

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 43 OF 2015

The Commissioner of Income Tax-II, Thane ... Appellant
V/s.

The Mumbai Metropolitan Regional Iron
and Steel Market Committee ... Respondent

- Mr. Tejveer Singh for the Appellant.
- Mr. Mandar Vaidya a/w. Mr. Kalpesh S. Turalkar for the Respondent.

**CORAM : S.V. GANGAPURWALA AND
A.M. BADAR, JJ.**

DATE : 17th JULY, 2017.

PER COURT :

1] The Commissioner cancelled the registration of the Respondent invoking its power under Section 12AA(3) of the Income Tax Act, 1961 (in short “the Act”).

2] Mr. Singh, the learned counsel submits that notice was issued to the Assessee by the Commissioner for withdrawing registration granted to the Assessee under Section 12A of the Act by invoking its power under Section 12AA (3) of the Act. According to the learned counsel, the proviso to Section 2(15) of the Act as

existed then will have to be applied while considering the present matter and in view of the said proviso, as the activity of the Respondent involved the carrying on of an activity in the nature of trade, commerce or business, the Respondent does not remain a charitable institution. The action of the Commissioner was justifiable. The Respondent collects fees and cess. In view of that the proviso to Section 2(15), as it existed then, would clearly apply making the Assessee liable for cancellation of its registration. The said aspect has not been considered by the Tribunal in its correct perspective and thereby arrived at erroneous conclusion.

3] The learned counsel for the Respondent submits that the Tribunal has rightly considered the provisions of Section 12AA(3) of the Act. The Commissioner has nowhere given a finding that activity of the Respondent is not genuine activity or the activity of the Respondent is not being carried out in accordance with the object of the institution. The learned counsel further relies on the CBDT Circular No.21 of 2016, dated 27th May, 2016 and the order of this Court in case of *Director of Income Tax vs. Khar Gymkhana*, reported in [2016] 385 ITR 162.

4] We have considered the submissions.

5] It is apparent from the record that the Commissioner has invoked its powers under Section 12(AA)(3) of the Act. The said powers are circumscribed by the limitations imposed under Sub Section 3 of Section 12AA of the Act. The Commissioner, nowhere has given the finding that the activities of the Respondent-institution are not genuine one or that the said activity carried out are not in consonance with the object of the institution. The Commissioner has merely relied on proviso to Sub-Section 2 of Section 15 of the Act, as it stood then. The said proviso has subsequently gone amendment.

6] The CBDT Circular No.21 of 2016, dated 27th May, 2016, has been considered by the Division Bench of this Court in case of *Khar Gymkhana* (supra).

7] Even considering the proviso, as it stood then, the case has not been made out so as to invoke Section 12AA(3) of the Act. The Tribunal as rightly considered the said aspect.

8] In view of that, the Appeal is bereft of any substantial questions of law. The Appeal as such is dismissed. No costs.

(A.M. BADAR, J.)

(S.V. GANGAPURWALA, J.)