IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7876 OF 2023

Purandhar Technical Education Society ...Petitioner
Vs.
The Commissioner of Income Tax (Exemption), Pune & Ors. ...Respondents

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Mr. Mihir Naniwadekar with Ms. Rucha Vaidya and Mr. Ruturaj Gurjar for Petitioner.
Mr. Suresh Kumar with Dr. Dhanalakshmi Iyer for Respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE: 08 JULY, 2024.

Oral Judgment (G. S. Kulkarni, J.) :-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. The petitioner, a Public Charitable Trust registered under the Societies Registration Act 1860, is before the Court in the present proceedings instituted under Article 226 of the Constitution, assailing an order dated 31 March, 2023 passed by respondent no.1, whereby the petitioner's application filed under the provisions of Section 12A(1)(ac)(i) of the Income Tax Act, 1961 (for short, "**the Act**") for registration of the petitioner under Section 12AB, which would entitle the petitioner to avail the benefit of Sections 11 and 12 of the Act, stands rejected.

3. Mr. Naniwadekar, learned counsel for the petitioner would urge that the only prayer being pressed by the petitioner, is prayer clause (b), which reads thus:-

> "(b) Issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction quashing the Impugned Order as per Form 10AD of the Act dated 31 March 2023 (Exhibit J)."

4. Briefly the factual matrix of the case is as follows:

On 19 November, 2007, the petitioner obtained a registration under the Societies Registration Act, 1860. The primary object of the petitioner is to promote education. The petitioner is accordingly engaged in educational activities. It is running a school at Pune.

5. On 14 January, 2008, the petitioner applied for registration under Section 12A of the Act. The case of the petitioner is that certificate of such registration was granted to the petitioner. From 2008 to 2019, the petitioner had filed its returns, availing benefits of a valid registration under Section 12A of the Act. It is, however, stated that the petitioner could not trace the certificate. Although such benefit was taken by the petitioner for certain number of years, without an objection by the department, subsequently, the tax authorities called upon the petitioner to produce the registration certificate. The petitioner hence made an application on 14 October, 2019 to the respondents to obtain a duplicate certificate of registration under Section 12A of the Act. However, as such application was not responded, a fresh application

was made by the petitioner on 19 April, 2022. The petitioner had contended that both the applications were not decided and duplicate certificate was also not issued to the petitioner.

6. In the aforesaid circumstances, on 25 March, 2022, the petitioner applied for a fresh provisional certificate under Section 12A(1)(ac)(i) of the Act, which was in the prescribed form (Form 10A) as per Rule 17A of the Income Tax Rules, 1962. Although the application for provisional registration was made on 04 April, 2022, an order on Form No.10AC under Section 12A(1)(ac)(i) for assessment years 2022-23 to 2026-27 was passed by the competent authority thereby granting registration to the petitioner. Copy of such registration is annexed at Exhibit-E to the petition, which would indicate that in item no.6 thereof, the registration was granted under the said provision on 04 April, 2022 (item no.7), for the period as set out in item no.8 i.e. from assessment year 2022-23 to assessment year 2026-27 (for 5 years).

7. Thus, the case of the petitioner is that from the assessment year 2022-23 to assessment year 2026-27, such registration granted to the petitioner has continued to operate and is legal and valid till date. It is contended by the petitioner that however, it so transpired that although the registration came to be granted to the petitioner on 04 April 2022, the petitioner inadvertently again applied for registration under the same provision in Form No.10AB on 30 September, 2022. Mr. Naniwadekar submits that in fact, such application was not required to be made, when the petitioner possessed a registration

granted on 04 April 2022. On such application made by the petitioner, albeit inadvertently, respondent no.1 issued notices to the petitioner calling upon the petitioner to *inter alia* submit copy of the provisional registration granted under Section 12AB of the Act (as per Form No.10 AC). The petitioner submitted its detailed reply on 15 February 2023, as also furnished to respondent no.1 a copy of the registration granted to the petitioner under Section 12AB of the Act on 04 April 2022, which was valid for 5 years, i.e., for the assessment years 2022-23 to 2026-27.

8. Thereafter, another notice was received by the petitioner from respondent no.1 on 09 March, 2023 calling upon the petitioner to furnish certain details and documents. It was stated that if the petitioner failed to submit such documents, the application of the petitioner would stand rejected. On 16 March, 2023, for submitting the details in regard to the petitioner's institution and its functioning, the petitioner sought an adjournment till 28 March, 2023. However, on 31 March, 2023, respondent no.1 passed the impugned order rejecting the petitioner's mistaken application on the ground that the petitioner did not possess a copy of the provisional registration granted under Section 12AB of the Act.

9. It is on the above conspectus, the petitioner is before the Court assailing the order dated 31 March, 2023 passed by respondent no.1. The petitioner contends that the impugned order could not have been passed by respondent no.1, when already registration was granted to the petitioner on 04 April, 2022

and which was to operate for a period of five years (from assessment year 2022-23 till 2026-27).

10. Mr. Naniwadekar submits that, in fact, in the above circumstances, it was absolutely not necessary for the petitioner to make a fresh application, which the petitioner made on 30 September, 2022 and on which the impugned order was passed. It is submitted that it was certainly a mistake on the part of the petitioner to make such application.

11. Mr. Naniwadekar submits that the petitioner is willing to withdraw such application for the reason that, as on date, a valid registration granted to the petitioner (dated 04 April, 2022) under Section 12AB subsists and continues to operate to the benefit of the petitioner. It is his submission that in the teeth of the registration dated 04 April, 2022, the impugned order dated 31 March, 2023 passed on a mistaken application is *ex-facie* illegal and cannot subsist. His submission is also that in any event the registration dated 04 April, 2022 would remain unaffected by the impugned order dated 31 March, 2023. It is, therefore, his submission that in the peculiar facts and circumstances of the case, the petitioner needs to be allowed to withdraw the application dated 30 September, 2022 which would also render the impugned order dated 31 March, 2023 inconsequential.

12. Mr. Naniwadekar has brought to our notice that the issue in regard to an application made by an assessee for registration under Section 12A read with Section 12AB of the Act, if was not being considered for a period of six

months, it was held that in such event, it would bring about a consequence of "deemed registration", as held by the High Court at Allahabad in the proceedings of **Society for Promn. of Edn., Allahabad vs Commissioner of Income-tax, Kanpur**[1] It is submitted that the High Court in such case recognized the legal position as it stood prior to the 2022 amendment of the said provision, which was to the effect that if an application for registration was not considered for a period of six months, in that event, there would be a "deemed registration" of the assessee under the provisions of Section 12AA of the Act read with Section 12AB of the Act. Mr. Naniwadekar has submitted that the orders of the Allahabad High Court, were assailed before the Supreme Court in the case of **Commissioner of Income-tax, Kanpur v. Society for Promn. of Edn., Allahabad**[2] in which a two Judge Bench of the Supreme Court upheld the orders passed by the High Court, confirming the view taken by the High Court in regard to the "deemed registration" under Section 12AA of the Act to hold that in the event an application is made under such provision and the same is not responded within six months, it would entail a consequence that such application would be 'deemed to be registered' under the said provision.

13. Mr. Naniwadekar would thus submit that admittedly the petitioner had earlier made an application and even if registration certificate was not to be

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1 [2017] 11 SCC 480

2 [2016] 67 taxmann.com 264 (SC)

located by the petitioner, certainly it brought about a situation that the petitioner was deemed to be registered following the decision of the Supreme Court in **Commissioner of Income-tax, Kanpur v. Society for Promn. of Edn., Allahabad** (supra).

14. Mr. Naniwadekar, however, has brought to our notice that there is a diametrically opposite view taken by another two Judges Bench of the Supreme Court in **Harshit Foundation Sehmalpur Jalalpur Jaunpur v. Commissioner of Income-tax**[3]. Mr. Naniwadekar submits that in the proceedings of such case, the challenge was to an order dated 31 January, 2017 passed by the High Court of Allahabad whereby the High Court had taken a view that non-response to the application under Section 12A read with Section 12AA of the Act within a period of six months "would not" bring about deemed registration of the application made under the said provision. It is submitted that such decision of the Supreme Court also deals with the position prior to the 2022 amendment as brought about to the provision of Sections 12A and 12AA of the Act. It is hence his submission that considering the prior decision in **Society for Promn. of Edn.**(supra) as also the subsequent decision in **Harshit Foundation** (supra), the petitioner in the facts of the present case is not at a disadvantage, inasmuch as the petitioner would stand protected in view of the prior decision in **Society for Promn. of Edn.**(supra). It is submitted that even assuming that decision of the Supreme Court in **Harshit Foundation** (supra) is

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3 [2022] 139 taxmann.com 56 (SC)

applicable, the petitioner remains protected under a valid registration order dated 04 April, 2022, which in fact would render the impugned order dated 31 March, 2023 to be illegal.

15. On the other hand, Mr. Suresh Kumar, learned counsel for the revenue would not dispute that the petitioner has been granted registration on 04 April, 2022 under the provisions in question and which is continued to operate for a period of five years i.e. for assessment year 2022-23 to 2026-27. He would, however, submit that the Court ought not set aside the impugned order dated 31 March, 2023.

16. It is on such backdrop, we have heard learned counsel for the parties as also we have perused the record and the decisions as noted above.

17. At the outset, we find substance in the contention as urged on behalf of the petitioner that the petitioner having already granted a registration under Section 12A(1)(ac)(ii) read with Section 12AB(1)(a) of the Act on 04 April, 2022 for a period of five years i.e. from assessment year 2022-23 to 2026-27, there was no need for the petitioner to make a fresh application on 30 September, 2022 under which the impugned order has been passed. It obviously appears to be a mistake on the part of the petitioner as it was quite illogical, that once the petitioner was possessing registration for five years, and before such registration would come to an end, there could be no need for the petitioner in the very year i.e. on 30 September, 2022 to make a fresh application for any registration. Further considering the purport of the

relevant provisions, we also find that the primary reason as set out in the impugned order, to reject the application of the petitioner, is itself not supported by the provision. Even assuming that the application of the petitioner was a valid independent application, and the reason as furnished in the impugned order that as the earlier provisional registration was not submitted by the petitioner, the petitioner would not be entitled for issuance of a registration, was not a valid and justifiable reason to reject the application.

18. Be that as it may, we may not be required to delve on the illegality of the order dated 31 March, 2023, for the reason that Mr. Naniwadekar, on instructions, submits that his client would intend to withdraw the application dated 30 September, 2022 on which the impugned order dated 31 March, 2023 has been passed. In the peculiar facts of the case, we are inclined to accept such request as made by Mr. Naniwadekar. This would obviously render the impugned order inconsequential. We also accept the contention as made on behalf of the petitioner that the order dated 04 April, 2022 would continue to operate to the benefit of the petitioner as there is nothing on record to show that such order is not legal, valid and non-subsisting as on date.

19. Mr. Naniwadekar's contention on the legal position as brought about by the decision of the Supreme Court firstly in the case of **Society for Promn. of Edn.** (supra) which recognized it to be a legal position, that non-consideration / non-response to an application, made by the assessee under

Section 12A read with Section 12AA of the Act, would bring about a situation of deemed registration being granted, would apply to a situation prior to the petitioner obtaining registration on 04 April 2022, that is on an application made by the petitioner on 25 March, 2022. It would be appropriate to note the orders passed by the Supreme Court in **Society for Promn. Of Edn.**'s case on the Revenue's appeal being rejected thereby upholding the decision of the Allahabad High Court, recognizing a situation of deemed registration, in the event there was no response to the application within a period of six months from the date of the said order which reads thus:-

> "1. Leave granted.
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> 2. There is no appearance on behalf of the sole respondent despite service of notice and adjournment sought for on a couple of occasions earlier.
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> 3. The short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.
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> 4. The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of 24.02.2003, at the worst, the same would operate only after six months from the date of the application.
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> 5. We see no basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent shall take effect from 24.08.2003.
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> 6. Subject to the above clarification and leaving all other questions of law open, the appeal is disposed of with no order as to costs."

20. As noted above, Mr. Naniwadekar has however, urged that in **Harshit Foundation** (supra), a two Judge Bench of the Supreme Court has taken a different view, than what was taken in **Society for Promn. of Edn.** (supra) when the Supreme Court upheld another decision of the Allahabad High Court, which held that non-consideration of an application within a period of six months "would not" bring about a situation of deemed registration. Mr. Naniwadekar submits that in passing such order, it was not brought to the notice of the Supreme Court the prior decision in **Society for Promn. of Edn.** (supra). The observations of the Supreme Court in dismissing the petition for Special Leave to Appeal in **Harshit Foundation** (supra), read thus:-

> "1. We have heard Mr. Abhinav Mehrotra, learned counsel appearing on behalf of the petitioner and Mr. N. Venkataraman, learned ASG appearing on behalf of the respondent.
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> 2. The only question which is posed for consideration before the High Court was whether on non-deciding the application for registration under Section 12AA (2) of the Income Tax Act, 1961 (for short 'the Act') within a period of six months, there shall be deemed registration or not.
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> 3. The aforesaid aspect has been dealt with and considered in detail by the Full Bench of the Allahabad High Court in its decision in the case of Commissioner of Income Tax vs. Muzafar Nagar Development Authority [2013] 38 taxmann.com 21/219 Taxman 318.
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> 4. After considering in detail the provisions of Section 12AA (2) of the Act and having found that there is no specific provision in the Act by which it provides that on non-deciding the registration application under section 12AA (2) within a period of six months there shall be deemed registration, the Full Bench of the High Court has rightly held that even if in a case where the registration application under Section 12AA is not decided within six months, there shall not be any deemed registration.

5. We are in complete agreement with the view taken by the Full Bench of the High Court.

6. The Special Leave Petition stands dismissed."

21. Mr. Naniwadekar submits that the decision of the Supreme Court in **Society for Promn. Of Edn.** (supra) is a decision rendered on an appeal whereas the order passed by the Supreme Court in **Harshit Foundation Sehamalpur** (supra) is an order rejecting a petition for Special Leave to Appeal. It is also his submission that this apart, in such decision, the orders passed by the High Court stand merged in the orders passed by the Supreme Court on the appeal. He thus submits that the decision of the Supreme Court in **Society for Promn. Of Edn.**(supra) being a judgment of the Supreme Court on an appeal, it declares law as laid down by the Supreme Court, within the meaning of Article 141of the Constitution, and hence, such decision is a binding precedent. In such context as to what would be the legal position which would emerge from an order passed by the Supreme Court on an appeal and the orders passed rejecting the Special Leave to Appeal, we usefully refer to a recent decision of the Supreme Court in **Sangita Vs. The State of Maharashtra & Anr.**[4] wherein the Supreme Court considering the relevant decisions in such context enunciated that when the Supreme Court refuses to grant Special Leave to Appeal, be it even by way of a reasoned order, it was held that such order passed by the Supreme Court, would not attract the Doctrine of Merger. The

4 Civil Appeal Nos.4609-4610 of 2024 arising out of SLP(C)Nos.25654-25655 of 2023) Decision Dt. 1/4/2024

Supreme Court referring to the three Judge Bench decision of the Supreme Court in **Kunhayammed and Ors. Vs. State of Kerala & Anr.**[5] and in **Khoday Distilleries Ltd. (Now known as Khoday India Ltd.) & Ors. Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal (Under Liquidation) represented by the Liquidator**[6], made the following observations:

> "6. ….. It is well-settled that when this Court refused to grant special leave to appeal, be it even by way of a reasoned order, it will not attract the 'Doctrine of Merger'. That would be an order where this Court, in the facts and circumstances of the case, declined to exercise its jurisdiction under Article 136 of the Constitution. This view, as taken by a three-Judge Bench of this Court in Kunhayammed and others vs. State of Kerala and another, (2000) 6 SCC 359, was reiterated by this Court in Khoday Distilleries Ltd.(supra), as follows:
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> > "26. From a cumulative reading of the various judgments, we sum up the legal position as under:
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> > 26.1. The conclusions rendered by the three-Judge Bench of this Court in Kunhayammed [Kunhayammed v. State of Kerala, (2000) 6 SCC 359] and summed up in para 44 are affirmed and reiterated.
> >
> > 26.2. We reiterate the conclusions relevant for these cases as under: (Kunhayammed case [Kunhayammed v. State of Kerala, (2000) 6 SCC 359], SCC p. 384)
> >
> > "(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.
> >
> > (v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration

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5 (2000)6 SCC 359

6 (2019)4 SCC 376

> of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.
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> (vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.
>
> ....."

22. Thus, adverting to the aforesaid principles of law, the decision of the Supreme Court in **Society for Promn. of Edn., Allahabad** (supra) is the law as declared by the Supreme Court under Article 141 of the Constitution of India.

23. Mr. Naniwadekar submits that although the law stood settled in the decision of the Supreme Court in **Society for Promn. of Edn.** (supra) and as also urged by the Revenue before the High Court of Allahabad in **Commissioner of Income-tax v. Harshit Foundation Sehmalpur Jalalpur Jaunpur**[7], the High Court had rejected the Revenue's contention when it observed thus:-

> "10. Learned counsel for the appellant submitted that since judgment of this Court in *Society for the Promn. of Edn.* (supra)

7 [2022] 139 taxmann.com 55 (All.)

> has been confirmed by Supreme Court while disposing appeal, therefore, it must be now taken that law of deemed grant of registration has been confirmed by Supreme Court. However, we find that Supreme Court in the judgment dated 16-2-2016, has held that all other questions of law are left open, meaning thereby question of law raised in appeal by C.I.T. has not been decided, but left open, hence, it cannot be said that judgment of this Court has merged with the judgment of Supreme Court on the above question of law, which was decided by this Court in *Society for the Promotion of Education* (supra).

24. We have noted the aforesaid contentions on the legal position, considering Mr. Naniwadekar's apprehension that it is not unlikely, that respondent no.1 would take further steps to cancel the registration of the petitioner dated 04 April, 2022, in such event, his contention is that the petitioner would assert to be fully protected under the decision of the Supreme Court in **Commissioner of Income-tax, Kanpur v. Society for Promn. of Edn., Allahabad** (supra). Be that as it may, such apprehension of the petitioner at this stage, is quite premature, as there is nothing on record that respondent no.1 has initiated any action to cancel the registration of the petitioner. We, therefore, do not delve on such issue and keep all contentions of the petitioner open to be asserted at the appropriate time and in the appropriate proceedings, if the need so arises.

25. We, accordingly, dispose of this petition accepting Mr. Naniwadekar's statement that the petitioner would intend to withdraw its application dated 30 September 2022 rendering the order dated 31 March, 2023 of no consequence. Hence the following order:-

ORDER

i. The application dated 30 September, 2022 filed by the petitioner for registration under Section 12A(1)(ac)(i) of the Act is permitted to be withdrawn. As a consequence thereof, the impugned order dated 31 March, 2023 is rendered inconsequential.

ii. It is noted that the registration dated 04 April, 2022 as granted to the petitioner under the provisions in question as on date is legal and valid from assessment year 2022-23 to 2026-27.

iii. In respect of any other action if initiated by the Department, all contentions of the parties are expressly kept open.

iv. The petition stands disposed of in the aforesaid terms.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI , J.)