
(2013) 09 AHC CK 0050

In the Allahabad High Court

Case No : IT Appeal No's. 149 of 2009, 31, 60, 114 of 2010 and 4 of 2011

Commissioner of Income Tax-I

APPELLANT

Vs

Lucknow Development Authority

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2014) 2 ALJ 578 : (2014) 265 CTR 433 : (2013) 219 TAXMAN 162

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

1. All the appeals have been filed by the Department u/s 260A of the income tax Act, 1961 against the different judgments and orders passed by the Income Tax Appellate Tribunal, Lucknow. The details of the Income Tax Appeals are as under:--

On 22.04.2010, a Coordinate Bench of this Court has admitted the Appeal No. 149 of 2009, on the following substantial question of law:--

Whether keeping the facts and circumstances of the case, the Tribunal had committed substantially illegal by holding that the income of the assessee is exempted u/s 11 of the income tax Act, though there is no condition that no profit should be earned by its activities and the profit earned will not tie distributed amongst the stakeholders and the finding of the Tribunal with regard to exemption u/s 12 of the Act is also substantially illegal ?

On 26.03.2010, a Coordinate Bench of this Court has admitted the Appeal No. 31 of 2010, on the following substantial question of law:--

Whether by assuming registration u/s 12AA of the income tax Act and exempting income of the Assessee without considering the dispute in terms of Sections 11, 12 & 13 of the income tax Act coupled with nature of activities, the Tribunal has acted arbitrarily or substantially illegally ?

On 16.12.2010, another Coordinate Bench of this Court has admitted the Appeal

No. 14 of 2010 on the following substantial question of law:--

Whether the learned Income Tax Appellate Tribunal was correct in law in holding that without exhausting the provisions contained in section 143(2) of the Act the proceedings initiated by the Assessing Officer by issuing notice u/s. 148 of the Act were not valid in the given facts and circumstances of the case.

Remaining two appeals were connected with the above-mentioned appeals.

The facts and circumstances in all the appeals are identical. Hence, all the appeals are disposed of by this consolidated order for the sake of brevity. However, the dates, figures, etc. have been taken from the leading ITA No. 149 of 2009 for adjudication of the present appeals.

2. The brief facts of the case (ITA No. 149 of 2009) are that for the assessment year under consideration, the assessee has filed its return showing the NIL income and claimed exemption u/s 11 of the income tax Act, 1961, being an "Authority" as was notified by the Government of Uttar Pradesh u/s 4 of Uttar Pradesh Planning and Development Act, 1973 (for short, "the Act"). However, for the assessment year under consideration, the AO while passing the assessment order u/s 143(3) of the Act has observed that the assessee is not eligible for the benefit u/s 11 of the Act. The AO, finally, assessed the entire income as business income for the purpose of taxation. Being aggrieved, the assessee has filed appeal before the CIT(A), who after examining the entire issue directed the AO to compute the income of the assessee in the manner specified u/s 11 of the Act, by observing that once registration u/s 12AA has been granted to the assessee, the AO is bound by such grant of registration and he has necessarily computed the income u/s 11 of the Act by taking the different report in Form-10B. Not being satisfied, the Department has filed the appeal before the Tribunal and the Tribunal vide its impugned order has dismissed the appeals filed by the Department and as such, the Department has preferred the present appeals.

3. With this backdrop, Sri D.D. Chopra, learned counsel for the Department has justified the orders passed by the AO. He submits that the assessee had applied for the registration as charitable institute u/s 12AA of the Act before the CIT, and the same was granted in pursuance to the orders dated 25.07.2005, passed by the Tribunal.

4. Learned counsel further submits that while passing the assessment order under scrutiny, the Assessing Officer examined the nature of activities of the assessee and came to the conclusion that the entire activities of the assessee during the year under consideration are beyond the purview of charitable purposes and the income earned by the assessee is not eligible for the benefits available u/s 11 of the Act. So, the Assessing Officer has assessed the income as business income and taxed accordingly.

5. It is also a submission of the learned counsel that in case of a trust, if there is income derived from property held under trust or from voluntary contributions

and to ascertain whether in the case of the assessee the character of income falls under anyone of the two categories envisaged in Sections 11(1)(a), (b), (c), and (d), the factual activities being carried out by the assessee is to be examined. The assessee is engaged in the activity of acquiring land, development of plots and construction residential as well as commercial places and sale thereof. The sales are also undertaken through auction process and sold to the highest bidder to earn more and more profits. The said activities are "trade" in nature and liable to tax. Thus, the activities being in the nature of trade and as such the benefit which is extended to charitable activities are not available as per the ratio laid down in the cases of P.C. Raja Ratnam Institution Vs. Municipal Corporation of Delhi and Others, ; and Christian Children Fund Inc. Vs. Municipal Corporation of Delhi and Others, .

6. Learned counsel further argued that the assessee is not on different footing from private colonizers and was making huge profits by giving compensation for land which is less than the market value of the actual landowners. As regards the claim of providing public amenities, private colonizers were also providing similar facilities. According to learned counsel, (i) assessee is a huge profit making agency for which it is taking money from general public; (ii) assessee did not engage in any charitable and if assessee developed any institution of public importance, the cost was recouped from the public at large; (iii) the objects/activities of the assessee were commercial in nature and they did not involve any charity; (iv) assessee also auctions plots at market rate and this does not involve any charity; and (v) in every activity of the assessee there was a scent of commercialization/profit motive and infrastructure/facilities provided by assessee are also provided by private builders also.

7. Learned counsel also submits that in view of above, the Tribunal has grossly erred in holding that the assessee authority was not established for commercial purposes, but for charitable purposes. Lastly, he made a request that the impugned orders passed by the Tribunal may kindly be set aside and restore the order passed by the Assessing Officer.

8. On the other hand, Sri S.K. Garg, learned counsel for the assessee has supported the impugned order. He submits that as per Section 4 of the Uttar Pradesh Planning and Development Act, 1973, the assessee's object is "an act to provide for the development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto". The Act declared the assessee is an "Authority" u/s 7. The objects of the Authorities are as under:--

7. Objects of the Authority.--The objects of the Authority shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient For purposes of

such development and for purposes incidental thereto:

Provided that save as provided in this Act nothing contained in this Act shall be construed as authorizing the disregard by the authority of any law for the time being in force.

9. Learned counsel also submits that as per Section 58 of the Act, in case of dissolution of the authority, the entire assets will be vested with the State Government. So, no profit of interest is involved.

10. Up to the assessment year 2002-03, the assessee was also enjoying exemption from income tax, u/s 10(20A) of the Act, which reads as under:-

10. Incomes not included in total income.-- In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--

(20) the income of a local authority which is chargeable under the head "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within or outside its own jurisdictional area.

Explanation.--For the purposes of this clause, the expression "local authority" means--

- (i) Panchayat as referred to in clause (d) of Article 243 of the Constitution; or
- (ii) Municipality as referred to in clause (e) of Article 243P of the Constitution; or
- (iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or
- (iv) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924 (2 of 1924).

So, the income was exempted from the taxation.

11. Following the deletion of Section 10(20A) and insertion of Explanation in Section 10(20) by the Finance Act, 2002, applicable w.e.f. 01.04.2003, the assessee was advised to seek registration u/s 12A of the Act, which at the relevant time read as:--

12A. Conditions for applicability of sections 11 and 12-- (1) The provisions of Section 11 and Section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:--

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment

of the institution, whichever is later and such trust or institution is registered u/s 12AA:

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of Sections 11 and 12 shall apply in relation to the income of such trust or institution,--

(i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of Section 11 and Section 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of Section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of Sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

12. Finally, learned counsel submits that the assessee's income is for "charitable purposes" as defined in Section 2(15) of the Act, which cover the objects for "advancement of any other object for General Public Utility". Section 2(15) of the Act is reproduced as under:--

2(15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

13. It is also a submission of the learned counsel for the assessee that the term "objects of general public utility" had been extensively dealt with and defined, to meant that where the objects of an institution cover the public at large or a section of public the objects are to be held to the "objects of general public utility" as meant in Section 2(15) of the Act. For this purpose, he relied on the ratio laid down in the case of Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, .

14. According to learned counsel, in the case of CIT v. Lucknow Industrial Development Authority, in ITA No. 156 of 2008 (copy of which is available on record), the Hon"ble High Court has held that the assessee being a "Statutory Authority" which was established under the Uttar Pradesh Industrial Area

Development Act, 1976, is entitled to registration u/s 12AA of the Act.

15. Similarly, learned counsel also relied on the ratio laid down in the case of Commissioner of Income Tax Vs. Krishi Utpadan Mandi Samiti, , where it was observed that the Samiti is entitled for the registration u/s 12AA of the Act. Lastly, he made a request that the appeals filed by the department may kindly be dismissed.

16. We have heard learned counsel for the parties and gone through the material available on record.

17. It is undisputed fact that the assessee is a "Statutory Authority" which Was established under the provisions of the Uttar Pradesh Planning and Development Act, 1973. In the instant case, prior to 1st April, 2003, the assessee were enjoying exemption u/s 10(20A) and Section 10(29). When these provisions were amended w.e.f. 1st April, 2003, then the necessity arose to register these institutions u/s 12A. In view of the objects, there is no good reason for holding that statutory bodies could not be treated as "charitable" within the meaning of Section 2(15). The object of the "Authority" is to provide shelter to the homeless people, therefore, there is no objectionable material to treat these institutions as non-charitable. The registration u/s 12A is mandatory to claim exemption under Sections 11 & 13, but registration alone cannot be treated as conclusive. It is always open to Revenue Authorities, while processing return of income of these assesseees, to examine the claim of the assesseees under Sections 11 and 13 and give such treated to these institutions as is warranted by the facts of the case. Revenue Authorities are always at liberty to cancel the registration u/s 12AA(3). Moreover, it may be mentioned that the benefit of Section 11 is not absolute or conclusive. It is subject to control of Sections 60 to 63. If it is found by keeping in view the provisions of Sections 60 to 63 that it is not so includible then such income does not qualify for any relief.

18. The contention that the assessee are earning profit has no merit as per the ratio laid down in the case of Shri Sarafa Association Vs. Commissioner of Income Tax and Another, , where it was observed that "the promotion of commercial trade is a charitable purpose u/s 2(15) of the Act". In the case of Director of Income Tax (Exemption) Vs. Govindu Naicker Estate, , it was observed that the construction of commercial complex by charitable trust is eligible.

19. If the objects of the "Authority" is charitable as public utility then the benefit being a charitable trust is eligible as per the ratio laid down in the case of Commr. of Income Tax Vs. Gujarat Maritime Board, , where it was observed that:--

in Section 2(15), namely, "any other object of general public utility". From the said decisions it emerges that the said expression is of the widest connotation. The word "general" in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals

would be a charitable purpose [Commissioner of Income Tax, Gujarat-III, Ahmedabad Vs. Ahmedabad Rana Caste Association,]. The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry [Commissioner of Income Tax, Madras Vs. Andhra Chamber of Commerce,]. If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity [Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association,].

20. Applying the ratio laid down in the case of Commissioner of Income Tax, A.P. Vs. Andhra Pradesh State Road Transport Corporation, , where of in the present case, the "Autonomous Authority" was established for the purpose of predominant of development the area and provide to shelter to the homeless people within the State of U.P. The management and control of the Authority is essentially with the State Government and there is no profit motive as the income earned by the Authority is deployed for the development of the State.

21. Further, it may be mentioned that Section 12AA of the Act lays down the procedure for registration in relation to the conditions for applicability of Sections 11 & 12 as provided in Section 12A. Therefore, once the procedure is complete as provided in sub-section (1) of Section 12AA and a certificate is issued granting registration to the trust or institution the certificate is a document evidencing satisfaction about (i) the genuineness of the activities of the trust or institution, and (ii) about the objects of the trust or institution. Section 12A stipulates that the provisions of Sections 11 & 12 shall not apply in relation to income of a trust or an institution unless the conditions stipulated therein are fulfilled. Thus, granting of registration u/s 12AA denotes that the conditions laid down in Section 12A stand fulfilled.

22. The effect of such a certificate of registration u/s 12AAA, therefore, cannot be ignored or wished away by the Assessing Officer by adopting a stand that the trust or institution is not fulfilling the conditions for applicability of Sections 11 & 12. In the case of Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal, , the Apex Court was called upon to determine as to whether the contribution made by the employer should be treated as a business expenditure, the requirement being contribution should be made to a recognized provident fund.

23. Needless to mention that this Hon''ble Court in the case of CIT v. U.P. Forest Corpn. Ltd., Tax Appeal No. 70 of 2009 observed that the Forest Corporation

being an statutory entity is entitled for the registration u/s 12A of the Act. The said observations was upheld by the Hon''ble Apex Court vide its order dated 12.05.2011 in SLP No. (Civil) No. 2590/2011.

24. We may also like to refer a C.B.D.T.

Circular No. 11/2008 dated 19.12.2008 , wherein the applicability of the commercial activities in respect of charitable purpose has been clarified. The said circular is reproduced as below:--

2.2. "Relief of the poor" encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated u/s 11(4A) or the seventh proviso to Section 10(23C), which are that --

(i) the business should be incidental to the attainment of the objectives of the entity, and

(ii) separate books of account should be maintained in respect of such business.

25. For the applicability of proviso to Section 2(15), the activities of the trust should be carried out on commercial lines with intention to make profit. Where the trust is carrying out its activities on non-commercial lines with no motive to earn profits, for fulfilment of its aims and objectives, which are charitable in nature and in the process earn some profits, the same would not be hit by proviso to section 2(15). The aims and objects of the assessee-trust are admittedly charitable in nature.

26. Mere selling some product at a profit will not ipso facto hit assessee by applying proviso to Section 2(15) and deny exemption available u/s 11. The intention of the trustees and the manner in which the activities of the charitable trust institution are undertaken are highly relevant to decide the issue of applicability of proviso to Section 2(15).

27. There is no material/evidence brought on record by the revenue which may suggest that the assessee was conducting its affairs on commercial lines with motive to earn profit or has deviated from its objects as detailed in the trust deed of the assessee. In these facts and circumstances of the case, the proviso to Section 2(15) is not applicable to the facts and circumstances of the case, and the assessee was entitled to exemption provided u/s 11 for the relevant assessment year.

28. From the record, it also appears that the "Authority" had been maintaining infrastructure, development and reserve fund IDRF as per the notification dated 15.01.1998, the money transferred to this funds is to be utilized for the purpose

of project as specified by the committed having constituted by the State Government under the said notification and the same could not be treated to be belonging to the "Authority" or the receipt is taxable nature in its hands. For this reason also, it appears that the funds are utilized for general utility.

29. Moreover, in the instant case, the Assessing Officer has not given any defective in computation of income as per Section 11 as submitted in Form-XB, but observed that the activities of the assessee are not charitable. The activities of the assessee are genuine. So, then it is so, then we find no reason to interfere with impugned orders passed by the Tribunal. The same are hereby sustained along with reasons mentioned therein.

30. The answer to the substantial questions of law are in favour of the assessee and against the department. In view of above, all the appeals filed by the department are dismissed, as stated above.