आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.1938/Ahd/2017**

निर्धारण वर्ष/**Asstt. Year:-**

Sankalp Disable Association 5th Floor, Arthi Complex B/h. L.G. Show Room Opp: Krishna Centre Nr.Mithakhali Six Road Ahmedabad 380 006. PAN : AALTS 1604 H	Vs.	CIT (Exemptions) Ahmedabad.

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	None
Revenue by :	Shri Mohd Usman, CIT-DR

सुनवाई की तारीख/Date of Hearing : 07/12/2021

घोषणा की तारीख /Date of Pronouncement: 09/12/2021

आदेश/**O R D E R**

PER RAJPAL YADAV, VICE-PRESIDENT

Assessee is in appeal before the Tribunal against order of the ld.Commissioner dated 30.6.2017 passed under section 12AA(3) of the Income Tax Act, 1961.

2. Registry has raised a defect in the appeal that the assessee has not filed certified copy of the impugned order. However, the assessee did not remove this defect. This appeal was listed on board on 14.6.2019. Nobody had appeared on behalf of the assessee, and it was adjourned time and again. Earlier, Shri Bharat S. Shah partner in Shah

& Dalal Co. has put appearance on behalf of the assessee, but thereafter, he withdrew his appearance and filed a letter to that effect on 19.10.2020. Hearing was adjourned to 18.1.2021 and fresh notice was issued. One Shalini Somani partner in Atal Shriram & Associates, CA filed a letter of authority on behalf of the assessee and sought adjournment. Hearing was adjourned; but again nobody appeared on the adjourned date. Fresh notice was issued. In spite of service, none has come present. Thereafter, notice was served through department through affixture. A report to this effect has been submitted by Shri Vinesh N. Rayda. Nanishkumar R. Acharya Inspector of Income-Tax Department effected service in the presence independent witness. He even filed photo exhibiting gate of the assessee's premises which was found to be closed. Under these circumstances, we heard the appeal *ex parte qua* the assessee.

3. The assessee has taken three grounds of appeal, but its grievance is that the ld.CIT has erred in withdrawing registration granted to it under section 12AA of the Income Tax Act, 1961.

4. Brief facts of the case are that registration under section 12AA of the Act was granted to the assessee-trust on 23.1.2013. However, the ld.Commissioner recorded a finding that on perusal of the financial statement and assessment records of the assessee revealed various irregularities and discrepancies. Summarised show cause notice was issued inviting explanation of the assessee as to why its registration granted under section 12AA by not cancelled. Copy of the show cause notice has been reproduced by the ld.Commisisoner on page no.2 and 3 of the impugned order, which reads as under:

> *"Perusal of the financial statements and assessment* ***records*** *reveals the following discrepancies*

(A) During the Financial year 2013-14 you have made following advances to the persons covered by the provisions of section 13(3) of the IT. Act

(i)	*Shri **Ramesh** Patel*	*Rs. 1,00,000/-*
(ii)	*Shri Kamlesh Patel*	*Rs. 1,55,000/-*
(iii)	*Sankalp Corporation*	*Rs. 1,55,000/-*
(iv)	*Sdnkalp Corporation Pvt. Ltd*	*Rs. 6,55,045/-*
(v)	*Sollywood Corporation*	*Rs. 52,000/-*
		Rs.11,17,045/-

Complete justification of these transactions should be filed. Please give detailed reply, how these transactions are not violating the provisions of Section 13 of the I.T Act, I 961.

B) Statutory auditor in annexure to the audit report had mentioned that these are interest bearing advances and interest @ 12% is being charged. This way, interest on these advances works out to Rs. 1,34,045/-. This interest has not been declared in the Income &, Expenditure Account. This is a serious discrepancy. The auditors had just mentioned the fact of charging interest to evade the provisions of section 13. You are requested to give detailed justification in respect of this discrepancy.

(C) It is also a matter of record that you have received a sum of Rs.24,81,222/- from 44 persons. During the assessment proceedings it was submitted by you that the advances are for the purpose of construction of houses/tenements for the physically handicapped persons. The houses can only be constructed on a piece of land. However, land is not reflected in your Balance-Sheet. This way, the entire explanation is untrustworthy. To prove the genuineness of these transactions please file copies of the agreement with the persons from whom advances are received along with confirmations from these persons

D) Perusal of your Balance-sheet reveals that you have shown interest free loan of' Rs.4,90,000/- as on 31-3-2014. You have not filed details of this interest free loan. Please furnish complete name and address of the persons to whom this loan was forwarded along with their confirmations, Since the trust funds are advanced interest *free, you are also requested to file complete justification for making an interest free advance*

(E) During the assessment proceedings for the Asst. Year 2014-25 you have filed a resolution passed by the Executive Committee of the Association that interest free loans are being advanced to the below mentioned persons for undertaking the housing scheme under "Sankalp Viklang Avas Yojana" :

i) *Shri Ramesh Patel*
ii) *Shri Kamlesh Patel*
iii) *Sankalp Corporation*
iv) *Sankalp Corporation Put. Ltd -*
v) *Sollywood Corporation Pvt. Ltd*
vi) *Solly wood Corporation*

However, in the audit report the auditors have mentioned that these advances were interest bearing and interest at 12% is being charged on these advances. The submission made by you during the assessment proceedings is contradictory and does not confirm with the financial statements. Detailed justification, for the same may be filed now.

3. *You are requested to furnish detailed justification for the above discrepancies. In case the discrepancies are no explained satisfactorily, registration granted to you u/s. 12A is proposed to be withdrawn as per the provisions of Section 12AA(3) of the Income-tax act, 1961. These details should reach to my office latest by 06.03.201."*

5. In response to the show cause, representative of the assessee appeared and sought adjournment. Hearing was adjourned. Thereafter, a brief reply was filed wherein it was contended by the assessee that advance given to the person referred to sub-section (3) of section 13 were made out of fund received from members in the form of advance membership fees for construction of project, hence the said advances are not income or any property of the trust used or applied indirectly for the benefit of any person referred to in section 13(3). The ld.Commissioner found, as a matter of fact, that in F.Y. 2013-14, the assessee has made interest free advance of Rs.11,17,045/- to two

individual, and three entities viz. Sankalp Corporation P.Ltd., Sollywood Corporation and Shri Ramesh Patel etc. In the next financial year again the assessee has advanced Rs.11,37,045/- to four persons. Thus, the ld.Commissioner formed an opinion that fund of the assessee-trust were not utilized for the purpose of objects of the trust, rather they are being given to the person covered under section 13(3) of the Act. The ld.Commissioner was of the view that if a charitable institution indulges in such type of activities, then sub-section (4) of section 12AA of the Act would apply. In this regard, the ld.Commissioner took cognizance of section 12AA(4) of the Act, and also made reference to the part of the explanatory note explaining scope of sub-section (4) of section 12AA of the Act. The discussion made by the ld.Commissioner in this regard reads as under:

> *"6. The issue of registration is to be decided within the factual metrics as mentioned in para 5 of this order. The legalities for cancellation of registration is mentioned u/s. 12AA(4) of the IT. Act, 1961. Section 12AA(4) reads as under:*
>
> > *"[4] Without prejudice to the provisions of sub-section (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 ii is noticed that the activities of the trust or like institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due or operation of sub-section (1) of section 13} then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:*
> >
> > ***Provided** that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.}" . . . . .*

The plain reading of the above said section makes it abundantly clear that if the trust or institution functions in such a manner that provisions of sub-section 1 of section 13 are attracted, in such an eventuality, the Commissioner has been empowered to withdraw registration granted u/s. 12AA or 12A of the Income Tax Act, 1961.

6.1 Perusal of the section 12AA(4) further reveals that this section was inserted by the Finance (No.2) Act, 2014 and the same is applicable w.e.f. 1-10-2014. In para 9.4 to the Explanatory notes to the Finance Act, 2014, it had been made very' clear that these provisions were brought to rationalize the provisions relating to cancellation of registration of trust. The explanatory notes makes it very clear that if the property of the trust is used or applied directly for the benefit of the specified persons like author of the trust, trustee, etc. or the funds are not invested in specified modes, in cases the Commissioner is empowered to cancel the registration granted u/s. 12AA/12A of the I.T. Act. For the ready reference the relevant para of the explanatory notes are reproduced as under :

> *"9.4 Therefore, in order to rationalize the provisions relating to cancellation of registration of a trust section 12AA of the Income-tax Act has been amended to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,-*
>
> *i) its income does not enure for the benefit of the public.*
>
> *(ii) It is for benefit of any particular religious community or caste (in case it is established after commencement of the Income-tax Act, 196I):*
>
> *(iii) any income or property of the trust is used or applied directly or indirectly for the benefit of specified persons like author of trust, trustees etc: or*
>
> *(iv) its funds are not invested in specified modes, then the Principal Commissioner or the Commissioner may cancel the registration, if such trust or institution does not . prove that there was a reasonable cause for the activities . .... to be earned out in the aforesaid manner."*

7. It has been discussed in detail in para 5 of this order that in the Financial Year 2013-14, the assessee trust has made interest free *advances to the below mentioned entities which arc cither-trustees or concerns where the trustees arc interested.*

i)	*Shri Ramesh Patel*	*Rs. 1,00,000/-*
ii)	*Shri Kamlesh Patel*	*Rs. 1,55,000/-*
iii)	*Sankalp Corporation*	*Rs. 1,55,000/-*
(iv)	*Sankalp Corporation Pvt. Ltd*	*Rs. 6,55,045/-*
(v)	*Sollywood Corporation*	*Rs. 52,000/-*
		Rs.11,17,045/-

***In** the Financial Year 2014-15 the assessee had made interest free advances to below mentioned assessees which are either trustees or concerns where the trustees are interested.*

(i) Shri Rarnesh Patel	*Rs. 17,000/-*
(ii) Shri Karnlesh Patel	*Rs. 1,55,000/-*
(iii) Sankalp Corporation	*Rs.7,25,045/-*
(iv) Other interest free loans	*Rs.2,40,000/-*
Total	*Rs.11,37,045/-*

Thus trust property had been utilized for the benefit of trustees and the concerns where the trustees are interested. This way, the provisions of section 13(1) are attracted in the case of the assessee, Once provisions of section 13(1) are violated, the provisions of section 12AA(4) comes into play. it. is also a matter of fact that the assessee had advanced trust funds to the trustees or other- persons where trustees are interested in violation to provisions of section 11(5) of the I.T. Act, 1961. As discussed in para 6.1 of this order, violation of section 11(5) also attracts provisions of section 12AA(4) of the I.T. Act, 1961."

7. The ld.CIT-DR relied upon the order of the ld.Commissioner.

8. A perusal of the above order would indicate that the ld.Commissioner has highlighted irregularities committed by the assessee-trust by utilization of its funds meant for fulfillment of charitable objects, for granting benefit to persons falling in the category to take undue advantage from these funds, because of their relationship. The assessee has not produced any detail before the ld.Commissioner as to how it has been fulfilled its objects. It has hardly

carried out any activities towards charitable purpose, for which it was created. Therefore, after perusal of order of the ld.Commissioner, we do not find any error in it. It is upheld; appeal of the assessee is dismissed.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 9th December, 2021 at Ahmedabad.

Sd/-	Sd/-
(WASEEM AHMED)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	VICE-PRESIDENT