

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI SANJAY GARG, JUDICIAL MEMBER

ITA NO. 5948/MUM/2012
(ASSESSMENT YEAR 2009-10)

The ITO (E)1(1),
R.No.505, Piramal Chambers,
5th Floor, Parel,
Mumbai -12

... Appellant

Vs.

Bhansali Trust,
640-646, Panchratna,
M.P.Marg, Opera House,
Mumbai 400 004
PAN: AAATD 1718N

.... Respondent

Revenue by : Shri S.J. Singh
Assessee by : S/Shri K. Shiv Ram/Ajay Singh

Date of hearing : 02/06//2015

Date of pronouncement : 31/08/2015

ORDER

PER G.S. PANNU,AM:

The captioned appeal is preferred by the Revenue and is directed against the impugned order dated 02/07/2012 of CIT(A)-1, Mumbai pertaining to the assessment year 2009-10, which in-turn has

arisen from the order passed by the Assessing Officer dated 28/12/2011 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the solitary Ground of appeal raised by the Revenue reads as under:-

"That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee is entitled for exemption u/s 11 of the Income-tax Act, 1961 and there by directing the AO to allow exemption under the said section without appreciating the fact that since the terms and clauses of the trust deed which were the basis of grant of registration u/s 12A of the Act have been altered after grant of such registration, the very foundation of registration having been removed by voluntary act of the assessee. The registration does not survive."

3. The respondent assessee is a Trust registered under section 12A of the Act and is carrying out charitable activities for more than 40 years as it has been set up vide Trust Deed dated 19/3/1969. In the return of income filed for the assessment year under consideration assessee claimed exemption under section 11/12 of the Act. The Assessing Officer has denied the exemption under section 11/12 to the assessee on the ground that the objects of the assessee Trust have been amended after the grant of Registration under section 12A of the Act without getting itself re-registered with the Director of Income Tax(Exemption) under section 12A of the Act after such amendments in the objects. As a consequence of the denial of exemption under

sections 11/12 of the Act the gross total income of the assessee determined at Rs.16,46,14,071/- was held to be taxable income.

4. The CIT(A) however, set aside the order of the Assessing Officer and concluded that the denial of exemption under section 11/12 of the Act was not justified, having regard to the facts and circumstances of the case. Notably, the CIT(A) noticed that the assessee Trust was already registered under section 12A for more than 40 years which had not been cancelled; that the original objects of the assessee Trust were charitable which have not been deleted/changed; that even the amendments in the objects remain charitable and do not cause any detriment to the original objects as mentioned in the original Trust Deed; that it is a case where the original objects of providing medical relief, educational help, relief to poor and other objects of general public utility continue to remain the same and only their scope has been enlarged; that the amendments in the objects were carried out in 1975 and 1979, which were duly registered with the Charity Commissioner; and, that in scrutiny assessment for A.Ys 2007-08 and 2008-09, the exemption under section 11/12 of the Act was not denied by the Assessing Officer . For all the above reasons, the CIT(A) has

allowed the plea of the assessee for exemption under section 11/12 of the Act.

5. Against the aforesaid decision of the CIT(A) the only point raised by the Revenue is that since the terms and clauses of the Trust deed which formed the basis of grant of registration under section 12A of the Act originally have been altered after grant of such registration, therefore, the very foundation of registration stands removed by the voluntary action of the assessee.

5.1 According to the Ld. Departmental Representative , the registration under section 12A of the Act dated 27/11/1973 does not survive because of the subsequent amendment in the Objects which were not intimated to the Director of Income Tax (Exemption) and, therefore, assessee was not entitled to the benefits of section 11/12 of the Act. In the course of hearing Ld. Departmental Representative has also placed reliance on the decision of the Mumbai Bench of the Tribunal in the case of Board of Control for Cricket in India. vs. ITO, 22 taxmann.com 29(Mum), contending that when there is change in objects of the Trust, after the grant of registration under section 12A, it cannot automatically claim benefits under sections 11/12 and that the Assessing Officer is not bound by the registration granted earlier

under section 12A of the Act, because the same would not survive. The Ld. Departmental Representative also referred to the discussion in the assessment order, wherein reliance has been placed on the judgement of the Hon'ble Allahabad High Court in the case of Allahabad Agricultural Institute & Another vs. Union of India And Others, 291 ITR 116(All) to contend that where the objects of the Trust or institution, which were the basis for registration have been altered after grant of such registration, the registration granted would not survive.

6. On the other hand, Ld. Representative for the assessee vehemently defended the order of the CIT(A) by pointing out that the change in the objects in the present case does not cause any wholesale change in objects so as to defeat the charitable purpose of the Trust. He pointed out that assessee continues to be registered with the DIT(Exemption) under section 12A of the Act and on the basis of such registration its recognition under section 80G of the Act has been renewed every three years and that even after amendments carried out in the Trust Deed in 1975 and 1979 the Assessing Officer in scrutiny assessment for the assessment years 2004-05, 2007-08 and 2008-09 allowed the exemption under section 11/12 of the Act. Ld. Representative for the assessee also relied upon the decision of the

Mumbai Bench of the Tribunal in the case of Mehta Jivraj Makandas & Parikh Govindaji Kalyanji Modh Vanik Vidyarthi Public Trust vs. Director of Income Tax (Exemption), 131 ITD 462 (Mum) for the proposition that there is no statutory requirement of intimating the change in objects to the DIT(Exemption). It is further pointed out that the Mumbai Tribunal in the case of Mehta Jivraj Makandas & Parikh Govindaji Kalyanji Modh Vanik Vidyarthi Public Trust (supra) has duly considered the judgment of the Hon'ble Allahabad High Court relied upon by the Assessing Officer in the case of Allahabad Agricultural Institute & Another (supra) and after following the ratio of the judgement of Hon'ble Supreme Court in the case of CIT vs. Surat City Gymkhana, 300 ITR 214(SC) held that registration under section 12A of the Act was a *'fait accompli'* to hold back the Assessing Officer from further probe into the object of the Trust. Ld. Representative for the assessee emphasized that the original objects continue to exist and the amendments also remain charitable and, therefore, Trust continues to be eligible for registration under section 12A and, therefore, the Assessing Officer is not justified in denying the exemption under section 11/12 of the Act. It has also been pointed out that even on the principle of consistency, in the present case, the decision of CIT(A) deserves to be affirmed.

7. We have carefully considered the rival submission. In the present case, as the aforesaid discussion shows, the only plea raised by the Assessing Officer to deny the exemption under section 11/12 of the Act is to the effect that there has been an addition in the object clause of the assessee Trust, subsequent to the grant of registration under section 12A of the Act, which has not been intimated to DIT(E). Thus, as per the Assessing Officer, it has to be presumed that the registration originally granted under section 12A of the Act does not survive, which would lead to the denial of the benefits of section 11/12 of the Act.

7.1 Factually speaking, the respondent assessee is a Trust set up on the basis of Trust Deed dated 19/3/1969 and it has undergone amendments vide orders of the Charity Commissioner dated 20/3/1975 and 19/7/1979 under section 50A of the Bombay Public Trust Act, 1952, which is subsequent to the registration of the Trust under section 12A of the Act as a 'charitable institution' dated 27/11/1973.

7.2 There is no denying the fact that so far as the objects contained in the original Trust Deed dated 19/3/1969 are concerned, they are charitable in nature because not only assessee was granted registration under section 12A of the Act on 27/11/1973 but it has also been allowed exemption under section 11/12 of the Act. The moot question

is as to whether assessee can be said to be a charitable institution even after the amendment to the Trust Deed dated 20/3/1975 and 19/7/1979. The aforesaid point is relevant because in the impugned order of assessment there is no finding by the Assessing Officer that the activities added in 1975 and 1979 do not fall within the purview of charitable purpose. In fact the only basis for the Assessing Officer to have denied the exemption under section 11/12 of the Act is the failure of the assessee to intimate the amendments of 1975 and 1979 and re-register with the DIT(Exemption) for the purposes of section 12A of the Act. The registration granted to the assessee under section 12A of the Act can be cancelled only as per the statutory requirements, which prescribe that either the activities being carried out are not genuine or that they are not being carried out in accordance with the objects, meaning thereby that the amended objects being pursued are non-charitable.

7.3 In fact the decision in the case of Board of Control for Cricket in India. vs. ITO (supra) relied upon by the Ld. Departmental Representative before us is a case where the amendments in the Memorandum of Association were found to be '*substantial and material changes*' and, therefore, the Tribunal opined that such

activities were required to be examined by the income tax authorities so as to enable the assessee to continue availing the benefits of section 11/12 of the Act. Notably, in this context, the impugned order of the Assessing Officer does not contain any adverse finding as to whether the additions in the objects have rendered the activities of the assessee as non-charitable.

7.4 In our considered opinion, a mere non-intimation of the amendments in the Trust Deed to the Department cannot ipso-facto lead to cancellation of registration because the statutory requirement of cancellation of registration contained in section 12AA(3) of the Act prescribe that the cancellation of registration cannot be effectuated unless a case is made out that the new objects do not fit-in with the existing objects (i.e. new objects are 'non-charitable' in nature) or that the activities are in-genuine. A pertinent question is as to whether, on facts, can such a finding be reached in the present case. For this purpose, we have perused the amendments to the Trust Deed made in 1975 and 1979, which have been tabulated by the Assessing Officer in the assessment order and a comparative chart has also been placed in the Paper Book filed before us at pages 52 to 53. A perusal of the same shows that in the original Trust Deed the objects of the assessee are in

the sphere of education purpose, medical purpose and relief of poverty, etc. In the context of the objects of medical purpose and relief to poverty, the activities enumerated inter-alia, included:-

“aid and relief in kinds such as giving clothes, grains and free distribution of medicines or providing free medical aid.”

Subsequently, in the 1975 amendment, the activities of aid or relief in kind has been supplemented by enabling providing of loan and relief in cash also.

7.5 Further, the medical purpose and other objects meant for the benefit of general public in India was contained in the original deed in the context of giving donations to hospitals and charitable dispensaries, etc. This aspect was extended in the amendment of 1975 to include running and managing of hospitals, Panjarapoles, etc., notably, in the original Trust Deed also, objects of the assessee included the sphere of schools, colleges, educational institutions, etc.

7.6 Thirdly, in the original Trust Deed the assessee envisaged help by way grants and contributions to institutions carrying on the work of public charitable purpose in India. In the amendment made in 1975 such activities was supplemented by incorporating the activity of giving

loans alongwith the activity of giving grants and contributions to institutions carrying on work for public charitable purposes in India.

7.7 Lastly, in the original Trust Deed assessee was having activity of providing grants and contributions to institutions established for carrying on an object of general public utility not involving an activity for profit. In the amendment made in 1979, it was incorporated that assessee would also promote rural development, including the programme of promoting socio and economic welfare and up-lift in rural areas.

7.8 In the background of the above analysis of the changes in the object clause, in our view, there is no change in the tone and tenor of the objects pursued by the assessee in a real sense. In fact, our aforesaid analysis of the changes in the Trust deed, do not reflect that the objects of the assessee Trust has undergone changes but the amendments are merely enabling clauses which provide only 'means' or 'power' to achieve objects in the Trust Deed. In our considered opinion, having regard to the aforesaid fact situation, it would be inappropriate to construe the amendments of 1957 and 1979 as insertions of any new objects of the assessee Trust, rather the amendments only seek to provide enabling powers to the Trust to accomplish its original objects

which are in the fields of educational purpose, medical purpose, relief of poverty and objects of general public utility not involving carrying on any activity for profit. In fact, Hon'ble Bombay High Court in the case of Deccan Gymkhana vs. CIT, 262 ITR 459 (Bom) as well as the judgment of Hon'ble Supreme Court in the case of PHD Chamber of Commerce & Industry vs. DIT, 130 ITR 186 (SC) has laid down that a distinction has to be made between the 'purpose' of a Trust and the 'powers' conferred upon the Trustees as being incidental to accomplish the purpose of the Trust. In our considered opinion, the amendments in 1975 & 1979, which have been noticed above only seek to enable the Trustees to carry out activities for accomplishing the purpose of the Trust which we have found earlier to be for a 'charitable purpose' as per original Trust deed. Therefore, factually speaking, even if one has to consider the amendments of 1975 & 1979 made in the Trust Deed, in our view it does not signify that the registration granted to the assessee on 27/11/1973 under section 12A of the Act is rendered nugatory.

7.9 At the time of hearing, the Ld. Departmental Representative had relied upon the judgment of the Mumbai Bench of the Tribunal in the case Board of Control for Cricket in India. (supra) as also the judgment of Hon'ble Allahabad High Court in the case of Allahabad Agricultural

Institute & Another (supra). In this context, it has to be observed that so far as the decision of the Mumbai Tribunal in the case of Board of Control for Cricket in India (supra) is concerned, the same has been rendered in the context of the fact situation therein. In the case of Board of Control for Cricket in India (supra), the Tribunal found the amendments to the Memorandum of Association as being substantive, which included amendment of rules and regulations providing for promotion of commercial interests towards administration of IPL Championship League, etc. Quite clearly in the present case, there is no such fact situation and for that matter, there is no charge against the assessee that the amendments of 1975 and 1979 have resulted in carrying on of any commercial activity by the assessee. Rather, in the present case, in the assessment finalized u/s. 143(3) of the Act on 7/11/2006 for assessment year 2004-05, the Assessing Officer allowed exemption to the assessee under section 11/12 of the Act. While doing so, the Assessing Officer has specifically noted that the activities of the assessee are in the field of education and health and running of Angadwadies in 600 villages and five High Schools with hostel facilities in backward areas. It was also specifically noted that the Trust was running 190 bedded General hospital at Dissa, where poor people were

being treated. Similarly, in the assessment order for assessment year 2007-08 passed under section 143(3) of the Act dated 11/12/2009, the Assessing Officer has noticed the activities of the assessee in the field of education, income generation for Angadwadies, de-addiction and other social and economic fields. The Assessing Officer has also noticed that assessee has carried out various projects during natural calamities, apart from the activities of running Angadwadies in villages, High Schools in backward areas and the providing of medical facilities to the poor people. Therefore, the fact situation in the present case, which the AO has also accepted in the scrutiny assessment in past, does not reflect any charge that the activities of the assessee as consequence of the amendment in the Trust Deed of 1975 and 1979 have been of non-charitable nature. Thus, the decision in the case of Board of Control for Cricket in India stands on a different footing and, is of no help to the Revenue in the present case.

8. In so far as the reliance placed by the Ld. Departmental Representative in the case of Allahabad Agricultural Institute (supra) is concerned, it was pointed out by the Ld. Representative for the assessee that the same was distinguishable as the facts therein were on a different footing. It was pointed out that in the case before the

Hon'ble Allahabad High Court, there were several changes made in the objects of the Trust which is not the situation in the present case. In our considered opinion, the decision of the Hon'ble High Court of Allahabad in the case of Allahabad Agricultural Institute & Another (supra), has been rendered in the specific facts and circumstances prevailing therein. The Hon'ble High Court therein had noted wholesale changes in the objects of the assessee and further the Hon'ble High Court observed that the assessee could not show that the revised objects were charitable in nature. It was under the aforesaid situation, the judgment of the Hon'ble Allahabad High Court has to be understood. In the present case, fact-situation which we have analyzed above, stands on an entirely different footing. Therefore, the judgement of Allahabad High court in the case Allahabad Agricultural Institute (supra), does not help the case of the Revenue in the present case.

8.1. In view of our aforesaid discussion, we find no merit in the appeal of the Revenue and we hereby affirm the decision of the CIT(A) directing the Assessing Officer to allow the exemption to the assessee under section 11/12 of the Act.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 31st August, 2015

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Mumbai, Dated : 31/08/2015

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Vm.

Copy of the Order forwarded to :

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

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Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai