

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Tax Appeal No.12 of 2014

The Commissioner of Income Tax, Ranchi, Aaykar Bhawan, Luby
Circular Road, P.O. & P.S. - Dhanbad, District – Dhanbad

... .. Appellant

Versus

Dr. Khalid Foundation, Govindpur, P.O. & P.S. - Govindpur, District –
Dhanbad

... .. Respondent

CORAM: HON'BLE MR. JUSTICE D. N. PATEL
HON'BLE MR. JUSTICE DR. SHIVA NAND PATHAK

For the Appellant: M/s. Deepak Roshan, Advocate
For the Respondent: M/s. Darshana Poddar Mishra, Advcoate

11/Dated: 30th September, 2016

Per D.N. Patel, J.

This Tax Appeal has been preferred against the judgment and order delivered by Income Tax Appellate Tribunal, Circuit Bench, Ranchi in ITA No.117/Ran/2010, whereby the application preferred by the respondent was allowed without assigning any reason and whatever factual aspects have been mentioned are absolutely false and wrong, as more than half a dozen cases have been decided at a time and the facts of other cases have been mixed up with the facts of the present case and wrongly the application has been allowed, as submitted by the counsel for the appellant. Substantial questions of law have been raised which are as under: -

- i. Whether on the facts and in the circumstances of the case the learned ITAT was justified in law in quashing the order u/s 12AA(1)(b)(ii) of the I.T. Act, 1961 passed by the CIT without going in depth the basis of rejection taken by CIT?*
- ii. Whether on the facts and in the circumstances of the case the learned ITAT was correct in law in directing the CIT to grant registration u/s 12AA of the Act without appreciating the fact that the Trust failed to establish that it has been created for charitable purpose and for the benefit of the Public?*
- iii. Whether on the facts and in the circumstances of the case the learned ITAT was correct in law in directing the CIT to grant registration u/s 12AA of the Act without verifying the independent existence of the Trust?*

- iv. *Whether on the facts and in the circumstances of the case the learned ITAT was correct in law in directing the CIT to grant registration u/s 12AA of the Act without appreciating the fact that the Settler reserves all rights with him which is totally against the spirit of Charitable Trust?*
- v. *Whether on the facts and in the circumstances of the case the learned ITAT was correct in law in directing the CIT to grant registration u/s 12AA of the Act without appreciating the fact that the Trust failed to establish genuineness of its actual activities vis-a-vis its stated objects which is essential condition to be fulfilled for grant of registration u/s 12AA of the I.T. Act, 1961?*
- vi. *whether on the facts and in the circumstances of the case the ld. ITAT is correct in passing a common order involving other Assessee(s) having difference issues?*
- vii. *Whether on the facts and in the circumstances of the case the impugned order is perverse?*

Having heard learned counsels for both sides and looking to the facts and circumstances of the case, combined and joint reasons given by Income Tax Appellate Tribunal in para-6 for half a dozen matters which are as under: -

“6. On careful analysis of the order(s) passed by the ld. CIT(s) and the rival submissions of all the parties, it is found that the assessee-society(s) was/were given registration under section 12AA and renewal was granted under section 80G for earlier years, therefore, it cannot be said that the material filed by the assessee(s) is incorrect. In this background, we are of the considered view that these are the fit cases to renew the registration of the Trusts and the impugned orders passed by the ld. CIT are not in accordance with law. Hence, the same are hereby set aside by directing the CIT(s) to renew the registration under section 80G and also grant of registration under section 12A/AA of the I.T. Act, 1961 as prayed for by the assessee(s) in different application(s), by allowing appeals of the assessee(s).”

The aforesaid reasons have been given jointly for every matter by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi including in ITA No.117/Ran/2010.

It appears that the facts of the present case have not been appreciated at all. Earlier this respondent-Trust had preferred an application under Section 12A of the Income Tax Act, 1961 on 22nd June, 2007 for its registration. This application was dismissed and the registration was refused by the Commissioner of Income Tax by an order dated 31st December, 2007. No appeal was preferred by the respondent and the order passed by the Commissioner of Income Tax was accepted. The said order had attained its finality.

It appears from the facts of the case that the respondent again preferred an application under Section 12A of the Income Tax Act, 1961 on 30th September, 2009 for registration and again the application was dismissed by an order dated 25th March, 2010 by the Commissioner of Income Tax.

Being aggrieved and dissatisfied by the order passed by the Commissioner of Income Tax dated 25th March, 2010, the respondent preferred appeal being ITA No.117/Ran/2010 which has been allowed by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi by an order dated 11th July, 2011, with the only reason given in para-6 as quoted herein above.

Looking to the reasons given by Income Tax Appellate Tribunal, Circuit Bench, Ranchi in allowing the aforesaid ITA No.117/Ran/2010, it appears that factually wrong aspects have been appreciated and wrongly this appeal has been allowed of the respondent. It has been observed by the Income Tax Appellate Tribunal that there was an application for renewal of the registration. It is factually a wrong aspect of the matter. Moreover, previously the registration was granted under Section 12AA is also not a fact of this case.

It ought to be kept in mind by the Income Tax Appellate Tribunal that whenever they decide more than one matter, all care should have been taken for factual aspects of each & every case, otherwise, this type of error is bound to occur.

In view of these facts, we, hereby, quash and set aside the order passed by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi in

ITA No.117/Ran/2010 judgment and order dated 11th July, 2011 and we hereby remand the matter to Income Tax Appellate Tribunal, Circuit Bench, Ranchi for its afresh decision. ITA No.117/Ran/2010 is revived to its original file. The same will be decided on merit of the case and on the basis of the evidences on record. Substantial questions of law raised in this appeal are accordingly answered which are necessary for remand of the matter.

It is needless to say that Income Tax Appellate Tribunal, Circuit Bench, Ranchi will afford an opportunity of being heard to the respondent, who is appellant before the Income Tax Appellate Tribunal, in ITA NO.117/Ran/2010. The respondent will also be permitted to adduce evidence if so required.

This Tax Appeal is allowed and disposed of.

(D. N. Patel, J)

Manoj/

(Shiva Nand Pathak, J)