R

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 19th DAY OF JULY 2018

PRESENT

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

AND

THE HON'BLE Mrs.JUSTICE S.SUJATHA

I.T.A.No.488 OF 2017

BETWEEN:

COMMISSIONER OF INCOME
TAX, (EXEMPTIONS)
DAVANAGERE ...APPELLANT

(BY Mr.E.I.SANMATHI, ADV.)

AND:

M/s. MARIA SOCIAL SERVICE SOCIETY
ST.MARY'S CATHOLIC CHURCH
VINOBHANAGAR 1ST STAGE
SHIMOGA – 577 204 ...RESPONDENT

THIS I.T.A IS FILED UNDER SECTION 260A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 19.8.2016 PASSED IN ITA NO.1361/BNG/2014 FOR THE ASSESSMENT YEAR 2011-12 PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 19.08.2016 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BANGALORE IN APPEAL PROCEEDINGS NO.ITA NO.1361/BNG/2014 FOR ASSESSMENT YEAR 2011-12 AS

SOUGHT FOR IN THIS APPEAL AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT IN THE INTEREST OF JUSTICE.

THIS I.T.A. COMING ON FOR ADMISSION, THIS DAY ***Dr. VINEET KOTHARI J***. DELIVERED THE FOLLOWING:-

JUDGMENT

Mr.E.I.Sanmathi, Adv. for Appellant-Revenue

The Revenue has filed this appeal under **Section 260A** of the **Income Tax Act, 1961** purportedly raising the substantial question of law arising from the order passed by the learned Income Tax Appellate Tribunal, Bengaluru Bench 'C', Bengaluru in **I.T.A.No.1361/Bang/2014 (Maria Social Service Society vs. Commissioner of Income Tax, Davanagere, Karnataka)** for the **assessment year 2011-2012** on **19.08.2016**.

2. The learned Tribunal, by the impugned order dated **19.08.2016** set aside the order of the learned Commissioner of Income Tax, Davanagere, **Annexure-B** dated **19.12.2013** by which the said Authority

cancelled the registration of the respondent – assessee Charitable Trust under **Section 12AA(3)** of the Income Tax Act.

3. The said Authority cancelled the registration giving the findings that the respondent – assessee Trust had received some foreign remittances and made over the said remittances to another Charitable Trust which was newly constituted and known as M/s.Malankara Catholic Diocese of Puttur. The Authority found that there was no clause of the Objectives in the Memorandum of Association of the respondent – assessee Charitable Trust to this effect and therefore, such transfer of foreign funds via respondent – Trust to M/s. Malankara Catholic Diocese of Puttur was ultra vires the objectives of the Trust and therefore, the registration was required to be cancelled. The relevant portion of the order of the said Authority is quoted below for ready reference:

"It is noticed that the diocese of Puttur is constituted by Memorandum of Association registered on ***25.01.2010*** *and was granted Registration u/s.**12AA*** *with effect from* ***17.02.2012*** *as a Public Religious Trust. The transfer of funds took place on various dates immediately on receipt of the amount from donors based on a resolution passed at the Special Governing Council body meeting held on* ***02.04.2010****. Therefore on the date of transfer, the diocese was not registered u/s.* ***12AA****.*

As observed earlier, the objectives of transfer do not provide for the transfer to act as a conduit for transfer of funds.

The provisions relating to the cancellation of registration as contended in ***12AA(3)*** *are as under:*

> *"**12AA(3)** Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the 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."

One of the condition to be satisfied are either activities of the Trust are not genuine or the activities are not being carried out in accordance with the objects of the Trust.

In this case second clause is attracted as transfer is ultra vires to objectives.

Therefore, registration granted to Trust vide proceedings in ***No.T-583/81/12A/CIT/ DVG/04-05*** *dated* **27.04.2005** *is hereby withdrawn.*

-Sd/-
(S.RADHAKRISHNA)
Commissioner of Income Tax
Davanagere."

4. On an appeal filed by the assessee – Trust before the Land Tribunal, the Tribunal however allowed the appeal condoning the delay in filing the said appeal with the following observations:

"There is no dispute that the objects of the assessee trust are charitable in nature as it was accepted at the time of grant of registration under ***Section 12AA****. It is not the case of the CIT or of the revenue that there is any change in*

the nature of activity of the assessee or in the objects of the assessee. The impugned order of the Commissioner is based on the consideration which is not relevant for the cancellation of registration under ***Section 12AA(3)*** *of the Act. The sole ground for initiating the proceedings for cancellation of registration as well as the consequential cancellation by the impugned order is the violation of FCRA as the assessee received foreign contribution which was transferred to another trust. It is not in dispute that the assessee is duly authorized by the competent authority under FCRA to receive the foreign contribution / donation. The issue of violation of FCRA does not fall under the jurisdiction of the Commissioner. In any case the competent authority has to decide the issue if any of violation of FCRA and in the absence of any such order of the competent authority it is not proper to assume that the assessee has violated FCRA by receiving the foreign contribution and transferring the same to another trust. The provisions of* ***section 12AA(3)*** *mandates the cancellation of registration on satisfaction of either of twin* *conditions i.e. activity of the trust are not genuine or are not being carried out in accordance with the objects. When there is no change either in the objects of the assessee trust during the year under consideration or any diversion of the activity from the earlier year. Giving money to another trust would not amount to change of activity of the trust or the activities carried out by the assessee are not in accordance with the objects. However it may be a subject matter of application of money for the purpose of objects of the trust which falls under* ***Section 11*** *of the Act. Therefore the issue of application of income is a subject matter of allowance of exemption under* ***Section 11*** *in the assessment and cannot be a ground for cancellation of registration. It is pertinent to note that the Commissioner has accepted this fact that the fund given to other trust namely Malankara Catholic Diocese of Puttur was also granted registration under* ***Section 12AA*** *of the Act and therefore the objects of the said trust was also considered and accepted as charitable in nature. Since this is a subject matter of assessment therefore we do not express any* *opinion or view on the issue of application of income for the purpose of exemption under* ***Section 11*** *of the Act in the present proceedings. Thus when there is no change in the activity of the assessee as well as the objects of the assessee then the mere transfer of the fund to the other trusts registration under* ***Section 12AA*** *does not fall in the ambit of provisions of* ***section 12AA(3)*** *of the Act for cancellation of registration. In view of the above facts and circumstances of the case, we hold that the Commissioner was not justified in cancelling the registration and accordingly we set aside the impugned order of cancellation of registration."*

5. The learned Tribunal found that the foreign remittances in question was duly authorized by the competent authority under the **Foreign Contribution (Regulation) Act, 2010 (FCRA)** to receive such foreign contributions / donations by the respondent – assessee Trust and the transfer of such funds by the assessee Trust to M/s. Malankara Catholic Diocese of Puttur was

made because the money in question was received with a specific direction from the donor to make over the said amount to the said newly formed M/s. Malankara Catholic Diocese of Puttur. Later on the said M/s.Malankara Catholic Diocese of Puttur was also registered as a Charitable Trust under the provisions of **Sections 11 and 12** of the **Income Tax Act, 1961**.

6. Having heard the learned counsel for the appellant – Revenue, we do not find any perversity or illegality in the findings of the Appellate Tribunal. The same are based on cogent and relevant evidence. We do not find any negative stipulation in the Memorandum of Association by the respondent – assessee Trust prohibiting any such transfer of funds to another charitable trust which was also registered under the provisions of the Income Tax Act although some of the remittances were transferred to them prior to it's registration. No evidence for misuse of such foreign

contribution / donation is brought on record by the revenue authorities before canceling such registration. The assessee clearly stated before the authority that since the remittances were received for the specific purpose of being made over to the said M/s. Malankara Catholic Diocese of Puttur, therefore they transferred the funds. The admission of the error on the part of the assessee Trust appears to have been, though uncalled for, made in right earnest and in a *bona fide* manner. But no violation of any terms of the clause of the Trust Deed or Memorandum of Association is admitted or otherwise established on record. The burden lies upon the Revenue to bring on record such material which proves that the Charitable Trust is engaged in activities which are contrary to the objects of the Trust, rather than fetching such innocuous and self defeating admissions on the part of Trust and less the same as an excuse for canceling the registration as a Charitable Trust.

7. In view of this, we do not find any *ultra vires* or illegal activity on the part of the respondent Trust and the findings recorded by the Land Tribunal are reasonable and sustainable findings of facts in the present case.

8. Therefore, we do not find any substantial of law arising in the said case and the appeal filed by the Revenue is liable to be dismissed and the same is accordingly **dismissed**. A copy of the order may be sent to the assessee.

Sd/-
JUDGE

Sd/-
JUDGE

RV