

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4<sup>TH</sup> DAY OF JUNE 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

**I.T.A. NO.173 OF 2011**

BETWEEN:

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

... APPELLANT

(BY SRI.K.V.ARAVIND, ADV.,)

AND:

ST.ANN'S EDUCATION SOCIETY  
NO.742, 6<sup>TH</sup> BLOCK  
RAJAJINAGAR  
BANGALORE - 560 010.

... RESPONDENT

(BY SRI.A.SHANKAR, SENIOR COUNSEL FOR SRI. M.LAVA, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 07.01.2011 PASSED IN ITA NO.796/BANG/2001, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO: (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, (II) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BNAGALORE IN ITA NO.796/BANG/2001 DATED 07.01.2011 CONFIRMING THE ORDER PASSED BY THE DIRECTOR OF INCOME TAX, EXEMPTIONS, BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The appeal was admitted by a bench of this Court vide order dated 24.08.2011 on following substantial questions of law:

- (i) *Whether the tribunal was correct in holding that the objects of the assessee is of general public utility and is entitled to registration under Section 12AA of the Act in view of its earlier order in M/s Karnataka Golf Association?*
- (ii) *Whether the tribunal order is vitiated on account of non-consideration of legal evidence on record as set out in para 2 of the substantial questions of law in the appeal memo?*

2. The facts leading to filing of this appeal in a nut shell are that assessee was registered as a society under the Karnataka Societies Registration Act on 14.10.1990 with the object of establishing and conducting Nursery, Primary and Middle Schools and technical training institutes, teachers training school, adult education, tutorial college, child care center, crèche etc. The assessee only established a school sometime in 1994. The Managers of the assessee took another school being run by another association viz., M/s Vishwa Bharathi Vidhya Mandir. Since then, the assessee did not file returns of income. The assessee filed an application for grant of registration under Section 12A(a) of the Act on 17.09.1999. A communication was issued to the assessee calling for certain details including audited statement of accounts in Form No.10B for last 5 years and details of furnishing of returns of income. The assessee filed a reply on 27.07.2000 and furnished audited accounts upto

23.12.1998 and stated that assessee being engaged only in advancement of education, its income is exempt under Section 10(22) of the Act and no returns of income have been filed.

3. Thereafter, a search was conducted in the premises of Sri.T.Balakrishna and concerns under Section 132 of the Act on 13.07.1999 and subsequently, the proceeding under Section 158BD of the Act were initiated on 26.10.1999. During the pendency of block assessment proceedings the file was transferred to DIT (Exemptions), Bangalore on 01.10.2001. Thereafter, a notice dated 05.10.2001 was issued to the assessee to file audited accounts for the year ending 31.03.1999 and 31.03.2000. However, the same was not filed. The assessee thereafter was heard. The Director of Income Tax (Exemptions) vide order dated 31.10.2001, inter alia found that admittedly, assessee had borrowed substantial amounts in cash from various persons at high interest rates and repayment and interest

payments of such amounts have not been recorded in the regular books of accounts. It was held that the affairs of the association was not conducted in a transparent manner. It was noticed that for years 1994 and 1995, the assessee had admitted that some voluntary contributions from parents were received. It was held that aforesaid voluntary contributions are the amounts collected from the parents to grant admissions to their children in the schools. It was also held that the aforesaid amounts were collected illegally. On the basis of the entries made in the audited balance sheets, it was held that association did not have adequate book balance of cash and association recorded payments and therefore, the cash was being maintained without recording the same in the books. It was also held that affairs of the associations are not being conducted either in a transparent manner or with a view to achieve the objects for which the assessee was formed. It was also held that the funds of the assessee were diverted to

private limited companies of the management. Thus, it was held that school was being run like a proprietary concern of Sri.T.Balakrishna and existed on a paper only as a façade to enable the management to make money. Accordingly, the application under Section 12AA of the Act was rejected.

4. Being aggrieved, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for short). The tribunal vide order dated 21.02.2005, inter alia held that as per provisions of Section 12AA(2) of the Act, order on an application for grant of registration under Section 12A of the Act, either granting or refusing to grant registration has to be passed before expiry of six months. It was further held that the application for grant of registration was filed on 17.09.1999 and the order was passed on 31.10.2001 i.e., almost over a period of two years. Thus, the mandatory provision requiring the order to be passed on the application under Section 12A of the Act

within six months has not been complied with. The tribunal therefore, set aside the order passed by the Director of Income Tax (Exemptions) and direct the authorities to proceed as if registration was granted under Section 12AA of the Act.

5. The revenue challenged the aforesaid order in ITA No.2791/2005. A division bench of this court by an order dated 21.04.2010, remitted the matter to the tribunal to consider the same afresh after reconsidering the decision in the case of '**KARNATAKA GOLF ASSOCIATION**'. The tribunal by an order dated 07.01.2011 placing reliance on the decision of the tribunal in the case of '**KARNATAKA GOLF ASSOCIATION vs. DIRECTOR OF INCOME TAX (EXEMPTION)**' passed in **ITA NO.175/BANG/2003 DATED 31.07.2003**' *inter alia* held that the assessee is entitled to registration under Section 12A of the Act as the object of the assessee is an object of general public

utility. In the aforesaid factual background, this appeal has been filed.

6. Learned counsel for the revenue while inviting our attention to para 3.6 of the order passed by the tribunal submitted that despite directions issued by this court, the tribunal has not examined the matter on merits and by a cryptic order, in view of decision in the case of '**KARNATAKA GOLF ASSOCIATION**' has held that assessee is entitled to registration. It is further submitted that even assuming that assessee is entitled to registration under Section 12A of the Act, mere registration would not entitle the assessee to the benefit of provisions contained in Sections 11 and 12 of the Act automatically. On the other hand, learned senior counsel for the assessee submitted that the application under Section 12A of the Act was filed on 17.09.1999 and the same was admittedly decided beyond a period of six months i.e., on 30.10.2001. Therefore, no sanctity can be attached to the aforesaid order in view of the



decision of the supreme court in '**COMMISSIONER OF INCOME-TAX, KANPUR VS. SOCIETY FOR PROMN. OF EDN., ALLAHABAD**', (2016) 67 TAXMANN.COM 264 (SC). A copy of order dated 03.06.2003 passed under Section 12AA (1)(b)(II) of the Act has also been produced and it has been pointed out that the assessee has already been registered under Section 12A of the Act by aforesaid order and therefore, substantial questions of law involved in this case have been rendered academic. It is also pointed out that block assessment proceedings were also initiated against the assessee, which has attained finality in view of order passed by division bench of this court in ITA Nos.1254/2006 and 1253/2006. However, it is fairly submitted by learned Senior counsel for assessee that mere grant of registration will not automatically entitle the assessee to the benefit of provisions of Section 11 and 12 of the Act.

7. We have considered the submissions made on both the sides and have perused the record. Admittedly, an application under Section 12A of the Act on 17.09.1999 and order on the aforesaid application has been passed beyond a period of six months i.e., on 30.10.2001. Therefore, in view of law laid down by Supreme Court, the registration under Section 12A of the Act shall be deemed to have taken effect after six months from the date of presentation of the application i.e., 18.03.2000. In any case, the registration has already been granted in favour of the assessee under Section 12A of the Act vide order dated 03.06.2003. Therefore, it is not necessary for us to examine the validity of the order passed by the tribunal and therefore, in our opinion, the substantial questions of law framed by a bench of this court have been rendered academic. Therefore, it is not necessary to answer the same. However, the appeal is disposed of with the observation that the mere grant of registration to the

assessee shall not result in grant of benefit to it *ipso facto* under Sections 11 and 12 of the Act and if any, regular assessment is pending, the same may be completed in accordance with law. Needless to state that if any proceeding for regular assessment is initiated, the same shall be initiated subject to law of limitation.

In view of the preceding analysis, the appeal is disposed of.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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