

SC: Performance of Charitable Activity not Compulsory for Registration of New Trust u/s 12AA of IT Act

Facts:

The present appeal has been filed by the Director of Income Tax ("**Appellant**") against the impugned judgment passed by the Hon'ble Delhi High Court ("**Delhi HC**") holding that a newly registered Trust is entitled for registration under section 12AA of the Income Tax Act, 1961 ("**IT Act, 1961**") on the basis of its objects, without any activity having been undertaken.

In the present case, the Foundation of Ophthalmic and Optometry Research Education Centre ("**Trust**" or "**Respondent**") was formed as a society on May 30th, 2008 and it applied for registration on July 10th, 2008 i.e. within a period of about 2 months. However, no activities had been undertaken by the Respondent before the application was made. Therefore, the Commissioner rejected the application on the sole ground that since no activities have been undertaken by the Respondent, it was not possible to register it.

The Income Tax Appellate Tribunal, Delhi ("**ITAT, Delhi**") reversed the orders of the Commissioner. The Appellant 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 were no activities, it was possible to consider whether the trust can be registered under section 12AA of the IT Act, 1961.

Issue involved:

Whether a newly formed trust is entitled for registration under Section 12AA of the IT Act, 1961 even if any activity has not been undertaken as yet?

Held:

The Hon'ble Supreme Court of India ("**SC**") has passed the following order in the matter of **Civil Appeal No. 4702/2014 dated February 19th, 2020** observing as follows:

- Section 12AA of the IT Act, 1961 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.
- 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 IT Act, 1961.
- It was argued by the Ld. Senior Counsel for the Appellant that the Commissioner is required to be satisfied about two things – firstly, the objects of the trust and secondly,

if 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 and find that it is not possible to agree with the same. The purpose of section 12AA of the IT Act, 1961 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 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 section 12AA of the IT Act, 1961. 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 have undertaken activities contrary to the objects of the Trust.

The Hon'ble SC conclusively held that the view of the Hon'ble Delhi HC in the impugned judgment is correct and is liable to be upheld given that there are similar precedents set by various other judgments as well viz. **Allahabad High Court in IT Appeal No.36 of 2013** titled as "**Commissioner of Income Tax-II vs. R.S. Bajaj Society**".

Important Provisions:

Section 12AA of the IT Act, 1961 : 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- 3 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 subsection (1) of section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of subsection (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 [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:

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.

(4) Without prejudice to the provisions of subsection (3), where a trust or an institution has been granted registration under clause (b) of subsection (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 subsection (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.

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