



IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

ITA NO.687/2009

BETWEEN:

SRI NARAYANA GURU
PRASADITHA SANGHA,
SHUNTILPADAVU,
NIDDODI VILLAGE,
KARKALA TALUK-574 227
REP. BY ITS PRESIDENT
SRI N. CHANDAYA,
AGED ABOUT 65 YEARS
S/O SRI. BASAPPA MAJARI.

...APPELLANT

(BY SMT. JINEETHA CHATRJEE FOR
SRI. S. PARTHASARATHI, ADVOCATE)

AND:

THE COMMISSIONER OF
INCOME TAX,
C.R.BUILDING, ROOM NO.1
CENTRAL REVENUE BUILDING,
ATTAVARA, MANGALORE-575 001.

...RESPONDENT

(BY SRI E.I. SANMATHI AND SRI.K.V. ARAVIND,
ADVOCATES)

THIS APPEAL IS FILED UNDER SECTION 260A OF INCOME TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER ISSUED BY THE ITAT BANGALORE IN ITA NO. 4/BNG/2009, DATED 29.05.2009.

THIS APPEAL IS COMING ON FOR HEARING THIS DAY, **ARAVIND KUMAR J**, DELIVERED THE FOLLOWING:

JUDGMENT

Assessee has filed this appeal challenging the correctness and legality of the order passed by Income Tax Appellate Tribunal, Bangalore Bench 'B', Bangalore dated 29.05.2009 in ITA No.4/Bang/2009 whereunder appeal filed by the assessee questioning the order of Commissioner for Income Tax, Mangalore who had rejected the assessee's application filed under Section 80G of the Income Tax Act, 1961 (for short 'Act') came to be affirmed.

2. Appellant (hereinafter referred to as 'assessee') is a society registered under the Karnataka Societies Registration Act, 1960. It was granted

registration under Section 12A and also approval under Section 80G(5)(vi) of the Act with effect from 17.02.2004 to 31.03.2005. Thereafter, continuation of the approval granted under Section 80G(5)(vi) of the Act was granted with effect from 01.04.2005 to 31.03.2008. On an application made for continuance of approval on 06.03.2008, it was proposed to be rejected by the respondent and as such, notice came to be issued which was duly replied by the assessee. Thereafter, application for continuance of recognition came to be rejected by the respondent. Assessee unsuccessfully challenged the same before Tribunal and as such, present appeal has been presented to this Court.

3. We have heard the arguments of Smt. Jineetha Chatterjee, learned Advocate appearing on behalf of Sri S Parthasarathy for appellant – assessee and Sri E.I.Sanmathi, learned Advocate appearing for Respondent – Revenue.

4. It is the contention of Smt Jineetha Chatterjee , learned Advocate appearing for the appellant - assessee that respondent was not justified in rejecting the application for continuance of recognition granted to appellant under Section 80G(5)(vi) of the Act without examining as to whether aims and objects of the assessee – society had been fulfilled and charitable object with which it was formed has been achieved or not and as such, she contends that order of the Commissioner is erroneous. She would also contend that Commissioner as well as Tribunal erred in not considering the fact that assessee – Trust had not carried on any activity which was hit by proviso to Section 2(15) of the Act and reply given to the respondent indicated that donations which had been received by the assessee had been utilised for the purpose envisaged under the objects of the Trust and its fulfillment. Non-consideration of said vital

evidence available on record by the respondent has resulted in miscarriage in the administration of justice. Hence, she prays for answering the substantial questions of law formulated in the appeal memorandum in favour of the assessee and against the revenue.

5. Per contra, Sri E.I.Sanmathi, learned Advocate appearing for the revenue would support the orders passed by the authorities and contends that assessee - Trust having obtained registration under Section 12A of the Act on 17.02.2004, had not carried out the object for which Trust was established even after lapse of four years and as such, rejection of renewal is just and proper and as such, he prays for dismissing the appeal by answering the substantial questions of law in favour of the revenue.

6. This Court, vide order dated 21.10.2009 has admitted the appeal to consider the following substantial question of law:

- “(a) Whether the Tribunal was justified in alleging that, mere construction of a building for the purpose of carrying out of activities for the advancement of any objects of general public utility like providing venue for public meeting to promote unity of brotherhood would not constitute charitable activity to deny continuance of approval under Section 80G(5)(vi) of the Act?
- (b) When Appellant has granted registration under Section 12A and also approval under Section 80G (5)(vi) of the Act and continuance for such approval in preceding years under similar circumstances then, whether Tribunal was justified in upholding the denial of continuance of approval subsequently under Section 80G(5)(vi) of the Act?
- (c) Whether construction of a building to enable carrying out Appellant’s objects can be held as in adequate for grant of continuance of approval under Section 80G(5)(vi) of the Act when such continuance was required

for carrying out of activity concerning advancement of object of general public utility as provided under Section 2(15)?

- (d) Whether the proviso to Section 2(15) of the Act would apply to justify the denial of continuance of approval under Section 80G(5)(vi) of the Act when the construction of building for carrying out of the object of the Society was under progress?"

7. Having heard the learned Advocates appearing for parties and on perusal of the records, it would emerge that assessee -Trust was granted registration under Section 12A of the Act and also approval under Section 80G(5)(vi) of the Act on 17.02.2004 upto 31.03.2005. Same was continued with effect from 01.04.2005 and upto 31.03.2008 by order dated 04.10.2005 (Annexure-E) and thereafter assessee sought for continuance of the approval granted under Section 80G(5)(vi) of the Act by submitting an application on 06.03.2008. Respondent issued a show cause notice to the

assessee proposing to reject the application. Same was resisted to by the assessee by filing detailed objection, copy of which has been made available by the learned Advocate appearing for the assessee during the course of arguments. Subsequently, the Commissioner vide order dated 28.11.2008 (Annexure-G) rejected the application for continuation of the recognition.

8. Perusal of the said order dated 28.11.2008 which is at Annexure-G would indicate that there is neither consideration of objections filed by the assessee for rejecting the application of assessee nor the respondent has examined as to whether the conditions laid down in clause (vi) of sub-section (5) of Section 80G of the Act is either fulfilled or not fulfilled, for rejecting the application for renewal. Assessee had carried said order of rejection in appeal before the Tribunal by filing an appeal and even the appellate Tribunal after

considering the grounds urged by the assessee has held that rejection order is justifiable. Perusal of the order of Tribunal dated 29.05.2009 would also indicate that there are no reasons forthcoming as to why order of rejection is sustained, except making a passing reference to the fact that construction of the building by the assessee would by itself not constitute granting of relief for the poor or it would be sufficient to hold such activity would amount charitable purpose. It is not in dispute that registration granted to the respondent-assessee under Section 12A of the Act is in force or vogue as on date and the Commissioner while examining the application for approval of an institution or fund under Section 80G of the Act is required to comply with Rule 11AA of Income Tax Rules, 1962, which reads as under:

“Requirements for approval of an institution or fund under Section 80G.

11AA. (1) The application for approval of any institution or fund under clause (vi) of sub-section (5) of Section 80G shall be in Form No.10G and shall be made in triplicate.

(2) The application shall be accompanied by the following documents, namely;-

(i) Copy of registration granted under Section 12A or copy of notification issued under Section 10(23) or 10(23C);

(ii) Notes on activities of institution or fund since its inception or during the last three years, whichever is less;

(iii) Copies of accounts of the institutions or fund since its inception or during the last three years, whichever is less.

(3) The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.

(4) Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such

satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid.

- (5) Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of Section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing:

Provided that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

- (6) The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the date on which such application was made:

Provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded. “

9. Perusal of the above Rule would indicate that an applicant is required to indicate in the application about activities of the institution or fund collected since its inception or during the last three years whichever is less including furnishing of Registration Certificate obtained under Section 12A and copies of its accounts since inception or last three years, whichever is less and in the event of Commissioner not being satisfied with the details furnished by the applicant, he is empowered under sub-rule (3) of Rule 11AA of the Rules to call for further documents or information from the institution or fund or cause such enquiry as he deems necessary in order to satisfy himself the activities of the institution or fund is genuine. After calling for such information or details or particulars, if the Commissioner is satisfied that all the conditions laid down under clauses (i) to (v) to sub-section (5) of Section 80G are fulfilled, he would issue approval as

otherwise, he would reject the application for approval by recording reasons for such rejection and communicate the same to the applicant.

10. At the cost of repetition, it requires to be noticed that order of rejection of renewal of recognition dated 28.11.2008 – Annexure-G is bereft of reasons. On the ground of order of rejection being not a speaking order which has been affirmed by the Tribunal in a perfunctory manner, we are of the considered view that both the orders cannot be sustained and are liable to be set aside. In view of the fact that objections came to be filed by the assessee – applicant to the rejection proposed by respondent indicating that it had taken steps to fulfill the objects of the Trust by not only constructing ‘Samudaya Bhavana’ but also medical treatment said to have been given by its ‘Mumbai Samithi’ apart from distribution of books to the needy, are all aspects which was required to be examined by

respondent and said exercise having not been undertaken, we are of the considered view that matter requires to be remitted to the respondent for being adjudicated afresh. Hence, by setting aside order dated 28.11.2008 passed by the respondent and order dated 29.05.2009 passed by the Tribunal, matter is being remitted to the respondent for adjudication afresh. It is needless to state that respondent would be at liberty to examine the application afresh on merits and in accordance with law.

11. In that view of the matter, substantial questions of law as obtained in the facts and circumstances of the case are required to be answered in favour of the appellant – assessee.

Hence, we proceed to pass the following order:

- (1) Appeal is hereby allowed by answering substantial questions of

law in favour of the assessee – applicant (on facts).

- (2) Matter is remitted back to the Commissioner of Income Tax, Mangalore for being adjudicated afresh and he would be at liberty to pass orders on merits and in accordance with law without being influenced by the observations made in the earlier order which came to be affirmed by the Tribunal.
- (3) Costs made easy.

**Sd/-
JUDGE**

**Sd/-
JUDGE**