AFR

Court No. - 4

Case :- INCOME TAX APPEAL No. - 136 of 2006
Appellant :- Commissioner Of Income Tax, Allahabad
Respondent :- Allahabad High School Society
Counsel for Appellant :- R.K. Upadhyaya, Shubham Agarwal
Counsel for Respondent :- Ashish Bansal, S.K.Garg

Hon'ble Sudhir Agarwal, J.
Hon'ble Prabhat Chandra Tripathi, J.

1. Heard Sri Shubham Agarwal, Advocate, for appellant and Sri Ashish Bansal, Advocate, for respondent.

2. This is Revenue's appeal under Section 260A of Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") arising from judgment and order dated 22.09.2005 passed by Income Tax Appellate Tribunal, Allahabad (hereinafter referred to as "Tribunal") in Income Tax Appeal No. 180(Alld)/2006.

3. This appeal was admitted on following two substantial questions of law:

(i) Whether Income Tax Appellate Tribunal was right in law and on facts of the case in condoning delay in filing application for registration under Section 12A of Act, 1961?

(ii) Whether Income Tax Appellate Tribunal was right in law and on facts of the case in directing to treat the Assessee-Society as registered under Section 12A(2) of Act, 1961 with effect from 01.04.1973?

4. The facts in brief necessary for understanding the dispute and answer the aforesaid questions are as under.

5. Allahabad High School Society (hereinafter referred to as "AHS Society") claims to have been founded in the year 1861 and set up two Schools, namely, "Girls High School and College" and "Boys High School and College". It was registered under Societies Registration Act, 1860 (hereinafter referred to as "Act, 1860") in February' 1988.

6. 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)*

7. 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.

8. 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.

9. 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 of any trust or institution after the expiry of the period aforesaid;	*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 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)*

10. 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.

11. 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.

12. 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.

13. 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.”*

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

15. An application was filed on behalf of “Boys High School” in 1991 seeking registration under Section 12A of Act, 1961. Commissioner, Income Tax (hereinafter referred to as 'CIT') granted registration to Boys High School under Section 12A vide order dated 24.07.1991 with effect from 01.01.1973 and delay in filing application was condoned.

16. 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."

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

18. 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.".

19. 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.

20. 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."*

21. 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.

22. A separate application was filed for Registration of Girls High School and College in the year 1999 but no explanation was furnished for delay, hence vide order dated 19.09.2000 registration under Section 12AA was granted to Girls High School and College with effect from 01.04.1999, i.e., from first day of Financial Year in which application is made. Thereafter, an application on behalf of High School Society itself was filed on 28.09.2004 stating that Society is parent body of both educational institutions and both are being run by it, hence, under a mistake it got registration for individual educational institution, though it ought to be in the name of Society, which would govern both the institutions. Consent on behalf of both the educational

institutions was also filed for cancellation of their registration and grant registration to Society itself. An application seeking condonation of delay was filed on behalf of Society on 07.03.2005. CIT granted registration to Society with effect from 01.04.2004, vide order dated 21.03.2005.

23. Counsel for appellant contended that there was no justification to condone delay in respect to Society for the reason that two educational institutions run by Society were already enjoying registration one with effect from 01.01.1973 and another with effect from 01.04.1999 and there was no power vested in Commissioner to cancel such registration once granted. It is submitted that power came to be vested in Commissioner subsequently and that too on satisfaction of two conditions by Sub-section 3 to Section 12AA which was inserted vide Finance (No. 2) Act, 2004 with effect from 01.10.2004. Moreover the aforesaid Section was applicable only when Commissioner is satisfied that activities of institution are not genuine or are not being carried out in accordance with object of Trust or Institution which is not the case in hand. Even with consent, it was open to Commissioner to cancel registration of two educational institutions by order dated 21.03.2005, but there was no justification on the part of Tribunal to refuse registration to Society with retrospective effect, i.e., from 01.04.1973.

24. We find no merit in the submission. This argument ignores and overlook the fact that such a registration would cause overlapping of period during which two institutions were enjoying registration with effect from different periods and that will create complication in the matter.

25. It is submitted that power to condone delay is vested in Commissioner which has to be exercised by recording reasons but Tribunal itself has condoned delay getting itself influenced with the fact that it is a matter of educational institution. We find that for

condonation of delay, purpose or objective with which Trust or Institution has been constituted is not relevant but for the purpose of condonation of delay one has to satisfy about genuineness of the reasons causing delay in filing application for registration which was not explained by respondent-Society at all.

26. Initial application filed by Society did not make any request for condonation of delay and no justification was given. In the subsequent application filed seeking condonation delay, the only reason given is that Society was not aware that instead of getting separate individual educational institutions registered, Society itself should have got registration. This explanation has not been found satisfactory by CIT since Society admittedly had assistance of well qualified Chartered Accountants etc. and it is not the case that registration granted to two educational institutions separately was illegal or impermissible.

27. Tribunal has discussed several law, applicable for considering the question of condonation of delay under Limitation Act, 1963 but looking to the language of statute in the case in hand, we do not find that respondents have given any such explanation, what to say of satisfactory, and Tribunal has read much more therein which has not been stated at all. The registration of individual institutions have been cancelled with the consent prospectively and simultaneously, Society as a whole, has been granted registration. Therefore, in our view, Tribunal in condoning delay and granting registration to Society with effect from 01.04.1973 has erred in law and the aforesaid judgment and order cannot be sustained.

28. Both the questions formulated above are answered in favour of appellant and against respondents. The order dated 22.09.2005 passed by Tribunal in these circumstances is hereby set aside and order of CIT is restored.

29. Appeal is allowed with costs.

Dt. 06.07.2016
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