

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1463/Bang/2018
AssessmentYear:2018-19

Shri Devaraj Urs Educational Trust For Backward Classes Tamaka Kolar 563 101 C/o MSSV & Co. Chartered Accountants 2 nd Floor, Above Canara Bank 63/2, Railway Parallel Road K.P. West, Bangalore 560 020 PAN NO :AAATS5344P	Vs.	Pr. CIT (Central) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Ramasubramanian, A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	14.10.2021
Date of Pronouncement	:	20.10.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 23.3.2018 passed by Ld. Principal CIT(Central) Bengaluru. The assessee is aggrieved by the decision of Ld. Pr. CIT (Central) in cancelling the registration granted to it u/s 12A of the Act.

2. The grounds of appeal urged by the assessee read as under:

That the order of the learned Commissioner of Income Tax (Appeals) is prejudicial to the interests of the appellant, is had and erroneous in law and against the facts and circumstances of the case.

2.0 **Jurisdiction**

2.1 *That the learned Principal Commissioner of Income Tax (Central) erred in law and on facts in holding that she has jurisdiction to cancel the registration by passing an order u/s 12AA(3) of the Act.*

2.2 *That the order of the Principal Commissioner of Income Tax (Central) passed u/s 12AA(3) is without jurisdiction as the order cancelling the registration can be passed only by Registering Authority.*

3.0 **Grounds regarding finding of alleged facts:**

3.1 *That the finding of the learned Principal Commissioner of Income Tax (Central) in paragraphs 3.2 to 3.3.47 are perverse as being not supported by any evidences on records and in fact being contrary to the materials on records.*

3.2 *That the learned Principal Commissioner of Income Tax (Central) erred in law and on facts in holding that the appellant had collected capitation fees, paid commission to agents to procure candidates, adopted dubious methods to route the capitation fee collected into the books of the appellant, violated provision of S.13 merely on the basis of the statement*

Mr. V. Srinivas and few other persons and all the alleged findings in 12AA(3) order are perverse.

3.3 *That the finding of the learned Principal Commissioner of Income Tax (Central) is violative of principles of natural justice as the appellant had not been given an opportunity to cross examine some of the parties.*

3.4 *That the learned Principal Commissioner of Income Tax (Central) erred in law and on facts in relying on the findings in the assessment order even though such findings have not become final as the appellant had filed an appeal.*

4.0 *Grounds regarding Retrospective Cancellation:*

4.1 *That the learned Principal Commissioner of Income Tax (Central) erred in law and on facts in cancelling the registration w.e.f assessment year 2010-11 onwards even though the S.12AA (3) does not permit retrospective cancellation*

5.0 *Other Grounds:*

5.1 *Without prejudice to the Grounds No. 3.1 to 3.4 assuming but without admitting that the facts found are correct, the learned Principal Commissioner of Income Tax (Central) in cancelling the registration ignoring the fact that the appellant is actually carrying on the educational activities.*

5.2 *The finding of the learned Principal Commissioner of Income Tax (Central) that just because the appellant had allegedly collected capitation fees and*

allegedly carried on such activities cannot be said that the activities of the trust have not been carried out in accordance with the objects of the trust.

5.3 *That the learned Principal Commissioner of Income Tax (Central) ought to have held that the alleged activities of the trust may at worst lead to disallowance u/s 11 of the Act in respect of the income earned from such activities. But it cannot form basis for cancellation of registration.*

5.4 *Assuming but without admitting that the allegations are true, that the learned Principal Commissioner of Income Tax (Central) erred in law and on facts in holding that the appellant — Trust has committed such acts even though such acts are purported to be committed by the parties.*

3. The Ld. A.R. submitted that the assessee is a Trust established vide Trust deed dated 14.11.1984 with the object of establishing educational institutions and to further the cause of backward classes through the education. The assessee was granted registration u/s 12A of the Act by the Commissioner of Income Tax – 1 Karnataka, vide his order dated 20.1.1992. The assessee is running various educational institutions.

4. The assessee was subjected to search u/s 132 of the Act on 06.8.2015. Consequent thereto, the assessments were framed in the hands of the assessee u/s 153A of the Act on 30.12.2017 for various years. In the assessment orders, the A.O. made various additions and also rejected the claim for exemption u/s 11 of the Act. The Ld. A.R. submitted that the Ld. CIT, on noticing the observations made by the AO and also findings given by search

officials, he took the view that the activities of the assessee are not genuine and are not being carried out in accordance with the objects of the Trust. Accordingly, by placing reliance on the decision rendered by Tribunal in the case of Late Shri Mohanlal Kanjibhai Pansara Education & Charitable Trust Vs. CIT (2013)36 Taxmann.com 338 and also the decision rendered by Hyderabad bench of Tribunal in the case of Vodithala Education Society Vs. ADIT (2008) 20 SOT 353, the Ld. CIT(A) cancelled the registration granted u/s 12A of the Act to the assessee with retrospective effect from assessment year 2010-11.

5. The Ld. A.R. further submitted that the assessments completed by the AO for assessment years 2010-11 to 2016-17 by making various additions and also rejecting the exemption claimed u/s 11 of the Act were challenged before Ld. CIT(A) and then before the Tribunal. He submitted that Bangalore bench of Tribunal has since disposed of the appeals filed by the assessee for assessment year 2010-11 to 2016-17, vide its order dated 16.8.2021 in ITA Nos.500 to 506/Bang/2020, and Tribunal has deleted all the additions made by the AO and also held that the assessee is eligible for deduction u/s 11 of the Act. The Ld. A.R. submitted that the grounds on which the registration was cancelled by Ld. Pr. CIT no longer exist after passing of the order by the Tribunal. Accordingly, the Ld. A.R. submitted that the order passed by Ld. Pr. CIT should be cancelled.

6. The Ld A.R. also submitted that the assessee has raised a specific ground challenging the jurisdiction of the Principal CIT in assuming charge over the assessee and in cancelling the

registration by passing order u/s 12AA(3) of the Act, that too with retrospective effect. The Ld. A.R. submitted that the registration was granted to the assessee by Ld. CIT (Exemption) and hence the Principal CIT will not have jurisdiction with regard to the matters relating to registration and cancellation u/s 12AA of the Act.

7. The Ld. D.R., on the contrary, submitted that the Ld. Principal CIT has duly addressed the issue of jurisdiction and also has given detailed independent reasoning to support his conclusion that activities of the assessee are not genuine. He submitted that it is not correct to say that the Ld PCIT entirely relied upon the assessment orders. Accordingly, Ld. D.R. submitted that the Ld. Principal CIT has cancelled the registration on proper reasoning and hence his order does not call for any interference.

8. We heard the rival contentions and perused the record. It is the contention of the assessee that the impugned order cancelling the registration granted to the assessee u/s 12A of the Act has been passed by the Ld Principal CIT on the basis of findings noticed by the search officials and also by the AO during the course of assessment proceedings. It is the contention of the Ld. A.R. that all the findings and additions have since been deleted by the Tribunal. Accordingly, it was submitted that the grounds on which the registration was cancelled no longer survive now. Besides, the above, the assessee is also questioning the validity of jurisdiction assumed by the Ld. Principal CIT while cancelling the registration u/s 12AA(3) of the Act and also challenging the validity of cancelling the registration with retrospective effect. On the

contrary, it is the contention of the Ld D.R that the assessment orders passed by the AO were not entirely relied upon by Ld PCIT.

9. Be that as it may, the fact remain that the Tribunal has now passed orders for AY 2010-11 to 2016-17 against the assessment orders passed for the above said years u/s 153A of the Act. There is no dispute that the Ld PCIT has also referred to the assessment orders passed u/s 153A of the Act. Now there is change in circumstances on account of passing of the orders by the Tribunal. Under these set of facts, we are of the view that the entire issues urged by the assessee before us require re-examination at the end of Ld. Principal CIT, who can take judicial view of the matters after considering the order passed by the Tribunal.

10. Accordingly, we set aside the order passed by Ld. Principal CIT and restore all the issues to his file for examining the claims of the assessee. After affording adequate opportunity to the assessee, Ld. Principal CIT may take appropriate decision in accordance with law on all the issues.

11. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 20th Oct, 2021

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 20th Oct, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.