

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 7th DAY OF NOVEMBER, 2014

PRESENT:

THE HON'BLE Mr.JUSTICE N.KUMAR

AND

THE HON'BLE Mr.JUSTICE B.MANOHAR

INCOME TAX APPEAL NO.261/2013

BETWEEN

1. THE DIRECTOR OF INCOME TAX
(EXEMPTION)
C.R. BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE DIRECTOR OF INCOME-TAX
EXEMPTION,
C.R BUILDING,
QUEENS ROAD,
BANGALORE.

... APPELLANTS

(By Sri.K V ARAVIND, ADV.)

AND

KARNATAKA INDUSTRIAL AREA
DEVELOPMENT BOARD
NO.143, 2ND FLOOR,
RASHTROTHANA PARISHAT BHAVAN,
NRUPATHUNGA ROAD,
BANGALORE-560 009.

... RESPONDENT

(By Sri.CHYTHANYA K.K., ADV.)

THE ADVOCATE FOR THE APPELLANTS HAS FILED THE ABOVE ITA UNDER SEC.260-A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 31/01/2013 PASSED IN ITA NO.1095/BANG/2011, PRAYING THIS HON'BLE COURT TO:

I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN,

II. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT, BANGALORE, IN ITA NO.1095/BANG/2011 DATED 31/01/2013 AND CONFIRM THE ORDER PASSED BY THE DIRECTOR OF INCOME TAX (EXEMPTION), BANGALORE.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, **N.KUMAR, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The Revenue has preferred this appeal challenging the order passed by the Tribunal which has set aside the order passed by the lower authorities 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 assessee, Karnataka Industrial Area Development Board, (for short hereinafter referred to as 'KIADB') was granted registration under Section 12A of the Act vide order dated 20.6.1988 passed by the Commissioner of Income Tax (Exemption). A notice was

issued to the assessee under Section 12AA(3) of the Act calling upon to show cause as to why the said registration should not be cancelled on the ground that case falls under first proviso to Section 2(15) of the Act. The assessee appeared, 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 gain on disposal of land to the extent of Rs.18,69,72,000/- and excess of income over expenditure at Rs.155,76,64,004. An extract of the Income and Expenditure account for the financial year 2008-09 is reproduced as under:

INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR
ENDED 31.3.2009

EXPENDITURE	RS.	INCOME	RS.
To repairs and Maintenance	76,18,544	By sale of application forms	1,11,91,886
Administrative Expenses	15,42,79,785	Recoveries of fines and penalties	7,01,51,481
Water and Electricity charges	10,61,92,021	Interest received	131,17,52,356

Special and Other Charges	9,43,78,709	Other receipts	14,16,03,730
Depreciation	63,04,074	Rent received	1,92,99,492
		Forfeiture of Deposits	1,12,40,038
		Water supply Charges	17,42,26,156
To Excess Of income Over Expenditure	1,55,76,64,004	by gain on disposal of land	18,69,72,000

3. From the aforesaid figures, it is evident that the KIADB charges for every services it renders. Therefore, the authority was of the view, there is no element of charity or providing any services or industrial sites free of cost. After meeting all the expenses, KIADB has earned a net profit of Rs.155,76,64,004/-. Under various heads, KIADB has earned huge profit. Thereafter, taking note of the change in the 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 the use or application, or retention, of the income, from such activity would take the case out of Section 2(15) of the Act and therefore after referring to the various judgments relied on it, proceed to pass an order cancelling the registration granted under Section 12AA with effect from the assessment year 2009-10. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal relying on the judgment in the case of Karnataka Badminton Association in ITA No.1272/Bang/2011 held; the registration already granted under Section 12A cannot be revoked for the reason that the Charitable Trust or Institution pursuing of advancement of objects of general public utility carried on commercial activities and therefore as the conditions stipulated in Section 12AA(3) do not exist in this case, set aside the order of cancellation and registration of assessee under Section 12A of the Act. Aggrieved by the said order, revenue is in appeal.

4. This appeal is admitted to consider the following substantial questions of law:

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 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 institutions, 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?

5. 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 activity carried on by the assessee is in the nature of trade, commerce or business or at any rate activity of rendering any services in relation to any trade, commerce or business 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 and therefore it ceases to be an institution for charitable purpose. Therefore, rightly the registration under Section 12A of the Act was cancelled which has been erroneously interfered with by the Tribunal.

6. Per contra, learned counsel appearing for the assessee contended, 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 assessee's case do not fall under that provision. Even if the activity 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, that is a matter to be considered by the assessing authority to extend the benefit of exemption or not. Therefore he submits that, no case for interference is made out.

7. From the aforesaid facts and rival contentions, 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 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:

Section 12AA(3)

[(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.]

8. A reading of the aforesaid provision makes it very clear, a registration granted earlier under Section 12A of the Act can be cancelled under two circumstances; (a) If the activities of such trust or institution are not genuine, (b) The activities of trust or institution not being carried out in accordance with the object of the trust or institution. Only on those two conditions being satisfied, the registration granted under Section 12A of the Act could be cancelled by the authorities.

9. It is not in dispute that there is no violation of the said two conditions by the assessee. The activities carried on by the assessee is a genuine one. As could be seen from the profits they have generated, the said profit is earned by carrying on the activities in accordance with the object of

the trust. Therefore, the two conditions stipulated in sub-section (3) of Section 12AA of the Act, which empowers the authority to cancel registration, do not exist in this 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) to Section 13 which is introduced by Financial Act, 2012 which came into effect from 1.4.2009 categorically provides that, nothing contained in Section 11 or Section 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 revenue. Notwithstanding the fact that the assessee is conferred registration under Section 12A of the Act, unless the assessee falls within 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 with 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, registration cannot be cancelled, which is precisely the Tribunal has held. In that view of the matter, we do not see any merit. The substantial questions of law are answered in favour of the assessee and against the revenue.

Hence, the appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

AP/-