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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12th DAY OF JANUARY, 2015

PRESENT

THE HON' BLE MR. JUSTICE N.KUMAR

AND

THE HON' BLE MR. JUSTICE B. VEERAPPA

INCOME TAX APPEAL No. 345/2013

BETWEEN:

1. The Director of Income Tax,
Exemptions,
C.R. Building,
Queens Road,
Bangalore.

2. The Director of Income Tax,
Exemptions,
C.R. Building,
Queens Road,
Bangalore.

... APPELLANTS

(BY SRI K V ARAVIND, ADVOCATE)

AND:

Sri Kuthethur Gururajachar Charities,
No.29, Crescent Road,
High Grounds,
Bangalore.

... RESPONDENT

(BY SRI S. PARTHASARATHI, ADVOCATE)

...

This ITA is filed under Section 260-A of the
Income Tax Act, 1961 arising out of Order dated

20.02.2013 passed in ITA No. 1304/Bang/2010 praying to formulate the substantial questions of law stated therein and allow the appeal and set aside the order of the ITAT Bangalore in ITA No.1304/Bang/2010, dated 20.02.2013 and confirm the order passed by the Director of Income Tax (Exemption), Bangalore.

This Income Tax Appeal coming on for Hearing this day, *B.VEERAPPA J.*, delivered the following:

JUDGMENT

The above appeal is filed by the revenue challenging the order dated 20.2.2013 passed by the Tribunal setting aside the order of the Director of Income Tax (Exemptions) dated 26.10.2010 in cancelling the registration of the Trust as a Charitable Trust under Section 12A of the Income Tax Act, 1961 (for short hereinafter referred to as 'the Act').

2. The respondent-assessee - Sri Kuthethur Gururajachar Charities was granted registration under Section 12A of the Act on 10.7.1994 by an order passed by the Commissioner of Income Tax. Subsequently, a notice came to be issued on 6.10.2010 as to why registration under Section 12A of the Act should not be

revoked by invoking the provisions of Section 12AA(3) of the Act by the authorities. In response to the said notice, the assessee filed its written submission and contested the matter. The authorities took note of the fact that for the assessment year 2010-11 excess of income over expenditure is at Rs.3,12,000/ and excess of income over expenditure is only 19.35% of the gross receipts.

3. The Director of Income Tax (Exemption) considering the entire material on record, by his order dated 26.10.2010, exercising his powers under the provisions of Section 12A of the Act has cancelled the registration observing that the examination of records shows that the dominant activity of the Trust is letting out the choultry on daily rental basis which is in the nature of business and hence, not charitable irrespective of quantum of rent charged and the assessee has earned huge profits and after taking note of the change in definition of Section 2(15) of the Act

which came into effect from 1.4.2009, it held that the activity carried on by the assessee is in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Therefore, the consideration received irrespective of nature of use of the application, or retention, of the income from such activity would take the case out of Section 2(15) of the Act and after referring the various judgments, the Director has cancelled the registration. Aggrieved by the said order, the assessee filed an appeal – ITA No.1304/2010 before the Tribunal.

4. The Tribunal after considering the entire material on record recorded a finding that the registration granted under Section 12A of the Act cannot be revoked on account of commercial activities by the assessee in pursuing the advancement of objects of general public utility and registration can be cancelled only on arriving at a finding that the activities

of the assessee are not genuine and not carried in accordance with the objects of the Trust. Accordingly, the Tribunal by its impugned order dated 20.2.2013 has allowed the appeal against which the present appeal is preferred by the revenue.

5. The substantial questions of law which arise for our consideration are as follows:

- i) *Whether the Tribunal was correct in holding that the assessee is entitled to continue registration under Section 12A of the Act, without appreciating the fact that, in view of the amendment to Section 2(15) of the Act, the activities carried on by the assessee were commercial in nature and therefore cannot be considered as charitable under Section 2(15) of the Income Tax Act?*
- ii) *Whether the Tribunal was correct in holding that the Director of*

Income Tax (Exemption) has not given any finding with regard to genuineness of the activities or the activities not in accordance with the objects of the institution, without appreciating that clear finding is recorded holding activities of the assessee were not in accordance with the objects and the objects are amended without approval of the department and therefore, provisions of Section 12AA(3) of the Act were applicable and recorded a perverse finding?

6. The learned Counsel for the revenue assailing the impugned order contended that the definition of 'charitable institution' has undergone a change with effect from 1.4.2009. The activities carried on by the assessee is renting the choultry for marriages, social activities as well as commercial activities i.e, to put up exhibition for sale of various consumer products and the aggregate value of the receipts from the said

activities exceeds Rs.25,00,000/- and therefore, it squarely falls under the first proviso to Section 2(15) of the Act. Therefore, it ceases to be an institution for charitable purpose and therefore, rightly the registration under Section 12A of the Act was cancelled which has been erroneously interfered with by the Tribunal.

7. Per contra, learned Counsel for the assessee contended that once a person is granted registration under Section 12A of the Act, the said benefit could be denied only if the case falls under Section 12AA(3) of the Act. Admittedly, the case of the assessee does not fall under the aforesaid provision. Even if the activities carried on by the assessee ceases to be a charitable purpose in view of the amendment brought about to the definition of 'charitable purpose' under Section 2(15) of the Act, it is a matter to be considered by the assessing authority to extend the benefit of exemption or not and sought to justify the impugned order passed by the Tribunal.

8. We have given our thoughtful consideration to the rival contentions urged by the parties to the lis and it is not in dispute that the assessee was granted registration under Section 12A of the Act. Now the said registration is cancelled by invoking the power conferred under the provisions of Section 12AA(3) of the Act. Therefore, it is necessary to find out under what circumstances the registration granted earlier could be cancelled.

Section 12AA(3) of the Act reads as under:

“(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [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) 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 subsection shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]”

9. A plain reading of the aforesaid provision makes it very clear that a registration granted under Section 12A of the Act can be cancelled under two circumstances i.e., (i) If the activities of such trust or institution are not genuine and (ii) The activities of trust or institution not being carried out in accordance with the object of the trust or institution. Only on these two conditions/grounds being satisfied, the registration granted under the provisions of Section 12A of the Act could be cancelled by the authorities.

10. It is not in dispute that the Director of Income Tax (Exemptions) has not recorded any such

finding about the violation of the two conditions stated above. The Tribunal while deciding the matter has rightly recorded a finding that a perusal of impugned order shows that Director of Income Tax (Exemptions) has not arrived at any such finding. The fact that the receipts from commercial activities are more compared to the overall receipts of the charitable organization can neither lead to the conclusion that the activities of the trust or institution are not genuine nor it can be said that the activities of the trust or institution are not being carried out in accordance with the objects of the trust or institution and therefore, the two conditions stipulated under the provisions of Sub-section (3) of Section 12AA of the Act, which empowers the authority to cancel the registration, do not exist in the present case. The registration granted is cancelled in view of the amendment of first proviso to Section 2(15) of the Act. That is not a ground specified in the statute for cancellation of the registration. In fact, Sub-section (8) of Section 13 of the Act which is introduced by Financial

Act, 2012 which came into effect from 1.4.2009 categorically provides that, nothing contained in Section 11 or 12 shall operate so as to exclude any income from the total income of the previous year or any receipt there of. If the provisions of the first proviso to clause (15) of Section 2 becomes applicable in the case of such person in the said previous year, the statute has protected the interest of the revenue. Notwithstanding the fact that the assessee is conferred registration under the provisions of Section 12A of the Act, unless the assessee falls within the provisions of Section 2(15) of the Act, excluding the first proviso, the assessee would not be entitled to the benefit of exemption from the tax. If the case of the assessee falls in the first proviso to Section 2(15) of the Act, the benefit of registration which flow from Section 12A of the Act is not available. Anyhow, that is a matter to be considered by the Assessing Authority. But on that ground, the registration cannot be cancelled, which is precisely the

Tribunal has held by allowing the appeal in the present impugned order.

11. In that view of the matter, we do not see any merit in the present appeal and no interference is called for. The substantial questions of law are answered against the revenue and in favour of the assessee. Hence, the appeal is dismissed.

Sd/-
Judge

Sd/-
Judge

Nsu/-