

IN THE HIGH COURT OF JHARKHAND AT RANCHI

T.A. No. 04 of 2020

Sri. Ramjanki Tapovan Mandir, Nivarnapur, Chutia,
Doranda Ranchi, through its Chairperson Mahant
Sri Om Prakash Sharan Appellant

Versus

1. The Commissioner of Income Tax (Exemptions), 2nd Floor, Central Revenue Building, Patna.
2. Income Tax Officer (Exemptions), 5, Central Revenue Building (Annexe), 3rd Floor, P.O. G.P.O & P.S. Main Road, Ranchi.
..... Respondents

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CORAM : Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Appellant : Mr. Sumeet Gadodia, Advocate
Mrs. Shilpi Sandil Gadodia, Advocate
Mrs. Akansha Mittal, Advocate
For the Respondents: Mr. Ratnesh Nandan Sahay, Advocate

11/03.11.2022: Heard learned counsel for the parties.

2. The instant Appeal has been preferred by the Appellant being aggrieved by the order dated 30.10.2019 passed in ITA No. 332/RAN/2018 by Income Tax Appellate Tribunal, Ranchi Bench, Ranchi (for short 'ITAT'), wherein the order passed by Respondent-Commissioner of Income Tax (Exemption), Ranchi dated 04.09.2018 cancelling registration of the Appellant under Section 12AA of the Income Tax Act, 1961 (for short 'I.T. Act') has been upheld.

3. The instant Appeal was admitted by this Hon'ble Court vide order dated 17.02.2021 and following substantial questions of law were framed:-

- (1) Whether the registration once granted under Section 12AA of the Income Tax Act, 1961 could be cancelled on the basis of same set of provision of the Trust which were examined earlier?
- (2) Whether the Income Tax Authorities have the jurisdiction under section 12AA(3) of the Income Tax Act, 1961 to question the legality and propriety of the Trust Deed of the Assessee or its inquiry is limited to the conditions stipulated under section 12AA(3) namely,-

- (i) that the activities of the Trust are not genuine, or,
 - (ii) are not being carried out in accordance with the object of the Trust?
- (3) Whether in the facts and circumstances of the case, findings of the learned I.T.A.T. that the appellant failed to give satisfactory explanation regarding the sale proceeds which is utilized for charitable object of the Trust, is perverse?

4. The Appellant Sri Ramjanki Tapovan Mandir is a Hindu Religious Trust registered under the provisions of the Bihar Hindu Religious Trust Act, 1950 (as adopted). The Appellant is represented through its Chairperson, Mahant Sri Om Prakash Sharan. The Trust was created for the purposes of maintaining the deity Sri Ramjanki and to manage the property of the deity, which is popularly known as 'Sri Ramjanki Tapovan Mandir'. The original Trust Deed of the Appellant-Trust was created on 25.02.1948 and the same was re-constituted on 12.05.1987 by cancelling the earlier Trust Deed. Thereafter, aforesaid Trust was again re-constituted on 20.09.2005 by a fresh registered Deed cancelling the earlier Trust Deed dated 12.05.1987. Under the re-constituted Deed dated 20.09.2005, provisions were incorporated for developing and transferring the property of the deity for the benefit of the Trust, as the properties of the Trust were being illegally encroached by local inhabitants. On the basis of the said re-constituted Deed dated 20.09.2005, applications were filed for grant of registration under Section 12AA of the I.T. Act, and, after examining the Trust Deed and the object and purposes of the Trust, Registration Certificate granting registration to the Trust under section 12AA of the I.T. Act was issued on 07.05.2012. In view of the said registration granted under section 12AA of the Act, the income of the Trust was exempted from levy of income-tax.

5. The Trust entered into development agreement with one Sarang Engicon Pvt. Ltd. for development of its properties for the benefit of the Trust and the net consideration received on transferring of capital assets were deposited in fixed deposit with Bank for a period of six months and above. However, taking exceptions to the transfer of the property of the Trust, a Public Interest Litigation was filed before the Hon'ble High Court of Jharkhand vide W.P.(PIL) No. 1597 of 2017 praying therein for an inquiry by an agency other than the agency of the State, in the matter of alleged illegal transfer of property belonging to the Appellant-Trust and other related action of the Trust.

6. A coordinate Bench of this Court, vide its order dated 07.06.2017 passed in W.P.(PIL) No. 1590 of 2017, after taking note of the earlier Trust Deeds of the years 1948 and 1987, held that it was the wishes of the founder of the Trust that its property could not have been sold, and, by giving complete go-bye to the wishes of the founder, by a subsequent Deed dated 20.09.2005, the properties of the Trust were sold. It may be noted here that properties of the Trust were transferred after obtaining permission from the Hindu Religious Trust Board and after seeking approval of the District Judge, as provided under Section 28(j) of the Bihar Hindu Religious Trust Act, 1950. However, the High Court, prima facie, held that the permission obtained by the Board was by way of misrepresentation/fraud which formed the basis of the order of approval passed by District Judge/ Judicial Commissioner, and, the High Court was of the opinion that fraud and mis-representation has been committed in transferring the properties of the Trust and, accordingly, vide order dated 07.06.2017, directed Central Bureau of Investigation to investigate the

matter and to take appropriate action including action for restoring the land in favour of the deity depending upon final outcome of CBI investigation.

7. As a sequitor to the aforesaid order dated 07.06.2017 passed by this Court, the Commissioner of Income Tax (Exemption) (for short 'CIT (Exemptions)') issued show cause notice dated 18.12.2017 to the Appellant-Trust for cancellation of its registration under section 12AA of the I.T. Act on the ground that the Trust is violating the aims and objectives mentioned in the Trust-Deed and/or Memorandum of Association. The Appellant appeared and submitted its reply, but, vide order dated 04.09.2018, CIT (Exemption) cancelled the registration granted to the Appellant-Trust on the ground that the activities of the Trust are not genuine. Said finding was arrived at by Respondent-CIT (Exemptions) primarily being influenced by the order dated 07.06.2017 passed by the High Court in W.P.(PIL) No. 1590 of 2017.

8. Being aggrieved by the order dated 04.09.2018, Appellant preferred an Appeal before the ITAT, Ranchi Bench, Ranchi which was registered as ITA No. 332/RAN/2018. It may be mentioned herein that Appellant also preferred a Special Leave Petition being S.L.P.(C) No. 24177 of 2017 being aggrieved by the order of the High Court passed in W.P.(PIL) No. 1590 of 2017. During pendency of its Appeal before ITAT, Ranchi, the Hon'ble Supreme Court granted leave by converting the S.L.P. into Civil Appeal No. 4003 of 2019 and vide its order dated 01.05.2019, was pleased to set aside the order of the High Court, wherein CBI investigation was ordered. The Hon'ble Supreme Court, in its Judgment dated 01.05.2019, reported in **(2019) 6 SCC 777**, held that there is no public law element involved, and, further, after taking into consideration provision of section 44 of the Bihar

Hindu Religious Trust Act, 1950 read with section 28(j) of the said Act, held that the properties of the deity could have been transferred.

9. The order of the Hon'ble Apex Court was brought to the notice of ITAT, but ITAT, vide impugned order dated 30.10.2019, upheld the order of the CIT (Exemptions) cancelling the registration granted to the Appellant under section 12 AA and dismissed the Appeal of the Appellant.

10. Mr. Sumeet Gadodia, learned counsel for the Appellant, at the outset, emphasized that the foundational basis of the order passed by CIT (Exemption) dated 04.09.2018 was the order of the Hon'ble High Court passed in the Public Interest Litigation, and, since the said order has been set aside by the Hon'ble Apex Court, the very foundation of the impugned order was rendered *nonest* and void. By inviting our attention to the order cancelling registration of the Appellant, it was contended that the CIT (Exemptions), in its order, quoted several paragraphs of the order of the High Court of Jharkhand, and, thereafter, cancelled the registration by recording, inter alia, that the Trust Deed of the year 2005 was not lawful as it has changed the original Trust Deeds of the years 1948 and 1987 contrary to the wishes of the founder of the Trust. On the basis of the above, it was recorded in the order that activity of the Trust was not genuine. Mr. Gadodia, while inviting attention of this Court to the order passed by the Hon'ble Apex Court in ***Civil Appeal No. 4003 of 2019 (Shree Shree Ram Janki Ji Asthan Tapovan Mandir & Anr. Vs. The State of Jharkhand & Ors.)***, contended, inter alia, that the Hon'ble Apex Court, in specific terms, has held in its aforesaid Judgment that the finding of the High Court that deity could not transfer its land is not tenable. On the basis of the above, it was contended that the very foundation of the order of

cancellation of the Appellant's registration under section 12AA was annulled by the Hon'ble Apex Court. While placing reliance upon section 28(j) and section 44 of the Bihar Hindu Religious Trust Act, 1950, it was contended that the property of the deity can be alienated, developed or given for lease for the benefit of deity and the Income Tax Department cannot contend that the Trust Deed of the year 2005 was contrary to the wishes of the founder of the Trust. Reference in this regard was placed to the decision of the Hon'ble Apex Court in the case of '***Commissioner of Income Tax Vs. Kamla Town Trust, reported in (1996) 7 SCC 349/(1966) 217 ITR 699 (SC)***'. It was further contended that once registration has been granted after satisfying about the genuineness of the activities of the Trust, the same cannot be cancelled on the basis of the same set of provisions of the Trust which were examined earlier. Reliance was placed on the following two decisions on the aforesaid proposition of law:-

- (i) ***CIT Vs. Sarvodaya Ilakkiya Pannal, (2012) SCC OnLine Mad. 5282/ (2012) 343 ITR 300 (Madurai)***.
- (ii) ***Tamil Nadu Cricket Association Vs. Director of Income Tax (Exemptions) – (2013) SCC OnLine Madras 3913, (2014) 360 ITR 633 (Madras)***.

11. Lastly it has been contended that ITAT, while upholding the order of CIT (Exemptions), has rendered an additional finding which was not the subject matter of dispute between the parties by recording, inter alia, that the Appellant has failed to satisfy that sale proceeds received by it from the sale of land has been used or will be used for development of charitable objects of the Trust. It was vehemently submitted that the Tribunal cannot build a case for the revenue which the revenue has not built for itself. While referring to the Supplementary Affidavit filed by the Appellant, it was

further contended that the finding of ITAT recording non-production of proof of utilization of the sale proceeds for the benefit and objectives of the Trust is not only beyond the show cause notice, but, is also contrary to the earlier order passed by ITAT itself for the Assessment Year 2013-14. It has been brought to our notice that for the Assessment Year 2013-14 vide Scrutiny Assessment Order dated 03.03.2016 passed under section 143(3) of the I.T. Act, Assessing Authority treated the income derived by the Appellant-Trust towards sale of its immovable property as exempt income. However, said assessment proceeding was subjected to *suomotu* proceeding under section 263 of the I.T. Act, and, CIT (Exemptions), vide its order dated 15.03.2018, set aside the Assessment Order and held the income to be taxable by placing reliance upon the earlier Trust Deeds of the years 1948 and 1987 and by recording, inter alia, that the Appellant-Trust was not entitled to sale or transfer the land of the deity. Against the said order under section 263, dated 15.03.2018, Appellant-Trust filed an Appeal before the ITAT, Ranchi, which was allowed vide order dated 20.02.2019, and, in the said order of ITAT, it was clearly held that earlier Trust-Deeds were not relevant for allowing the benefit of exemption, and, income derived pursuant to development agreement was as per object of the Trust. Further reliance was placed upon the Supplementary Affidavit and it was stated that Appellant-Trust, from time to time, has invested the income earned from sale of immovable assets in fixed deposit with the Bank and, as per the Balance-sheet for the year ending on 31st March, 2020, an amount of Rs. 7.00 Crores (approx.) was lying in fixed deposit of the Appellant-Trust. Placing reliance on the Instructions of the Central Board of Direct Taxes (CBDT) bearing Instruction No. 883-CBDT F.N. 180/54/72-IT (AI) dated

24.09.1975 CBDT Bulletin XXI/1/74, it was submitted that the investment of the net consideration on the transfer of a capital asset in fixed deposit with a bank for a period of six months or above would be regarded as utilization of the net consideration for acquiring another capital asset within the meaning of section 11(1A) of the Income Tax Act, 1961. As such, it was contended that the finding in the impugned order of ITAT was not only beyond the show cause notice, but was also perverse.

12. Per contra, Mr. Ratnesh Nandan Sahay, counsel appearing for Revenue, has supported the impugned order of ITAT as well as the order dated 04.09.2018 passed by CIT (Exemptions) cancelling registration of the Appellant granted under Section 12AA of the Act. It was contended that the CIT (Exemptions), while cancelling the registration certificate, has specifically held that since the Trust Deed was changed contrary to the wishes of the founder for selling the property of the deity, the activity of the Trust was held to be not genuine by CIT (Exemptions), which is the correct position in the eye of law. He further submitted that under the I.T. Act it is CIT (Exemptions), which is a competent authority to grant exemption on the attended facts and circumstances of each case, and the matter should be again remanded back to CIT (Exemptions) for determining the claim of exemption of the Appellant.

13. We have heard the parties and have perused the order dated 04.09.2018 passed by CIT (Exemptions) and the impugned order dated 30.10.2019 passed by ITAT. Section 12AA of the I.T. Act prescribes therein the procedure for registration to be granted to a Trust or Institution, and, Section 12AA(3) provides the circumstances under which registration granted under Section 12A of the I.T. Act to a Trust or Institution can be

cancelled. For the sake of ready reference, Section 12AA(3) is quoted hereunder:-

“(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 Principal Commissioner or 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.”

14. A bare perusal of the said section reveals that Section 12AA(3) contemplates existence of two contingencies for cancellation of the registration already granted, namely.-

- (i) If the activities of the Trust are not genuine; or
- (ii) are not being carried out in accordance with the objects of the trust.

15. In the instant case, it is an admitted fact that registration under section 12AA of the I.T. Act was granted to Appellant-Trust on the basis of Trust Deed dated 20.09.2005. It is further an admitted fact that in the Trust Deed dated 20.09.2005, it was specifically recorded, inter alia, that the lands of the Trust were under threat of encroachment by local inhabitants, and, in order to save the land in question, it was felt necessary to utilize the said land by giving it for development for construction of buildings/flats and the proceeds received from consideration amount were to be utilized for the purposes of the Trust. On the basis of the same set Trust Deed, benefit of exemption under Section 12A of the I.T. Act was granted by

granting registration to the Trust under section 12AA. However, despite the aforesaid facts, notice was issued to the Trust dated 18th December, 2017 directing the Trust to show cause, inter alia, as to why its registration be not cancelled for violation of the aims and objectives mentioned in the Trust Deed/Memorandum of Association.

16. Thereafter, CIT (Exemptions) passed order dated 04.09.2018 cancelling the registration granted in favour of the Appellant-Trust by recording, inter alia, that the Trust created in the year 2005 was created with intent of changing the original Trust Deeds of 1948 and 1987, which was against the wishes of founder of the Trust. Operative portion of the order of CIT (Exemptions) is quoted hereunder:-

“On circumstances and developments, it could be said that trust created in 2005 was created with intent of changing the original trust deed of 1948 and 1987 by trustee who acted against the wishes of founder of the trust and land belonging to deity were sold for development and thus the trust created was not lawful going against the wishes of founder.”

17. The Hon’ble Apex Court, in the case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, while considering the issue as to whether the income of Kamla Town Trust was exempt under section 4(3)(i) of the Income Tax Act, 1922, held vide para-17 as under:-

“For all these reasons, therefore, it must be held that when such rectified trust deed is pressed in service before the Income Tax authorities in assessment proceedings concerning the relevant assessment years the Income Tax Officer will have to interpret such rectified instrument for finding out its correct legal effect. But it will not be open to the Income Tax Officer to refuse to look at such rectified instrument of trust and to insist that the trustees of the trust should ignore the said rectified objects and should stick to the instrument as it existed prior to its rectification. The Income Tax Officer will have to take the instrument as it exists in its actual amended form when it is

pressed in service for framing the assessment concerning the relevant assessment year in which such rectified instrument holds the field. The second contention, therefore, fails and is rejected.”

18. In the said case, rectified instrument of the Trust, as it stood, was declared to convey the intention of the Trust for purposes of determination as to whether the activities carried out by the Trust were charitable or not? In substance, it has been held that a Trust Deed is an understanding between the author of the Trust and its trustee, and, the Income Tax Department is not authorized to comment on execution of the Trust Deed. In the present case, CIT (Exemptions), while cancelling the registration, went beyond the terms of the Trust Deed and proceeded to cancel the registration by recording, inter alia, that the Trust Deed dated 20.09.2005 was contrary to the wishes of the founder of the Trust and the earlier instruments of Trust i.e. Trust Deeds of the years 1948 and 1987. Thus, CIT (Exemptions) clearly travelled beyond the scope of inquiry as contemplated under section 12AA(3) for declaring that the activities of the Trust are not genuine.

19. In fact, from bare perusal of the order of the CIT (Exemptions), it would be evident that said order was solely influenced by the order passed by this Hon’ble Court in W.P. (PIL) No. 1590 of 2017. In fact, several paragraphs of the order of this Hon’ble Court were quoted in the order cancelling registration and the finding rendered for treating the activities of the Trust as not genuine was solely based upon the order passed by this Court passed in W.P. (PIL) No. 1590 of 2017. As mentioned above, said order of this Hon’ble Court has already been set aside by the Hon’ble Supreme Court in the case of the Appellant itself (supra).

20. The Hon'ble Supreme Court, while setting aside the order passed by this Hon'ble Court, reported in (2019) 6 SCC 777, vide paragraphs 10, 11 and 21, held as under:-

“10. The vesting of the property in deity is a religious endowment but has no public element in it, the grievance of which can be made in a writ petition filed in the public interest. We do not say any more than the fact that the High Court should have refrained from entertaining such Public Interest Litigation in respect of alleged wrongful sale of property of the religious bodies.

11. Section 44 of the Bihar Hindu Religious Trust Act, 1950 (the Act) gives power of transfer of immovable property of a religious trust after taking previous sanction from the Board. Such permission is to convert any property of the Trust after approval of the District Judge as provided by Section 28(j) of the Act. The stand of the appellants is that they have obtained approval as contemplated by the Act and such approval has been sought as an act of prudent management. Therefore, the High Court was not justified in creating a suspicion on an act of transferring the land of the deity.”

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“21. We find that the finding recorded by the High Court that the Deity could not transfer its land in any case is not tenable. The appellant relies upon statutory provisions in support of its stand to transfer of land. The sweeping remarks that the allegations are against the Government and the Board which consist of Government functionaries; therefore, the matter requires to be investigated by CBI are wholly untenable and such sweeping remarks against the Government and/or the Board should not have been made. The functioning in the Government is by different Officers and the working of the Executive has inbuilt checks and balances. Therefore, merely because, permission has been granted by a functionary of the State Government will not disclose a criminal offence. The High Court has thus travelled much beyond its jurisdiction in directing investigations by CBI in a matter of sale of property of the Deity. Still further, the High

Court has issued directions without their being any complaint to the local police in respect of the property of the religious Trust.”

21. The Hon’ble Apex Court, in clear terms, held that under section 44 of the Bihar Hindu Religious Trust Act, 1950, a religious trust has power to transfer its immovable property after taking previous sanction, and, the Hon’ble Apex Court has further held that the deity could transfer its land for fulfilling its objectives. Thus, the finding rendered by CIT (Exemptions) for cancellation of the registration certificate is directly contrary to the order passed by the Hon’ble Apex Court in the case of the Appellant-Trust itself.

22. That apart, once registration has been granted to the Appellant Trust under section 12AA of the Act after satisfying about the genuineness of the activities of the Trust, the same cannot be cancelled on the basis of the same set of provisions of the Trust which were examined earlier. Reference in this regard may be made to the Judgment rendered in the case of *‘CIT Vs. Sarvodaya Ilakkiya Pannal’* (supra). Relevant paragraphs of the said Judgment are quoted hereunder:-

“4. In order to avail of the benefit of exemption under section 11 of the Act, a trust can make an application to the Commissioner for registration under section 12A of the Act. On receipt of the said application for registration of a trust or institution, the Commissioner should satisfy himself about the genuineness of the activities of the trust or institution. In order to satisfy himself, the Commissioner may also make such enquiry as he may deem necessary in that behalf. In the event the Commissioner satisfies himself that the trust is entitled to registration keeping in mind the objects, shall grant, registration in writing in terms of section 12AA(1)(b)(i) of the Act. In the event the Commissioner is not satisfied, he shall refuse such registration in terms of section 12AA(1)(b)(ii) of the Act. Once such a satisfaction is arrived at by the Commissioner to grant such registration cannot be cancelled by following the very same provision of section 12AA(1)(b)(i) of the Act go into the genuineness of the activities of the trust. However, the Commissioner is empowered to revoke the certificate in terms of section

12AA(3) of the Act. As per the said provision, in the event the Commissioner is satisfied subsequently, i.e. after registration that the activities of such trust or institution are not genuine or not being carried out in accordance with the objects of the trust or the institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.

5. In order to apply the above provision, there must be a specific finding by the Commissioner that the activities of the trust or institution are not genuine or not being carried out in accordance with the objects of the trust or institution, as the case may be. The question is, whether the order of the Commissioner of Income-tax could fall under the powers conferred on him under section 12AA(3) of the Act. The only reason given by the Commissioner of Income-tax to cancel the registration is that the activities of the trust were not charitable and, therefore, the trust is not entitled to exemption under section 11 and, consequently, cancelled the registration granted under section 12AA.

6. It is not as if that the registration was granted without considering the objects of the trust in question, namely:-

“(a) The publication, sale and spread of Sarvodaya Literature.

(b) To support all activities connected with the constructive programmes of the father of the nation, Mahatma Gandhi.

(c) To organize meetings, seminars, symposium and conferences to propagate Gandhian and Sarvodaya Ideologies.

(d) To do all other acts and things incidental to and necessary in the furtherance of the said objects.

(e) To apply the profit derived by the society to the activities connected with spreading and propagating of Gandhian and Sarvodaya Ideologies and to help the Sarvodaya movement.”

7. The Commissioner of Income-tax, before granting the registration, had gone into the above objects and satisfied himself for grant, of registration. Subsequently, by the order of the Commissioner of Income-tax dated June 31, 2011, the very same objects were considered and were found not to be the activities which are charitable in nature. While carrying on the activities of publication and sale of Sarvodaya Literature and Gandhian Ideologies as charitable activities, referring the same objects as not charity, it cannot be brought under the

provisions of section 12AA(3) of the Act. The cancellation was made not on the ground that the activities of the trust were not genuine but the activities of the trust were not in accordance with the objects of the trust. When the trust was registered with the definite objects, carrying on such activities would be in terms of the objects for which the registration was made. In fact, if those activities are not carried on, the trust may violate the objects for which the registration was granted.

8. *Under section 12AA, the Commissioner is empowered to grant or refuse the registration and after granting registration, would be empowered to cancel and that too, only on two conditions laid down under section 12AA(3) of the Act. Whether the income derived from such transaction would be assessed for tax and also whether the trust would be entitled to exemption under section 11 are entirely the matters left to the Assessing Officer to decide as to whether it should be assessed or exempted. The Tribunal had allowed the case of the assessee with the finding that none of the conditions under section 12AA(3) were violated and, therefore, the satisfaction which was arrived at by the Commissioner of Income-tax was not justified. In that view of the matter, we find no reason to interfere with the order of the Tribunal and, accordingly, both the questions require no further consideration.”*

23. Further, reference may be made in this regard to the Judgment of Hon’ble Madras High Court in the case of *‘Tamil Nadu Cricket Association Vs. Director of Income Tax (Exemptions)*. Relevant paragraphs of the said Judgment are quoted herein-under:-

“44. We do not accept the submission of learned standing counsel appearing for the Revenue. As rightly observed by learned senior counsel appearing for the assessee, the Revenue granted registration under section 12AA of the Act satisfying itself as to the objects of the association befitting the status as charitable purpose as defined under section 2(15), as it stood in 2003 and after granting the registration, if the registration is to be cancelled, it must be only on the grounds stated under section 12AA(3) of the Act with reference to the objects accepted and registered under section 12AA, as per the law then stood under the definition of section 2(15) of the Income-tax Act. Even therein, courts have defined as to when an institution could be held as one of the advancement of any other object of general public utility. Thus, if a

particular activity of the institution appeared to be commercial in character, and it is not dominant, then it is for the Assessing Officer to consider the effect of section 11 of the Act in the matter of granting exemption on particular head of receipt. The mere fact that the said income does not fit in with section 11 of the Act would not, by itself, herein lead to the conclusion that the registration granted under section 12AA is bad and, hence, to be cancelled.”

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“47. It is no doubt true that the decision reported in Asst. CIT v. Surat City Gymkhana, (2008) 300 ITR 214 (SC), was in the context of section 10(23) of the Income-tax Act, 1961, nevertheless, the fact remains that the understanding of the scope of the expression “general public utility” would nevertheless is of relevance herein. Admittedly, when the assessee was granted registration, the Revenue recorded its satisfaction that the objects are of charitable purpose. Thus, only possible enquiry under section 12AA of the Act for cancellation is to find out whether the activities of the trust are genuine or in accordance with the objects of the trust, the assessee’s income, at best, may not get the exemption under section 11 of the Act. But this, by itself, does not result in straight rejection of the registration as “trust” under section 12AA of the Act. Consequently, we reject the prayer of the Revenue that section 12AA(1) of the Income-tax Act, 1961, must be read along with section 12AA(3) of the Income-tax Act, 1961, before considering the cancellation.”

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“50. As already noted in the preceding paragraphs, considering the provision under section 12AA(3) of the Act, cancellation or registration in a given case could be done only under the stated circumstances under section 12AA(3) of the Act and in the background of the definition relevant to the particular year of registration. As rightly pointed out by the assessee, the Revenue does not allege anything against the genuineness of the objects of the assessee or its activities. It rests its order on the ground of the assessee receiving income from holding of matches which, according to the assessee, were not held by it. Thus, as regards the question as to whether the particular income qualified under section 11 of the Act or not is not the same as activity being genuine or not. In the circumstances, we do not agree with the view of the Income-tax Appellate Tribunal that the order passed by the Director of Income-tax (Exemptions) was in accordance with the provisions of the Income-

tax Act, 1961. He viewed that the conduct of the test matches and ODI are in the nature of commerce or business. Though the assessee claimed their activities for promotion of sports, he held that the dominant feature is evident from the huge profits received, and, hence, the amount received from the BCCI as subsidy are commercial. As regards conducting of IPL matches, he pointed out that though no services are rendered by the assessee for conducting the matches, the ground where the matches are played are given for rent which is a commercial venture. The subsidy received from the BCCI included mainly TV advertisements sold by the BCCI for the conduct of IPL and their commercial receipts arising for IPL transactions. Therefore, the nature of receipt was important than the name of account under which it was accounted. Thus, he viewed that the objects and activities would no longer come within the definition of section 2(15) of the Act after the amendment came in effect from April 1, 2009.”

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“54. As seen from the observation of the Income-tax Appellate Tribunal, although generally it accepted the case of the assessee that the physical aspect of the game was one in accordance with the objects, the quantum of receipt apparently led the Income-tax Appellate Tribunal and the Revenue to come to the conclusion that the activities are commercial and, hence, by section 2(15) proviso to the Act, the receipt from the BCCI could not be called as subsidy. As for the observation of the Income-tax Appellate Tribunal that the twin conditions stood satisfied is concerned, it is not denied by the Revenue that at the time of granting registration, the Commissioner had satisfied himself about the objects of the trust and the genuineness of the activities as falling within the meaning of “charitable purpose”, as it stood in 2003. The Revenue does not deny as a matter of fact that the objects remain as it was in 2003 and there is no change in its content to call the assessee’s object as not genuine. There are no materials to indicate that the grant of registration was not based on materials indicating objects of general public utility.

55. The assessee is a member of the Board of Control for Cricket in India (BCCI), which in turn is a member of ICC (international Cricket Council). BCCI allots test matches with visiting foreign team and one day international matches to various member cricket associations which organize the matches in their stadia. The franchisees conduct matches

in the stadia belonging to the State cricket association. The State association is entitled to all in-stadia sponsorship advertisement and beverage revenue and it incurs expenses for the conduct of the matches. BCCI earns revenue by way of sponsorship and media rights as well as franchisee revenue for IPL and it distributes 70 per cent, of the revenue to the member cricket association. Thus, the assessee is also the recipient of the revenue. Thus, for invoking section 12AA read with section 2(15) of the Act, the Revenue has to show that the activities are not fitting with the objects of the association and that the dominant activities are in the nature of trade, commerce and business. We do not think that by the volume of receipt one can draw the inference that the activity is commercial. The Income-tax Appellate Tribunal's view that it is an entertainment and, hence, offended section 2(15) of the Act does not appear to be correct and the same is based on its own impression on free ticket, payment of entertainment tax and presence of cheer group and given the irrelevant consideration. These considerations are not germane in considering the question as to whether the activities are genuine or carried on in accordance with the objects of the association. We can only say that the Income-tax Appellate Tribunal rested its decision on consideration which are not relevant for considering the test specified under section 12AA(3) to impose commercial character to the activity of the association. In the circumstances, we agree with the assessee that the Revenue has not made out any ground to cancel the registration under section 12AA(3) of the Act. As regards the observation of the Income-tax Appellate Tribunal that IPL matches and Celebrity cricket matches are also being held by the association and, hence, it is an entertainment industry, we need not go into these aspects for the order of the Director of Income-tax (Exemptions) casts no doubt on the genuineness of the objects of the trust. Hence, it is for the Assessing Officer to take note of all facts, while considering the same under section 11 of the Income-tax Act, 1961. We disapprove the approach of the Tribunal in this regard. In the above said circumstances, we set aside the order of the Income-tax Appellate Tribunal."

24. We are in respectful agreement with aforesaid Judgment of the Hon'ble Madras High Court and we declare that once registration has been granted under section 12AA after satisfying about genuineness of the

activities of the Trust, the same cannot be cancelled on the basis of the same set of provisions of the Trust. At this stage, we would like to refer to paragraph 11 and 12 of the Appellate Order of ITAT, wherein ITAT assigned reason for upholding the order of CIT (Exemptions). Said paragraphs are quoted hereunder:-

“11. We may also point out that neither in the written submissions nor before the Tribunal nor in the reply dated 26.03.2018 to the show cause issued by the CIT(E), it has been mentioned or explained by the appellant that the sale proceeds from sale of land for development have been used or will be used for the development of charitable objects of the trust. Therefore, this factum was sufficient for CIT(E) for satisfying himself that the activities of the trust are not genuine or are not being carried out in accordance with the objects of the Trust. In this situation, the CIT(E) has very well empowered to pass order under section 12AA(3) of the Act cancelling the registration.

12. In view of foregoing discussion, we reached to a logical conclusion that the CIT(E) was right in cancelling the registration granted to the assessee on 7.5.2012 as the Pujari of the trust changed the original trust deed granted in 1948 and subsequent trust deed in 1987 against the wishes of the founder. The reasons stated by the appellant for sale of land of the trust for development is also not genuine, bonafide and thus, it is crystal clear that the activities of the trust were not genuine as it has violated the objects of the trust as wellthe transferring the property of the trust without any good cause against the interest of trust. Accordingly, grounds of the assessee being devoid of merits, is dismissed.”

25. ITAT, despite the order of the Hon’ble Apex Court, being brought to its notice, held that the activity of the Trust is not genuine and bona fide, as the Pujari of the Trust changed the original Trust Deeds and it has violated the objects of the Trust in transferring the property of the Trust. This finding of ITAT is directly in the teeth of the Judgment of the Hon’ble Apex Court in the case of the Appellant-Trust itself and is not sustainable in the eye of law.

26. That apart, ITAT, by recording, inter alia, the finding that Appellant has failed to satisfy that sale proceed received by it from sale of land has been used, or will be used for development of charitable objects of the Trust, has clearly travelled not only beyond the show cause notice, but, also the order passed by CIT (Exemptions). It has been rightly pointed out by the counsel for the Appellant that the issue regarding utilization of sale proceeds received from transfer of land was not the subject matter of dispute at the stage of cancellation of registration of the Appellant, and, under the said circumstances, Appellant could not have led any evidence in that regard. It is trite law that Tribunal cannot travel beyond the reasons recorded in the order impugned before it and develop a complete de novo case for the Revenue, which was not the basis of the order passed by revenue authority.Emphasis Supplied.

27. That apart, we have examined the Supplementary Affidavit filed on behalf of the Appellant-Trust including the order passed by ITAT, Ranchi itself in an earlier proceeding pertaining to the year 2013-14, wherein ITAT has clearly held that, earlier, Trust Deeds were not relevant for allowing the benefit of exemption and the income derived from transfer of property was as per the objects of the Trust. We have also considered the instructions issued by CBDT bearing Instruction No. 883-CBDT F.N. 180/54/72-IT (AI) dated 24.09.1975. Said Instructions clearly state that the investment of net consideration received on the transfer of a capital asset in fixed deposit with a Bank for a period of six months or above would be regarded as utilization of the net consideration for acquiring another capital asset within the meaning of Section 11(1A) of the I.T. Act. Admittedly, Appellant-Trust has deposited the sale proceeds in fixed deposit with the Bank for a period

of more than six months and, thus, it cannot be said that Appellant-Trust has utilized the sale proceeds contrary to the objects of the Trust. Thus, the finding of ITAT in impugned order that Appellant failed to utilize the sale proceeds for the objectives of the Trust is perverse.

It goes without saying that we have not gone on the issue of utilization of sale proceeds as it is the Assessing Officer to take note of all facts while considering the same under Section 11 of Income Tax Act, 1961.

28. Under the cumulative facts and circumstances mentioned hereinabove, we allow the instant Appeal and set aside the order dated 30.10.2019 passed by ITAT, Ranchi Bench, Ranchi, and, thus, consequently, we further quash and set aside the order dated 04.09.2018 passed by CIT (Exemptions) under section 12AA(3) of the I.T. Act cancelling registration of the Appellant-Trust under section 12A/12AA of the I.T. Act.

29. Accordingly, the instant Appeal is allowed and the questions of law framed at the time of admitting the Appeal are answered in affirmative in favour of the Appellant. The Appeal succeeds. However, in the facts and circumstances of the case, there would be no order as to cost.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)