

(2016) 04 BOM CK 0206
In the Bombay High Court
Case No : Income Tax Appeal No.2174 Of 2013

DIT (Exemptions)	Vs	APPELLANT
M/s. Maharashtra Housing and Area Development Authority		RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Income Tax Act, 1961 — Section 12AA, Section 2(15)

Citation : (2017) 392 ITR 240

Hon'ble Judges : S.C. Dharmadhikari and Dr. Shalini Phansalkar Joshi, JJ.

Bench : Division Bench

Advocate : Mr. A.R. Malhotra with Mr. N.A. Kazi, Advocates, for the Appellant;
Mr. S.E. Dastur, Senior Counsel with Mr. Nishant Thakkar i/by M/s. Mint & Confreres, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal of the Revenue challenges an order passed by the Income Tax Appellate Tribunal dated 22-2-2013 in Income Tax Appeal No.435 of 2012. The Assessment Year is 2009-10.
2. Mr. Malhotra, appearing on behalf of the Revenue would submit that this appeal raises substantial questions of law and which have been formulated by the Revenue on page 6 and 7 of the paper book.
3. Mr. Malhotra sought to rely upon Section 12AA of the Income Tax Act, 1961 to submit that exercise of the power under Sub-section (3) thereof could be guided by the newly inserted proviso to Clause 15 of Section 2 of that Act. Thus, endeavour is that the term "charitable purpose", as is defined in the Income Tax Act, includes what has been specified therein and inter alia the advancement of any other object of general public utility. The proviso and the first one to this would indicate that advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation

to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Mr. Malhotra would submit that the moment this proviso is attracted, then the Commissioner can record a satisfaction that the activities of the Trust or institution are not genuine or are not being carried out in accordance with the object of the Trust or institution, as the case may be, and thereupon the registration can be cancelled.

4. We do not think any such larger question or controversy would arise in the facts of the present case. In the present case, even if the parties have placed before us a voluminous compilation and Mr. Malhotra sought to rely upon an order passed by the Tribunal's Bench at Amritsar against the Jammu Development Authority to submit that the said order was upheld by the Division Bench of the High Court of Jammu and Kashmir and which order of the Division Bench, dated 7.11.2013 (Jammu Development Authority v. Union of India & Anr., ITA No.164/2012) has not been interfered by the Hon"ble Supreme Court of India, we do not feel that we should go this further. We do not decide any academic question or controversy but a substantial question of law and said to be arising between the parties from an adjudication undertaken by the authorities under the Income Tax Act.

5. In the present case, the order of the Director of Income Tax (Exemption) refers to a proposal received from the Assistant Director, Mumbai and which proposal stated that the assessee before us, namely, Maharashtra Housing and Area Development Authority (MHADA) has been carrying on activities in the nature of trade, commerce or business, etc., and gross receipts therefrom are in excess of Rs.10 lakhs. That is how the proviso to Section 2(15) would be attracted. This Assistant Director requested the Director, therefore, to consider withdrawal of registration, as granted to the assessee.

6. All that has been referred by the Director is the details of income in Income and Expenditure Account and profit of Rs.114.48 crores out of sale of housing and income by way of lease rent, tenancy deposits, etc.. Based on that a show cause notice was issued to the assessee and the assessee pointed out how its activities are in furtherance of the Maharashtra Housing and Area Development Act, 1976. It has no profit motive, far from indulging in any trade or commerce and as far as the activities alleged or the income generated, what has been pointed out is that MHADA gives houses to middleclass families at affordable rents. The income is on account of sale of housing stock and which is erroneously termed, according to MHADA, as coming from a systematic commerce and business activities.

7. We have referred to the order passed by the Director and impugned before the Tribunal in great detail with the assistance of Mr. Malhotra. We do not find anything in the matter referred by the Director which could be termed that the assessee was undertaking any activities which would demonstrate that it is not a genuine Trust or institution. We have also not found any material which would

indicate that the assessee or its affairs are not being carried out in accordance with the object of the Trust or institution. If these are two aspects referred to in Sub-section (3) of Section 12AA and the materials in that behalf were completely lacking, then, we do not find any reason for the Director to exercise the power which he purported to exercise in the present case. On this short ground alone the assessee's appeal should have been allowed by the Tribunal. Though the Tribunal has discussed the ambit and scope of the proviso to Clause 15 of Section 2 and Sub-section (3) of Section 12AA, we do not find that in the facts and circumstances of the present case, any such discussion was necessary and warranted, once the appeal could have been allowed on the above short ground. With this conclusion, we uphold the order of the Tribunal. We need not assign any other reason nor examine the contentions raised before us in further details. The questions, as are posed by Mr. Malhotra and in the backdrop of these proceedings can be decided in a proper case. With these observations, the appeal fails and it is dismissed.