IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY ,THE 22ND DAY OF FEBRUARY 2019 / 3RD PHALGUNA, 1940

ITA.No. 171 of 2014

AGAINST THE ORDER/JUDGMENT IN ITA 250/COCH/2011 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 18.07.2013

APPELLANT/APPELLANT/ASSESSEE:

MAHATMA GANDHI CHARITABLE SOCIETY,
T.C. VIII/52, LAKSHMI VIHAR, THIRUMALA,
THIRUVANANTHAPURAM-695006, REPRESENTED BY ITS CHAIRMAN, K.R.PANDALAI.

BY ADVS.
SRI.O.K.NARAYANAN
SRI.P.REJINARK

RESPONDENT/RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME-TAX,
AAYKAR BHAVAN, KAWDIAR, THIRUVANANTHAPURAM-695003.

BY ADVS.
SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

OTHER PRESENT:
SRI JOSE JOSEPH, SC FOR INCOME TAX DEPT.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 22.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

<u>J U D G M E N T</u>
[ITA No.171 of 2014]

<u>Vinod Chandran, J.</u>

The appeal is from Annexure-A8 order of the Income Tax Appellate Tribunal. The questions of law framed are as follows:-

(1) Ought not the Tribunal have found that the Commissioner's order was passed on no materials and that there was absolutely no satisfaction entered into as to the objects of the assessee being not genuine or the assessee having not carried on the activities as declared in the Memorandum of Association (MoA)?

(2) Has not the Tribunal committed an error amounting to perversity in having confirmed the orders of the Commissioner?

2. The assessee is said to have been formed in the year 1995 and applied for a registration under Section 12A of the Income Tax Act, 1961 ("Act" for short). The application of the assessee was also favourably considered and registration granted as per Annexure-A1. Later, the law stood amended and Section 12AA came into force which also contained a provision under sub-Section (3) for cancellation of registrations. Admittedly, Section 12AA(3) took into its fold even the registrations granted earlier to such amendment. Further, by Finance Act, 2008 with effect from 01.04.2009, the definition of "charitable purpose" under Section 2(15) of the Act stood amended by introduction of a proviso. The main definition clause stood as it is.

3. The definition clause along with the proviso as introduced with effect from 01.04.2009 is extracted hereunder:-

> "2(15) "Charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment including watersheds, forests and wildlife and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:
>
> Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;
>
> Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities therein is ten lakh rupees or less in the previous year."

4. The Commissioner invoked sub-Section (3) of Section 12AA by a notice dated 31.01.2011. The notice specifically called upon the assessee to show cause as to why the registration granted under Section 12A should not be cancelled for reason of the activities of the assessee no more being considered as a charitable activity. The Chairman of the assessee appeared before the Commissioner and contended that the activity of the assessee comes within the meaning of “relief to the poor” as it gives employment to poor people. When the assessee was asked to demonstrate as to the activities carried on which comes within the nomenclature of “relief to the poor”, it was submitted that the nature of job offered would itself indicate that only poor people can apply for it. The Commissioner found that the assessee was not able to satisfy the requirement of the term

“relief to the poor” and held that employment of persons by the society in a labour contract cannot be categorised as a general public utility carried on by the assessee. It was also found that the gross receipts from the contracts for the subject years indicated Rs.3 crores for the year 2008-09 and Rs.4 crores for the year 2009-10. Finding the second proviso to Section 2(15) to be clearly attracted, the Society was held to be not pursuing charitable activities as defined under the Act and the registration stood cancelled.

5. An appeal was taken to the Tribunal which first resulted in Annexure-A5. The assessee's contentions as noticed by the Tribunal were that it was established for carrying out various activities, including giving employment to at least one member in a family which is needy and deserving. Relying on clause 4(17) of the MoA, the

learned counsel also contended that giving employment opportunity to the poor is one of the objects of the Trust which would fall in the advancement of the object of carrying on general public utility. The Tribunal found that merely by invoking the monetary limit as existing in the statute by the provisos, there could be no cancellation effected of the registration granted under Section 12A. However, the Tribunal also looked into the question of exemption and found that despite the registration being continued, the Assessing Officer could look into the income and decide on the exemption applicable to such income. This was by Annexure-A5 order.

6. The assessee then filed a Miscellaneous Application before the Tribunal and submitted that it was never the contention of the assessee that the provision of employment to the

poor would come under general public utility. It was always the stand of the assessee that it had been providing employment to the poor only and hence the same would come within the objects as seen from the MoA, which is provision of employment to the poor, a charitable activity. The stand hence was that this activity of providing employment to the poor would be a charitable purpose and hence they are entitled to continue their registration granted under Section 12A. The Tribunal based on the above contentions, especially looking at an affidavit submitted by the Counsel who argued the matter before the Tribunal, that the arguments raised were not properly understood by the Tribunal; withdrew its earlier order and posted the matter for hearing.

7. The assessee filed an appeal before this Court from the above order of the Tribunal in

the Miscellaneous Application at Annexure-A7, which was rejected by this Court by judgment in ITA No.170/2014 dated 14.10.2014. The learned counsel appearing for the assessee also fairly conceded that, as of now, the assessee could not raise any contention against Annexure-A5 order. The questions of law raised are also those arising from Annexure-A8. Annexure-A8 found that the Commissioner had rightly cancelled the registration invoking the provisions under Section 12AA(3).

8. The learned Counsel for the assessee had placed reliance on the judgment of this Court reported in ***(2016) 382 ITR 399 (Ker) [Sree Anjaneya Medical Trust v. Commissioner of Income Tax]***. We are of the opinion that the said decision has absolutely no application to the facts as arising from this case. The Division Bench in that case was concerned with registration of Trust under

Sections 12A and 12AA. The registration was declined on the ground that an inspection conducted showed receipt of amounts from students. The appellant therein had taken up a specific contention that the receipts were of advance fees received from Non Resident Indian students and that it was to be adjusted towards the fees of each year of study. The Division Bench of this Court found that when considering the aspect of registration simplicitor, there is no requirement of an examination of the modus of fund application or the ethical background of its settlers. The preliminary requirement is only an examination of whether the trust is constituted genuinely for carrying on charitable activities and whether it has the capacity to so carry out its professed objects. The application of its funds and the operations as such being in consonance with the objects are all considerations at the time of actual claim of exemption which is made at the time of assessment. What distinguishes the present case is that the question raised is not of registration and is one of cancellation of registration as provided under Section 12AA(3), that too looking at the activities of the trust.

9. The appellant-trust obviously was engaged in executing contracts as awarded by the Indian Railways for cleaning train coaches and railway stations. The contention of the assessee was also that considering the work of cleaning, for which the contract was awarded, it should be assumed that the employment would only be of persons from the marginalised sections of society. The Tribunal considered the question elaborately. The specific objects as available in the MoA of the Trust was extracted by the Tribunal. The reliance

placed by the assessee was also on sub-clause (17) which reads as "giving employment at least for one member in a family, which is needy and deserving". The Tribunal first considered the question as to whether taking a contract from the Indian Railways and carrying out the contract work by employing poor people as claimed by the assessee would amount to a charitable purpose or not. The Tribunal, according to us, correctly found that execution of a contract as awarded by the Indian Railways for the purpose of cleaning train coaches and railway stations is a purely commercial and business activity. The Tribunal also noticed that when there is employment given in pursuance of a contract work, there are many labour friendly legislations which had to be complied with by the employer. Mere employment of people from the weaker sections of Society would not absolve the contractor from the labour legislations and such work is one carried out with a clear intention at making profit. The assessee having bid in a competitive tender had been awarded the work for a consideration agreed upon between the parties and carrying on of such work cannot be categorised as a charitable work merely because the poor or persons from marginsalised sections are given employment. The execution of the work awarded by the Railways, is not a public utility service carried on by the assessee and the mere fact that the poor are employed in such execution of contract awarded, would not make it a charitable purpose.

10. Further though the assessee is said to have provided employment to various people who are engaged in the actual cleaning work carried out in pursuance of the contract, there is absolutely no material placed as to the categories from which

such employees were sourced. But for the mere assertion that the nature of the work would itself indicate that only poor people would come for the same, the assessee has not indicated anything about the source from which the assessee had employed such people.

11. The Tribunal correctly found that for cancellation of registration, there are two conditions to be satisfied; one that there is a registration granted earlier and the other the satisfaction of the Commissioner that the trust or the institution is not genuine or the activity of the trust is not being carried on in accordance with the objects of the trust. The activity specifically carried on by the assessee is execution of contract awarded by the Indian Railways. This does not come within any of the objects as professed by the assessee in its MoA.

The provision of employment is an incidental and necessary corollary to the execution of the contract awarded by the Indian Railways to the assessee. Various High Court judgments as proffered before the Tribunal were discussed by the Tribunal to distinguish them on facts. We would not further labour on the same, since the only argument was on the basis of the aforesaid judgment of the Division Bench of this Court itself. The Commissioner, according to us, has rightly found that the activities carried on by the assessee being in the nature of execution of a contract work as obtained from the Indian Railways, would not be a charitable purpose coming under the definition under the Act. We, hence, uphold the order of the Tribunal and dismiss the Income Tax Appeal. We do not think that consideration of the facts by the Tribunal was perverse in any manner. We find no question of law arising from the order of the Tribunal. We reject the Income Tax Appeal . No costs.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

ASHOK MENON

JUDGE

jg

APPENDIX

APPELLANT'S EXHIBITS:

ANNEXURE-A1	**TRUE COPY OF ORDER C.NO.301/TECH/TVM-6/93-94 DATED 30/1/95 PASSED BY THE 1ST RESPONDENT U/S 12 A.**
ANNEXURE-A2	**TRUE COPY OF MEMORANDUM OF ASSOCIATION OF THE APPELLANT SOCIETY.**
ANNEXURE-A3	**TRUE COPY OF ORDER C.NO.AAATM4153E/312/2/2010-11 DATED 24/2/2011 PASSED BY THE COMMISSIONER OF INCOME TAX,TRIVANDRUM.**
ANNEXURE-A4	**TRUE COPY OF THE DETAILED ARGUMENT NOTE FILED BY THE COUNSEL FOR THE APPELLANT.**
ANNEXURE-A5	**TRUE COPY OF THE ORDER IN ITA NO. 250/COCH/2011 DATED 16/11/2012 PASSED BY THE TRIBUNAL ALLOWING THE APPEAL FILED BY THE APPELLANT.**
ANNEXURE-A6	**TRUE COPY OF M.A.NO.02/COCH/2013 DATED 12/12/2012 FILED BY THE APPELLANT.**
ANNEXURE-A7	**THE COPY OF THE ORDER PASSED IN M.A.NO.02/COCH/2013 BY THE TRIBUNAL ON 8/2/2013.**
ANNEXURE-A8	**TRUE COPY OF THE ORDER DATED 18/7/2013 PASSED BY THE TRIBUNAL IN ITA NO. 250/COCH/2011.**

[TRUE COPY]

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