

**IT: CIT had no jurisdiction to cancel the registration certificate once granted by him to assessee under section 12A till 1-10-2004**

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**[2018] 90 taxmann.com 281 (SC)**

**SUPREME COURT OF INDIA**

**Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd.**

**v.**

**Commissioner of Income-tax, Gwalior**

**R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.**

**CIVIL APPEAL NO. 6262 OF 2010<sup>†</sup>**

**FEBRUARY 16, 2018**

**Section [12AA](#) of the Income-tax Act, 1961, read with section [21](#) of the General Clauses Act, 1897 - Charitable or religious trust - Registration procedure (Cancellation of registration) - Assessment year 2009-10 - Whether since express power was conferred on Commissioner to cancel registration for first time by enacting sub-section (3) in section 12AA only with effect from 1-10-2004 by Finance (No. 2) Act 2004 prospectively, Commissioner had no jurisdiction to cancel registration certificate once granted by him to assessee under section 12A till 1-10-2004 - Held, yes - Whether section 21 of General Clause Act has no application to order passed by Commissioner under section 12A because order is quasi judicial in nature - Held, yes [Paras 27 and 29][In favour of assessee]**

## **FACTS**

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- The assessee was a State Government Undertaking which was established with a view to develop and assist the State in the development of industrial growth centers/areas, to promote, encourage and assist the establishment growth and development of industries in the State of M. P.
- The assessee filed an application for grant of registration under section 12 which was granted by the Commissioner.
- Thereafter, the Commissioner issued a show cause notice to the assessee stating therein as to why the registration certificate granted to the assessee by order dated 10-2-1999 under section 12A be not cancelled/withdrawn. The Commissioner did not find any substance in the stand taken by the assessee in its reply and, accordingly, cancelled/withdrawn the certificate issued to the assessee by order dated 29-6-2002.
- The assessee filed rectification application contending that once the Commissioner grants the registration certificate under section 12A, he has no power to cancel/recall the certificate granted to the assessee. The Commissioner rejected the application.
- On appeal, the Tribunal set aside the order passed by the Commissioner.
- On revenue's appeal, the High Court held that section 21 of the General Clauses Act is the source of power to pass cancellation of the certification granted by the Commissioner when there is not express power available under section 12A.

- On assessee's appeal:

## **HELD**

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- The Commissioner had no express power of cancellation of the registration certificate once granted by him to the assessee under section 12A till 1-10-2004. It is for the reasons that, first, there was no express provision in the Act vesting the Commissioner with the power to cancel the registration certificate granted under section 12A. Second, the order passed under section 12A by the Commissioner is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the Commissioner only when there was express power vested in him under the Act to do so. In this case there was no such express power. [Para 21]
- Indeed, the functions exercisable by the Commissioner under section 12A are neither legislative and nor executive but they are essentially quasi judicial in nature. [Para 22]
- It is not in dispute that an express power was conferred on the Commissioner to cancel the registration for the first time by enacting sub-section (3) in section 12AA only with effect from 1-10-2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the Commissioner only on and after 1-10-2004, i.e., (assessment year 2004-05) because the amendment in question was not retrospective but was prospective in nature. [Para 27]
- High Courts after examining the issue, in the light of the object of section 12A of the Act and section 21 of the General Clauses Act held that the order of the Commissioner passed under section 12A is quasi judicial in nature. Second, there was no express provision in the Act vesting the Commissioner with power of cancellation of registration till 1-10-2004; and lastly, Section 21 of the General Clause Act has not application to the order passed by the Commissioner under section 12A because the order is quasi judicial in nature and it is for all these reasons the Commissioner had no jurisdiction to cancel the registration certificate once granted by him under section 12A till the power was expressly conferred on the Commissioner by section 12AA (3) of the Act with effect from 1-10-2004. [Para 29]
- In the light of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and the order of Tribunal is restored. [Para 31]

## **CASE REVIEW**

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*DIT (Exemptions) v. Mool Chand Kairati Ram Trust* [\[2011\] 11 taxmann.com 42/199 Taxman 1/339 ITR 622 \(Delhi\)](#); *Welham Boys' School Society v. CBDT* [\[2006\] 285 ITR 74/\[2007\] 158 Taxmann 199 \(Uttaranchal\)](#) and *Oxford Academy for Career Development v. Chief CIT* [\[2009\] 315 ITR 382 \(All.\)](#) (para 30) approved.

## **CASES REFERRED TO**

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*Indian National Congress(I) v. Institute of Social Welfare* [2002] 5 SCC 685 (para 23), *State of Bihar v. D.N. Ganguly* AIR 1958 SC 1018 (para 26), *State of Madhya Pradesh v. Ajay Singh* AIR 1993 SC 825 (para 26), *Gharul Hasan v. State of Rajasthan* AIR 1967 SC 107 (para 26), *Hari Shanker Jain v. Sonia Gandhi* AIR 2001 SC 3689 (para 26), *DIT (Exemptions) v. Mool Chand Khairati Ram Trust* [\[2011\] 11 taxmann.com 42/199 Taxman 1/339 ITR 622 \(Delhi\)](#) (para 27), *Welham Boy's School Society v. CBDT* [\[2006\] 285 ITR 74/\[2007\] 158 Taxman 199 \(Uttaranchal\)](#) (para 27) and *Oxford Academy for Career Development v. Chief CIT* [\[2009\] 315 ITR 382 \(All.\)](#) (para 28).

**Mrs. Romi Chhabra**, AOR *for the Appellant*. **K. Radhakrishnan**, Sr. Adv., **Mrs. Sadhna Sandhu**, Adv., **Mrs. Anil Katiyar**, AOR and **B.V. Balaram Das**, AOR *for the Respondent*.

## **JUDGMENT**

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**Abhay Manohar Sapre, J.-** This appeal is directed against the final judgment and order dated 14.03.2007 passed by the High Court of Madhya Pradesh at Gwalior in Misc. Appeal(Income Tax) No.6 of 2005 whereby the Division Bench of the High Court allowed the appeal filed by the respondent and set aside the order passed by the ITAT and restored the order of the Commissioner of Income Tax.

2. The question involved in the appeal lies in a narrow compass. Few facts, however, need mention to appreciate the same.

3. The appellant is a limited company registered under the Companies Act. It is a State Government Undertaking which is established with a view to develop and assist the State in the development of industrial growth centers/areas, to promote, encourage and assist the establishment growth and development of industries in the State of M.P. The appellant is an "assessee" under the Income Tax Act, 1961 (hereinafter referred to as "the Act").

4. On 10.02.1999, the appellant filed an application in the format prescribed under Section 12-A of the Act to the Commissioner of Income Tax (hereinafter referred to as "the CIT") for grant of registration. According to the appellant, since they were engaged in public utility activity which, according to them, was for a charitable purpose under Section 2(15) of the Act, they were entitled to claim registration as provided under Section 12 (A) of the Act. Since the application for registration was delayed in its filing, the appellant also made an application for condonation of delay in filing the application.

5. By order dated 13.04.1999, the CIT (Gwalior) condoned the delay and granted the registration certificate as prayed for by the appellant. In clause 3 of the registration certificate, it was mentioned that the certificate is granted without prejudice to the examination on merits of the claim of exemption after the return is filed.

6. On 27.11.2000, the CIT issued a show cause notice to the appellant stating therein as to why the registration certificate granted to the appellant by order dated 10.02.1999 under Section 12A of the Act be not cancelled/withdrawn. The show cause notice also set out the factual grounds for the withdrawal of the registration certificate. The appellant was asked to reply the show cause notice. The appellant accordingly filed their reply and opposed the grounds on which the withdrawal/cancellation of the certificate was proposed.

7. By order dated 29.04.2002, the CIT did not find any substance in the stand taken by the appellant in their reply and accordingly cancelled/withdrawn the certificate issued to the appellant.

8. The appellant felt aggrieved and filed rectification application under Section 154 of the Act before the CIT on 04.07.2002 contending therein that the order of the CIT dated 29.04.2002 cancelling/withdrawing the registration certificate contains an error apparent and, therefore, it is required to be rectified or/and recalled. It was contended that once the CIT grants the registration certificate under Section 12A, he has no power to cancel/recall the certificate granted to the Assessee.

9. On 20.12.2002, the CIT rejected the application filed by the appellant for rectification holding that there was no error in his order cancelling the registration certificate granted to the appellant. In other words, the CIT held that he had the power to cancel the certificate once granted by him and, therefore, the order for cancelling the registration certificate is legal and proper.

10. Aggrieved by the said order, the appellant filed an appeal before the Income Tax Appellate Tribunal,

Agra Bench. By order dated 26.08.2004, the ITAT allowed the appellant's appeal and set aside the order dated 29.04.2002 passed by the CIT by which he had cancelled/withdrawn the registration certificate.

**11.** The Revenue felt aggrieved by the order of the ITAT and filed appeal in the High Court at Gwalior Bench under Section 260-A of the Act. The High Court, by impugned order, allowed the appeal filed by the Revenue and set aside the order passed by the ITAT and restored the order of the CIT.

**12.** The Division Bench of the High Court placed reliance on Section 21 of the General Clauses Act and held that since there is no express power in the Act for cancelling the registration certificate under Section 12A of the Act and hence power to cancel can be traced from Section 21 of the General Clauses Act to support such order. In other words, in the opinion of the High Court, Section 21 is the source of power to pass cancellation of the certification granted by the CIT when there is no express power available under Section 12A of the Act.

**13.** It is against this order, the assessee felt aggrieved and filed this appeal by way of special leave before this Court.

**14.** None appeared for the appellant (assessee). Mr. Radhakrishnan, learned Counsel appeared for the respondent (Revenue).

**15.** Having heard the learned counsel for the Revenue and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order, restore the order of the ITAT.

**16.** The main questions, that arise for consideration in this appeal, are four:

**17.** First, whether the CIT has express power to cancel/withdraw/recall the registration certificate once granted by him under Section 12A of the Act and, if so, under which provision of the Act?

**18.** Second, when the CIT grants registration certificate under Section 12A of the Act to the assessee, whether grant of certificate is his quasi judicial function and, if so, its effect on exercise of his power of cancellation of such grant of registration certificate?

**19.** Third, whether Section 21 of the General Clauses Act can be applied to support the order of cancellation of the registration certificate granted by the CIT under Section 12A of the Act, in case, if it is held that there is no express power of cancellation of registration certificate available to the CIT under Section 12A of the Act? and

**20.** Fourth, what is the effect of the amendment made in Section 12AA introducing sub-clause(3) therein by Finance (No-2) Act 2004 w.e.f. 01.10.2004 conferring express power on the CIT to cancel the registration certificate granted to the assessee under Section 12A of the Act.

**21.** In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12A till 01.10.2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section 12A of the Act. Second, the order passed under Section 12A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.

**22.** Indeed, the functions exercisable by the CIT under Section 12A are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature.

**23.** Third, an order of the CIT passed under Section 12A does not fall in the category of "orders" mentioned in Section 21 of the General Clauses Act. The expression "order" employed in Section 21 would show that such "order" must be in the nature of a "notification", "rules" and "bye laws" etc. (see -

*Indian National Congress(I) v. Institute of Social Welfare* [2002] 5 SCC 685.

**24.** In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12A of the Act, is neither legislative nor an executive order but it is a "quasi judicial order". It is for this reason, Section 21 has no application in this case.

**25.** The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi judicial order. A quasi judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (See Interpretation of Statutes, Ninth Edition by G.P. Singh page 893).

**26.** Relying upon the aforementioned rule of interpretation, this Court has held that the Government has no power to cancel or supersede a reference once made under Section 10(1) of the Industrial Disputes Act, 1947. [See- *State of Bihar v. D.N. Ganguly* AIR 1958 SC 1018]. Similarly, on the same principle it is held that the application of Section 21 of the General Clauses Act has no application to amend or rescind or vary a notification issued under Section 3 of the Commissions of Enquiry Act for reconstituting the commission by replacement or substitution of its sole member except applicable for a limited purpose for extending the time for completing the enquiry. (*State of Madhya Pradesh v. Ajay Singh* AIR 1993 SC 825). It is also held while construing the provisions of Citizenship Act that the certificate of registration of citizenship issued under Section 5(1)C of the Citizenship Act cannot be cancelled by the authority granting the registration by recourse to Section 21 of the General Clauses Act. (*Ghaurul Hasan v. State of Rajasthan* AIR 1967 SC 107 and *Hari Shanker Jain v. Sonia Gandhi* AIR 2001 SC 3689). And lastly, while construing the provisions of the Representation of People Act, it is held that the Election Commission cannot, by recourse to Section 21 of the General Clauses Act, deregister or cancel the registration of a political party under Section 29A of the Act for the decision of the Commission to register a political party under Section 29A(7) of the Act is a quasi judicial in nature. [See *Indian National Congress(I)* (*supra*)]

**27.** It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature.

**28.** The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi High Court in the case of *DIT (Exemptions) v. Mool Chand Khairati Ram Trust* [\[2011\] 11 taxmann.com 42/199 Taxman 1/339 ITR 622](#), Uttaranchal High Court in the case of *Welham Boys' School Society v. CBDT* [\[2006\] 285 ITR 74/\[2007\] 158 Taxman 199](#) and Allahabad High Court in the case of *Oxford Academy for Career Development v. Chief CIT* [\[2009\] 315 ITR 382](#).

**29.** All the three High Courts after examining the issue, in the light of the object of Section 12A of the Act and Section 21 of the General Clauses Act held that the order of the CIT passed under Section 12A is quasi judicial in nature. Second, there was no express provision in the Act vesting the CIT with power of cancellation of registration till 01.10.2004; and lastly, Section 21 of the General Clauses Act has no application to the order passed by the CIT under Section 12A because the order is quasi judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 01.10.2004.

**30.** We are of the considered view that the view taken by the abovementioned three High Courts in the respective cases is in conformity with law and we accordingly approve the said view taken by these High Courts in three aforementioned decisions.

**31.** In the light of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and the order of ITAT is restored.

**32.** Needless to say, the CIT would be free to exercise his power of cancellation of registration certificate under Section 12AA(3) of the Act in the case at hand in accordance with law.

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†Arising out of order of High Court of Madhya Pradesh in MAIT No. 6 of 205, dated 14-3-2007.