IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA No. 19 of 2012

Date of Decision : October 25 , 2016

Commissioner of Income Tax, Shimla … Appellant

Versus

Himachal Pradesh Road Transport Corporation …Respondent

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge

The Hon'ble Mr. Justice, P. S. Rana, Judge.

Whether approved for reporting?[1] *No.*

For the appellant	:	Mr. Vinay Kuthiala, Senior Advocate, with Ms. Vandana Kuthiala, Advocate, for the appellant.
For the respondent	:	Mr. Ajay Vaidya, Advocate, for the respondent.

Sanjay Karol, J. (Oral)

Himachal Pradesh Road Transport Corporation, Shimla, a Public Sector Undertaking, applied for registration as a Charitable Institution, under the provisions of Section

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Whether reporters of Local Papers may be allowed to see the judgment?

12AA of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). Such application was processed by the appropriate authority granting registration under Section 12AA of the Act and registration granted to the assessee vide its order dated 31.3.2006 (Annexure P-1), the effect of which was that the assessee could claim exemption from payment of tax by virtue of Sections 11 and 12 of the Act.

2. Whether the activities, charitable in nature, carried out by the assessee were genuine or not, or as to whether they were not being carried out in accordance with the objects of the trust or the institution, so as to fall within the ambit and scope of sub-Section (15) of Section 2 of the Act, the Commissioner of Income Tax by virtue of sub-Section (3) of Section 12AA of the Act, was empowered to assess and cancel the registration so accorded under the Act.

3. In exercise of such power, the Commissioner of Income Tax, Shimla, issued show cause notice dated 24.11.2008 and pursuant thereto, vide order dated 9.1.2009 (Annexure P-2) cancelled the registration of the

assessee under the provisions of Section 12AA (3) of the Act.

4. The said order came to be assailed by the assessee before the Income Tax Appellate Tribunal and the appeal, in terms of impugned order dated 12.01.2012 (Annexure P-A), came to be allowed.

5. Aggrieved thereof the revenue has filed the present appeal, which stands admitted on the following substantial questions of law:

> "1. Whether the pursuit of charitable purposes is a necessary condition for the grant and continuance of registration u/s 12AA of the Income tax Act in the case of an institution claiming to be a charitable institution?
>
> 2. Whether the authority granting registration u/s 12AA of the Act has the inherent power to withdraw such registration when the objects are found to be not charitable in nature?
>
> 3. Whether the provision of Section 293C are not curative in nature especially in view of amendment of Section 12AA(3) of the Income Tax Act by Section 7 of the finance act of 2010?"

6. During the course of hearing our specific attention is invited to the Circular No. 21/2016, dated 27.5.2016, issued by the appropriate authority, *inter alia,* clarifying as under:-

> "**4. In view of the aforesaid position, it is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.**
>
> **5. With the introduction of chapter XII-EB in the Act vide Finance Act, 2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA may lead to a charitable institution getting hit by sub-section (3) of Section 115TD and becoming liable to tax**

on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax-liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to section 2(15) comes into play. The process for cancellation of registration is to be initiated strictly in accordance with section 12AA(3) and 12AA(4) after carefully examining the applicability of these provisions."

[Emphasis supplied]

7. In view of the intervening developments which have now taken place and the stand taken by the department whereby, substantial questions of law, so framed by this Court, on which the appeal came to be admitted, no longer arises for consideration, as it is for the appropriate authority i.e. the Assessing Officer to examine the matter in the light of the returns furnished by the assessee and the material placed by the parties with regard to the income generated with respect to each financial year.

Revenue stands advised to take appropriate action in terms of the clarification issued by the appropriate authority.

8. Under these circumstances, we dispose off the present appeal with the direction to the Assessing Officer to pass appropriate orders, in the light of the aforesaid circular. Appropriate action be taken in accordance with law.

Pending application(s), if any, also stand disposed of accordingly.

(Sanjay Karol),
Judge.

(P. S. Rana),
Judge.

October 25 , 2016 **(PK)**