

M/S. ANANDA SOCIAL AND EDUCATIONAL TRUST

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v.

THE COMMISSIONER OF INCOME TAX & ANR.

(Civil Appeal No(s).5437-5438 of 2012)

FEBRUARY 19, 2020

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[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Income Tax Act, 1961: s.12AA – Registration under, of a newly registered Trust – Entitlement – Held: A newly registered Trust is entitled for registration under s.12AA on the basis of its objects, without any activity having been undertaken – s.12AA of the Act empowers the Principal Commissioner or the Commissioner of the Income Tax on receipt of an application for registration of a trust to call for such documents as may be necessary to satisfy himself about the genuineness of activities of the trust or institution and make inquiries in that behalf – It empowers the Commissioner to thereupon register the trust if he is satisfied about the objects of the trust or institution and genuineness of its activities – The purpose of s.12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine – Since s.12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, the term ‘activities’ in the provision includes ‘proposed activities’ – That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust – In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of s.12AA of the Act – In that situation, the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust – Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.

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Income Tax Act, 1961: s.12AA – Object of – Held: Is to ensure that the activities undertaken by the Trust are not contrary to its

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- A *objects and that a Commissioner is entitled to refuse registration if the activities are found contrary to the objects of the Trust.*

Self Employers Service Society v. Commissioner of Income Tax (2001) Vol.247 ITR 18 – referred to.

- B CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5437-5438 of 2012.

[From the Judgment and Order dated 08.04.2015 of the High Court of Delhi at New Delhi in Income Tax Appeal No. 98 of 2015]

With

- C Civil Appeal Nos. 4702 of 2014 and 1727 of 2020.

Pritesh Kapur, Ms. Aishwarya Bhati, Sr. Advs., Senthil Jagadeesan, Ms. Sonakshi Malhan, Ms. Suriti Chowdhary, Ms. Mrinal Kanwar, Satyalipsu Ray, Vikas Bansal, Mrs. Anil Katiyar, Advs. for the appearing parties.

- D The following Order of the Court was passed:

ORDER

CIVIL APPEAL NO(S).5437-5438/2012

- E We have heard learned counsel appearing for the parties and perused the impugned Judgment(s) and Order(s) passed by the High Court of Karnataka.

In our considered view, the reasons assigned by the High Court in passing the impugned judgment(s) and order(s) need no interference as the same are in consonance with law.

- F Accordingly, there is no merit in these appeals and they are dismissed.

CIVIL APPEAL NO.4702/2014

- G This appeal has been preferred by the appellant - Director of Income Tax against the impugned judgment and order passed by the Delhi High Court holding that a newly registered Trust is entitled for registration under section 12AA of the Income Tax Act, 1961 (for short, the 'Act') on the basis of its objects, without any activity having been undertaken. Section 12AA of the Act reads as follows :

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“12AA. Procedure for registration. - (1) The [Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A, shall-

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he-

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the [Principal Chief Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the [Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A.

(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 the

A [Principal Commissioner or] 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:

B 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.

C [(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 it is noticed that the activities of the trust or the 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 to 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:

E 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.]

F The above section provides for registration of a trust. Such registration can be applied for by a trust which has been in existence for some time and also by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration.

G In brief, section 12AA of the Act empowers the Principal Commissioner or the Commissioner of the Income Tax on receipt of an application for registration of a trust to call for such documents as may be necessary to satisfy himself about the genuineness of activities of the trust or institution and make inquiries in that behalf; it empowers the Commissioner to thereupon register the trust if he is satisfied about the objects of the trust or institution and genuineness of its activities.

H In the present case, the trust was formed as a society on 30.05.2008 and it applied for registration on 10.07.2008 i.e. within a period of about two months.

No activities had been undertaken by the respondent Trust before the application was made. The Commissioner rejected the application on the sole ground that since no activities have been undertaken by the trust, it was not possible to register it, presumably because it was not possible to be satisfied about whether the activities of the trust are genuine. The Income Tax Appellate Tribunal, Delhi (for short, the 'Tribunal') reversed the orders of the Commissioner. The Revenue Department approached the High Court by way of filing an appeal. The High Court upheld the order of the Tribunal and came to the conclusion that in case of a newly registered trust even though there was no activities, it was possible to consider whether the trust can be registered under section 12AA of the Act. This judgment is assailed before us.

Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

It was argued before us that the Commissioner is required to be satisfied about two things – firstly that the objects of the trust and secondly, its activities are genuine. If there have been no activities undertaken by the trust then the Commissioner cannot assess whether such activities are genuine and therefore, the Commissioner is bound to refuse the registration of such a trust.

We have given our anxious consideration to the above submissions made by Ms. Aishwarya Bhati, learned Senior Counsel appearing for the appellant – Director of Income Tax and find that it is not possible to agree with the same. The purpose of section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.

Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that

- A the term ‘activities’ in the provision includes ‘proposed activities’. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of
- B a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to
- C have undertaken activities contrary to the objects of the Trust.

We therefore find that the view of the Delhi High Court in the impugned judgment is correct and liable to be upheld.

- D Ms. Bhati, learned Senior Counsel for the appellant, fairly drew our attention to a judgment of the Allahabad High Court in IT Appeal No.36 of 2013 titled as “*Commissioner of Income Tax-II vs. R.S. Bajaj Society*” which has taken the same view as that of the Delhi High Court in the impugned judgment. The Allahabad High Court has also referred to a similar view taken by the High Courts of Karnataka and Punjab & Haryana.

- E Apparently, a contrary view has been taken by the Kerala High Court in the case of *Self Employers Service Society vs. Commissioner of Income Tax* – (2001) Vol.247 ITR 18. That view however does not commend itself. However, the facts in *Self Employers Service Society (Supra)* suggest that the Commissioner of Income Tax had observed
- F that the applicant for registration as a Trust had undertaken activities which were contrary to the objects of the Trust.

In the result, we find that there is no reason to interfere with the impugned judgment of the High Court of Delhi. The appeal is, accordingly, dismissed.

- G **CIVIL APPEAL NO.1727/2020 (@SLP(C) NO.25761/2015)**

Leave granted.

- H In this case, the Trust which applied for registration under section 12AA of the Income Tax Act, 1961, was found not to have spent any part of its income on charitable activities. The Commissioner of Income Tax, therefore, refused the registration of Trust.

M/S. ANANDA SOCIAL AND EDUCATIONAL TRUST v. THE COMMISSIONER OF INCOME TAX & ANR. 727

The Income Tax Appellate Tribunal reversed the decision of the Commissioner of income Tax on the basis of the judgment of the Delhi High Court in matters referred to above. A

For the reasons stated earlier, we are of the view that the object of the provision in question is to ensure that the activities undertaken by the Trust are not contrary to its objects and that a Commissioner is entitled to refuse registration if the activities are found contrary to the objects of the Trust. B

In the present case, what has been found is that the Trust had not spent any amount of its income for charitable purposes. This is a case of not carrying out the objects of the Trust and not carrying on activities contrary to its object. These circumstances may arise for many reasons including not finding suitable circumstances for carrying on activities. Undoubtedly the inaction in carrying out charitable purposes might also become actionable depending on other circumstances; but we are not concerned with such a case here. C

In these circumstances, we leave it upon the Commissioner of Income Tax to consider the issue by exercising his powers under subsection (3) of section 12AA, if the facts justify such actions. D

The appeal is, however, dismissed.