

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. 344/2013

BETWEEN:

1. The Director of Income Tax,
Exemption,
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:

M/s. Kodava Samaja,
No.7, 1st Main Road,
Vasanthnagar,
Bangalore-560 002.

... RESPONDENT

(BY SRI BALRAM R. RAO, ADVOCATE)

This ITA is filed under Section 260-A of the Income Tax Act, 1961 arising out of Order dated 8.2.2013 passed in ITA No. 200/Bang/2012 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.200/Bang/2012, dated 8.2.2013 confirming 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 8.2.2013 passed by the Tribunal setting aside the order of the Director of Income Tax (Exemption) dated 15.12.2011 in cancelling the registration of the assessee 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 - M/s. Kodava Samaja was granted registration under Section 12A of the Act on 27.6.1980 by an order passed by the Commissioner of Income Tax. Subsequently, a notice

came to be issued on 22.11.2011 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 on 2.12.2011 and contested the matter. The authorities took note of the fact that the accounts for the year ended 31.3.2009 shows receipts by way of rentals and other income to an extent of Rs.75,92,080/- and excess of income over expenditure of Rs.63,61,403/- for the assessment year 2008-09 and Rs.82,54,493/- for the assessment year 2009-10. An extract of the Income and Expenditure account for the financial year is reproduced as under:

Expenditure	F.Y.2008-09 Rs.	F.Y.2009-10 Rs.
To opening stock	Rs.32647	189110
To Administrative expenses	16199877	18378098
To Function & Cultural activities	1550373	1743629
Financial expenses	705660	430513
To Academic & Related Expenses	1592707	2141630
Repairs & Maintenance	3122342	3507516
Donations & Disbursement	888051	1366054
Less Rent written off	39286	39286
To Bar & Restaurant expenses	2742026	2683511
to provisions –leave salary	-	120708

provision		
Depreciation	4295569	5177126
Excess of Income over Expenditure	6361403	8254493
TOTAL	37820941	44031674

INCOME	Rs.	
By Rentals & Other income	7304192	7007477
By Fee & Other Collections	22835294	26852374
By Bar Section Sales	3011239	3038677
By Sports, Games & Functions Collections	999582	902417
By Guest Room & Roof Garden Rent	836480	976365
By grant from Govt. of Karnataka	-	300000
By grant from Kodava Samaja	-	550000
By Interest Income	1311421	1280958
By provisions	14000	-
By Other Income	470311	1317872
By Donations & Charity	422612	1141550
By monthly subscriptions	426700	370996
By Closing Stock	189110	292988
TOTAL	37820941	44031674

3. The Director of Income Tax (Exemption) considering the entire material on record, by his order dated 15.12.2011, exercising his powers under the provisions of Section 12A of the Act has cancelled the registration observing that on examination of records

shows that the Samaja has earned profit of Rs. 63,61,403/- and 82,54,493/- for the assessment years 2008-09 and 2009-10 respectively. Under various heads, the Samaja 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 was held that the activity carried on by the assessee is in the nature of trade, commerce or business or any activity of rendering any services in relation to trade, commerce or business and therefore, the consideration received irrespective of the nature of use or application, or retention, of the income, from such activity would take the case out of Section 2(15) of the Act and after referring to the various judgments, the Director of Income Tax (Exemption) has cancelled the registration. Aggrieved by the said order, the assessee filed an appeal – ITA No. 200/2012 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 Samaja 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 Samaja are not genuine and not carried in accordance with the objects of the Samaja. Accordingly, the Tribunal by its impugned order dated 8.02.2013 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 for registration under Section 12A of the Act, without appreciating the fact that, in view of amendment to Section 2(15) of the Act,*

running of Bar/Restaurant, renting out of rooms to its members/guests and letting out choultry on commercial basis are not charitable activities and recorded a perverse finding?

- ii) *Whether the Tribunal committed an error in holding that DIT (exemption) has not recorded its finding with regard to genuineness of the activities of the Trust or that the activities of the assessee were not in accordance with the objects of the Trust, without appreciating that running of liquor bar and restaurant was not in accordance with the objects of the Trust and the condition under Section 12AA(3) of the Act is satisfied for cancellation of registration and consequently 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

Samaja is in the nature of renting the marriage hall cum choultry for reasonable rent irrespective of caste, religion, colour and nationality on rental basis, conducting sports and recreation club etc., 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 sub-section 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 (Exemption) 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 (Exemption) 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/-