

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10<sup>TH</sup> DAY OF JULY 2012

PRESENT

THE HON'BLE MR.JUSTICE D.V.SHYLENDRA KUMAR

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

ITA No.182/2011

BETWEEN:

THE DIRECTOR OF INCOME TAX,  
EXEMPTIONS,  
C.R.BUILDING,  
QUEENS ROAD,  
BANGALORE.

.... APPELLANT

(BY SRI.M.V.SESHACHALA & SRI.K.V.ARVIND, ADVS)

AND:

M/S.VENKATESHA EDUCATION SOCIETY,  
125, ARMSTRONG ROAD,  
BANGALORE.

...RESPONDENT

(BY SRI.PARTHASARATHI, ADVOCATE)

ITA FILED UNDER SEC-260-A OF IT ACT, 1961  
ARISING OUT OF ORDER DATED 28/01/2011 PASSED IN  
ITA NO.1209/BANG/2002, FOR THE ASSESSMENT YEAR  
1997-98, PRAYING TO FORMULATE THE SUBSTANTIAL  
QUESTIONS OF LAW STATED THEREIN AND TO ALLOW  
THE APPEAL AND SET ASIDE THE ORDERS PASSED BY

THE ITAT, BANGALORE IN ITA NO.1209/BANG/2002 DATED 28-01-2011 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-I, BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR HEARING THIS DAY, *SHYLENDRA KUMAR J.*, DELIVERED THE FOLLOWING:

### J U D G M E N T

Appeal by the Revenue under Section 260-A of the Income Tax Act, 1961 (the 'Act' for short). The Revenue is aggrieved by the order dated 28-1-2011 passed by the Appellate Tribunal allowing the appeal of the assessee and directing the Registering Authority to grant registration to the assessee under the provisions of Section 12-A of the Act which had been denied by the Registering Authority in terms of the order dated 26-7-2002.

2. The assessee is a registered Society registered under the provisions of Mysore Registration of Societies Act and functioning since the year 1970 running several

educational institutions. It appears, the assessee had claimed the benefit of exemption under Section 10(22) of the Act so long as the provisions was available on the statute/rules and after the deletion of Section 10(22) of the act w.e.f. 1-4-1999 by the Finance Act No.2/1998. The assessee has made efforts to retain the benefit of exemption in respect of its income under the provisions of Sections 11 and 12 of the act and for such purpose, it had made an application under Section 12-AA of the Act.

3. It is to be noticed here that the registration under Section 12-A of the Act is mandatory for claiming benefit of exemption under Sections 11 and 12 of the Act.

4. The Registering Authority while examining one such application of the assessee found that the past manner of conduct of the assessee-Society was not very satisfactory; that the application of funds of the Society

was not fully for the purpose of carrying on the activities of educational institutions run by the Society; that it was virtually being run as a family trust and funds of the Society was being used or misused for the benefit of the members of the family who are responsible for conducting the affairs of the Society, and therefore, the Society did not qualify for registration under Section 12-A of the Act.

5. The Registering Authority in fact has indicated any reasons in the order to reject the registration under Section 12-A of the Act.

6. This order had been made subject matter of the appeal before the Appellate Tribunal. The Tribunal had occasion to go into various contentions urged by the appellant-assessee and in terms of its order found that the reasons for rejection was not one justifying refusal to register under Section 12-A of the Act; that the

shortcomings noticed by the Registering Authority was more in the nature of irregularities, which did not amount to illegality in the manner of conduct of the affairs of the Society and therefore thought it fit that denial of registration was not justified and accordingly allowed the appeal and reversed the order of the Registering Authority and directed grant of registration.

7. In between, an earlier order to this effect passed by the Tribunal had been set aside by this court for the reason that the order not indicating the reasons and the matter had been remanded. It is the order of the Tribunal, which is passed after remand which has now been made subject matter of appeal by the revenue before this court.

8. The Tribunal had passed the impugned order on examination of all aspects, but the result being the

same, the revenue is yet again before this court in this appeal under Section 260-A of the Act.

9. This appeal had been admitted to examine several questions that had been raised by the Revenue in the memorandum of appeal.

10. We have heard Sri.M.V.Seshachala, learned Senior Standing Counsel for the appellant-Revenue and Sri.S.Parthasarathy, learned counsel for the respondent-assessee.

11. Mr.Seshachala has made submissions based on the grounds raised in the appeal and pointing out that the Tribunal could not have characterised very weighty reasons and supported by the factual position, as noticed by the Registering Authority as trivial reasons for rejecting the application for registration; that it is not really so and it is the Tribunal which has assumed

or proceeded on the surmise that it is a trivial reason. Therefore, the order of the Tribunal is not sustainable.

12. On the other hand, Sri.Parthasarathy, learned counsel appearing for the assessee submits that the subject issue is covered by the earlier judgment of this Court rendered in the case of **DIRECTOR OF INCOME TAX v/s GARDEN CITY EDUCATIONAL TRUST reported in (2009) 28 CTR (Kar) 139** and contended that the observations as contained in paragraph 17 of the judgment applies to the present situation.

Paragraph 17 reads as under:

*It is not the finding of the CIT that the applicant-assessee had not complied with any of the procedural requirements. The Tribunal is fully justified in observing that the manner of application of funds and as to whether the applicant-assessee can claim the benefit of exemption in terms of ss. 11 and 12 is a question which has to be examined by the AO at the stage when it is urged and not by the CIT when such question is not before the CIT. It is hereby clarified and emphasized that while*

*registration in accordance with the provisions of s. 12A of the Act is a condition precedent for claiming the benefits under ss. 11 and 12 of the Act a registration as per s. 12A by itself, will not automatically confer the benefits of ss. 11 and 12 on a trust, but the trust will get the benefit only on complying with the requirements of ss. 11 and 12 of the Act, which compliance can be examined by the assessing authority, while processing the return filed by the trust. Therefore, this appeal has to be dismissed.*

Therefore, submits that the appeal should be dismissed.

13. Apart from the view taken by this Court in the earlier judgment relied upon by the assessee, what we have to notice is that the relevant consideration for passing the orders on an application under Section 12A of the Act is as to whether and as is indicated in Section 12AA of the Act, which is the procedure to be followed by the Registering Authority for granting registration under Section 12A of the Act has actually been adhered to by the Registering Authority.

Section 12A reads as under:

*12A. (1) 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 1<sup>st</sup> 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 and such trust or institution is registered under section 12AA]*

Section 12AA reads as under:

*12AA. (1) The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1) 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:*

13. The two relevant examinations are that the authority should satisfy himself that the objects of the Trust should be in the nature of charitable purposes and the genuineness of the activities of such institution, and on being satisfied on both counts, the applicant can be granted registration under Section 12-A of the Act. The object of the Trust so long as it fits into any one of the objects as mentioned under Section 2(15) of the Act, the first requirement is fulfilled and the second requirement will be met by the genuineness of the activities of such institutions are also to the satisfaction

of the authority. We do not find any recording by the Registering Authority about the lack of genuineness of activities, but the Registering Authority did notice some shortcomings on the part of the Society, in the manner of its functioning.

14. We are of the opinion that the shortcomings by themselves cannot be put on par with lack of genuineness of the Society, in the activities of the Society. However, as noticed in the judgment of this court rendered in the case of **GARDEN CITY EDUCATIONAL TRUST (Supra)**, this is the exercise which perhaps the assessing authority may have to indulge in at the time of examining the returns filed by a Charitable Organisation claiming exemption in terms of Sections 11 and 12 of the Act.

15. It is therefore, we are not inclined to disturb the order of the Tribunal. We find no error or illegality

committed by the Tribunal in allowing the appeal and dismiss this appeal by opining that the questions really are not very germane for the purpose of Section 12-A of the Act.

Sd/-  
JUDGE

Sd/-  
JUDGE

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