 or 12. Thus, where the income of a trust is eligible for exemption under section 11, the eligibility for claiming exemption ought to be tested on the touch stone of the provisions of section 13. In the instant case, it being established that the respondent-trust is a public charitable and religious trust eligible for claiming exemption under section 11, it becomes relevant to test it on the anvil of Section 13.*"

From a reading of the above, it becomes clear that the application of section 13(1)(b) would only arrive at a stage when an application for exemption is made. At the time of registration of the trust all that is required to be seen is whether the object and purpose of the formation of the trust, is for a charitable purpose.

In view of the above, we are of the opinion that the tribunal rightly came to the conclusion that at the stage of grant of the registration under Sections 12A and 12AA, the provisions of Section 13(1)(b) would not apply. The questions are, therefore, answered in favour of the assessee and against the department.

This appeal is dismissed. No costs.

Order Date :- 16.1.2017

Deepika