courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 21/09/2026

(2014) 08 RAJ CK 0079

In the Rajasthan High Court

Case No : Income Tax Appeal No. 17/2014

Commissioner of Income APPELLANT

Vs

Vijay Vargiya Vani Charitable Trust RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:
Income Tax Act, 1961 — Section 12AA, 12AA(3), 260-A

Citation : (2014) 271 CTR 698 : (2014) 369 ITR 360 : (2015) 232 TAXMAN 340

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : N.S. Jangpangti, A.C.I.T, Advocate for the Appellant

Judgement

J.K. Ranka, J.—The instant appeal filed by the appellant U/Sec. 260-A of the Income Tax Act, 1961 (for short the Act) is directed against order of Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short ITAT) dt. 21st January, 2014 passed in ITA No. 1012/JP/2011.

2. The brief facts, which have been gathered on the basis of the order of the Tribunal, order of the Commissioner of Income Tax and arguments of the Officer present on behalf of the Revenue are that a Public Charitable Trust came to be formed on 22.4.2010 namely Vijay Vargiya Vani Charitable Trust with a view to carry on charitable activities. An application in Form No. 10-A for seeking registration u/Sec. 12AA of the Act was moved to the Commissioner concerned on 16/03/2011. The Commissioner sought certain clarifications from the assessee Trust about activities being carried out till date, copy of income and expenditure account for the financial year 2010-11 and also as to show how clause 7(d) and (f) are charitable in nature in the Trust deed. The Commissioner also found that the assessee Trust is running a Magazine "Vijayvergiya Vani", which though is being distributed free of cost but advertisement receipts to the tune of Rs. 1,44,800/- had been received and that it was for the benefit of a particular section/caste of the society i.e. "Vijayvergiya community" and not for the public at large and also held the advertisement received was in the nature of

a commercial activity and after analysing the material placed on record rejected the application for grant of registration u/S. 12AA The order was challenged before the Tribunal by the assessee and the Tribunal vide impugned order allowed the appeal of the assessee by holding that the predominant objects of the Trust are required to be seen at the time of grant of registration u/S. 12AA and once these objects have been found to be charitable in nature ancillary/ subsidiary objects, which were relating to the purchase, acquire the land and building is secondary and need not be looked into at the time of granting of registration. It was also found by the Tribunal that the objects of the assessee were to run medical and educational institutions, provide education, medicine, food, clothing etc. and after analysing the material placed on record directed the Commissioner to grant registration to the assessee, which order has been assailed before us.

3. Mr. N.S. Jangpangti ld. officer appearing on behalf of the Revenue contended that though the application for registration was moved by the assessee Trust, but no evidence was led as to any amount having been incurred towards the charitable activities and once there was no expenditure towards charitable activities bonafide of the Trust could not have been established and, therefore, the Commissioner has rightly rejected the application. He further contended that the two clauses namely; (i) to purchase, acquire apply for land, building, premises or construct the building and (ii) to publish newspaper, journal, magazine either daily fortnightly or monthly basis are not at all related to charity and even if one of the clause is derogatory or not related with charitable activities, the Commissioner in his own discretion had right to reject the application, which he did and the Tribunal has not appreciated these clauses properly. He further contended that the assessee''s receipts received from advertisements are in the nature of commercial activities and, therefore, if all these are put together, the claim of the assessee that it is carrying on charitable activities, was not proper. He contended that substantial questions of law arise out of the order of the Tribunal and needs consideration of this Hon''ble Court.

4. We have heard the ld. Officer and have gone through the impugned order as well as the order of the Commissioner and in our view no question of law much less substantial question of law arise out of the order of the Tribunal.

5. On reading of the Sec. 12AA and other provisions, in our view, there is no restriction as the Revenue has contended. In our view, the statute does not prohibit or enjoin the Commissioner from registering the trust solely based on its activities, without commencement of any activity in the case of a newly registered trust.

6. However, in our view, at the stage of creation of a Trust/Society or Institution as the case may be, though Commissioner has naturally to satisfy himself about the genuineness of the activities of the trust or the institution as the case may be, but unless a chance is given to the assessee Trust/Society to run its charitable activities, it would be premature on part of the Commissioner to say at

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-appellant-…

the time of creation of the trust itself that it should have charitable activities already undertaken by it. If the clauses/objects of the trust are charitable in nature then in so far as grant of registration is concerned, it needs to be granted but if at all the Commissioner subsequently notices that the trust/society/ institution as the case may be, have not come up to expectation and do not render services for which it was created i.e. of charitable work then, in our view, the Commissioner has power to cancel the registration so granted. However, if at the threshold of creation of a trust/moving of an application u/Sec. 12AA if one is required to prove charitable activities already undertaken by it, may not be proper. The very purpose of creation of a trust/society is by and large to seek registration, collect funds and then to start charitable activities rather than activities starting prior to creation of trust/registration. In our view, at the time of grant of registration of a newly created trust the predominant purpose of the institution is required to be seen that is all and once the objects which have been found to be incorporated in the trust deed have been found to be genuine for carrying on charitable activities, it should fulfill the purpose of grant of registration u/s 12AA. It may be practically impossible for one to prove the genuineness of the trust/society at the time of creation of the society/trust itself and genuineness in our view can be proved only by the activities later on point of time after grant of registration

7. Purpose of Section 12AA in a welfare country like ours is to grant benefits on public charitable trusts/societies to help the people, needy and down trodden for grant of medical, educational and other facilities. Such institutions are playing the role, which the government cannot do itself. Proper checks and balances are available with the Revenue to revoke the registration as pointed out hereinbefore in case the Trust does not carry on activities charitable in nature or otherwise, Section 12AA(3) grants power to the Commissioner, if activities of a trust or institution are not genuine or not being carried out in accordance with the objects of the trusts/societies, as the case may be, to cancel the registration of such trusts or institutions. The very purpose, in our view, is to look into the activities of the trusts for some time and thereafter, if the activities are being carried out in accordance with the objects of the trust/institution let the trust or institution carry on the activities. However, if it is not being carried out then at that stage, the registration already granted can be cancelled. Therefore, in our view, it was premature on part of Commissioner at the time of very creation of the trust and moving of an application to ask for the charitable activities having already been carried out by the assessee Trust.

8. In our view, the object of Section 12AA is to examine genuineness of the objects of the trust but not the income of the trust for charitable or religious purpose. The Commissioner cannot sit in the chair of Assessing Officer to look into amount spent on charitable activities at the time of creation of the Trust. The stage for reviewing the application of income has not arrived when such trust or institution files application for registration of the trust/society.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-appellant-…

9. In our view, the Trust can move the application immediately at the time of formation then there is no prohibition under the Act seeking registration. In our view as observed earlier the only thing to be looked into at the time of granting of registration is that the object of the Trust for which it was formed have to be seen and examined, the CIT''s satisfaction about genuineness of the activities of the Trust is not a criteria as the trust is yet to commence activities. Asking about charitable activities at the nascent stage would amount'' to putting a cart before the horse.

10. In view of what we have observed hereinabove, in our view the Tribunal rightly directed the Commissioner for granting registration u/Sec. 12AA of the Act and in our view reading of plain language of Section 12AA, no substantial question of law arise out of the order of the Tribunal for consideration of this Court.

11. Consequently, we do not find any infirmity or perversity in the order of the Tribunal so as to call for interference by this Court. The appeal stands dismissed, in limine.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-appellant-…