

INCOME TAX : Where answers given to questionnaire by Managing Trustee of assessee-Trust showed that donations were received by way of cheques out of which substantial money was ploughed back or returned to donors in cash and thus registration conferred upon it under sections 12AA and 80G was completely being misused by Trust, Income-tax authorities were right and justified in cancelling registration under sections 12AA and 80G to Trust

- An entity which is misusing the status conferred upon it by Section 12AA of the Act is not entitled to retain and enjoy said status.
- [*Batanagar Education & Research Trust v. CIT (Exemptions)* [2021] 129 taxmann.com 29 (Cal.) set aside (See Annex)]

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[2021] 129 taxmann.com 30 (SC)

SUPREME COURT OF INDIA

Commissioner of Income Tax (Exemptions), Kolkata

v.

Batanagar Education Research Trust

UDAY UMESH LALIT AND AJAY RASTOGI, JJ.

CIVIL APPEAL NO. 4451 OF 2021

AUGUST 2, 2021

JUDGMENT

Udav Umesh Lalit J. - This appeal challenges the judgment and order dated 9-10-2018 passed by the High Court at Calcutta in ITA No. 116 of 2018 setting aside (i) the order dated 25-2-2016 passed by Commissioner of Income-tax (Exemption) ("CIT" for short) canceling registration of the respondent Trust ("Trust", for short) under section 12AA of the Income-tax Act, 1961 ("the Act" for short); and (ii) the order dated 13-9-2017 passed by the Income-tax Appellate Tribunal ("the Tribunal", for short) dismissing appeals arising therefrom.

2. The Trust was registered under section 12AA of the Act *vide* order dated 6-8-2010 and was also accorded approval under section 80G(vi) of the Act.

3. In a survey conducted on an entity named School of Human Genetics and Population Health, Kolkata under section 133A of the Act, it was *prima facie* observed that the Trust was not carrying out its activities in accordance with the objects of the Trust. A show cause notice was, therefore, issued by the CIT on 4-12-2015.

4. In answer to the questionnaire issued by the Department, Shri Rabindranath Lahiri, Managing Trustee of the Trust gave answers to some of the questions as under:

"Q.11. Please confirm the authenticity of the abovementioned Corpus Donation.

Ans. A major part of the donations that were claimed exemption u/s 11(1)(d) were not-genuine. The donation received in F.Ys. 2008-09, 2009-10 and 2010-11 were genuine Corpus Donation received either from the Trustees or persons who were close to the Trustees or persons who were close to the Trustees. In F.Y. 2011-12 and 2012-13 a part of the donation were genuine like the earlier years.

However, a major part of the donations received in these two F.Ys. viz. 2011-12 and 2012-13, shown as Corpus Donation, were in the nature of accommodation entries to facilitate two things-

- (a) To procure loans from the Bank we had to show substantial amount of Capital Reserve in our Balance Sheet.
- (b) We require funds for the expansion of our college. The fees received from the students along with genuine donations from the Trustees and their contacts were not sufficient to run the institution.

Q.12. Why are you saying that a major part of the donations received were not genuine?

Ans. In those cases, which I admit as accommodation entries, a part of the donation received was returned back to the donors through intermediaries.

Q. 13. Who were the intermediaries and what were the modes of returning the money?

Ans. We were instructed to transfer funds through RTGS to the following seven (7) persons:

1. Santwana Syndicate
2. P.C. Sales Corporation
3. Kalyani Enterprises
4. Riya Enterprises
5. Laxmi Narayan Traders
6. Hanuman Traders
7. Rani Sati Trade cum Pvt. Limited

These payments were booked as capital expenditure under the head Building.

Q. 14. In response to the earlier question you have stated that you were "instructed". Who gave you the instruction?

Ans. I can remember only one name right now, that is Shri Gulab Pincha, Mob No. 9831015157. He was the key person for providing a large part of bogus donation received which was immediately returned back to the different parties in the guise of payments towards capital expenditure in building. We do not know any details in respect of the donors on behalf of whom Shri Gulab Pincha acted as a middle man. Shri Pincha provided us with the details of the donors, cheque of the donations, letters of corpus donations etc. He also provided us with the names and bank a/c. details of the seven (7) persons, mentioned in Answer 13 to whom money has to be returned back through RTGS. He also collected the money receipts/80G certifications on behalf of the donors.

Q. 19. The ledger copy for the period from 1-4-2014 to 4-9-2014 in respect of "General Fund" of your trust having details of the donors is being shown to you to identify the bogus donations along with bogus donors.

Ans. After going through the list of the donors appeared in such ledger it is understood that the Donors whose names are written in capital letters under the sub-head "Donation-13", "Donation-I" and "Donations-II" having total amount of Rs. 6,03,07,550/- is bogus and out of which Rs. 5,96,29,973/- was returned back through RTGS to the above mentioned seven (7) persons following the instructions of the mediators."

5. On the basis of the material on record, the CIT came to the following conclusions:

"6.1. The intention of the legislature to grant registration u/s 12AA and 80G, to give the benefit u/s 11 to encourage medical relief to the poor and needy persons, promote education among masses and support to the poor section of the society. But time and again these provisions have been misused for personal need and for benefit of trustees/members of the trusts and societies. Survey u/s. 133A conducted in the case of assessee elaborates the nature and volume of transactions in the alleged activities.

6.2. Looking at the volume and depth of the illegal activities performed and indulged by the society to use the provisions of the I.T. Act providing support and encouragement to the organizations for doing the benevolent activities, assessee society not only opened the pandora's box defying the sole benevolent purpose of provisions as per the I.T. Act, but also challenged the cause of the constitutional provisions by maintaining certain well-needed objectives as per the Act and performing the reverse in reality.

6.3 Based on the facts and circumstantial evidences as discussed in Para 1 to 5, it can be inferred: -

- (a) Assessee trust has received a sum of Rs. 1,23,87,550/- as bogus donation from M/s. School of Human Genetics & Population Health and voluntarily offered as income. SHG & PH has admitted their bogus transactions by filing application before the Hon'ble Settlement Commission, Kolkata and through confirmation filed.
- (b) They have received bogus corpus donation not only from SGHG&PH but also from various parties in different years.
- (c) Society/Trust has grossly misused the provision of Section 12AA and 80G(5) (vi).
- (d) They have violated the objects of the trust as converting cheque received through corpus donation in cash beyond-the-objects. The society was found to be involved in hawala activities.
- (e) Corpus donation received is not voluntary, merely an accommodation entry and fictitious.
- (f) Activities of the trust are not genuine as well as not being carried out in accordance with its declared objects. Assessee's case is covered within the 60th limb of Section 12AA(3).
- (g) Even ingenuine and illegal activities carried on by assessee through money laundering do not come within the conceptual framework of charity *vis-a-vis* activity of general public utility envisaged the Income-tax Act as laid down in Section 2(15).

The CIT, therefore, invoked the provisions of Section 12AA(3) of the Act and cancelled the registration granted under section 12AA of the Act *w.e.f.* 1-4-2012. Consequently, the approval granted to the Trust under section 80G of the Act was also cancelled.

6. The matter was carried in appeal by the Trust by filing Income Tax Appeal Nos.756 & 912/Kol/2016 before the Tribunal.

After considering the entire material on record, the Tribunal concluded as under:

"13. We have given a very careful consideration to the rival submissions. It is clear from the statements of Secretary and Treasurer of SHG and PH that they were accepting cash and giving bogus donations. In the statement recorded in the survey conducted in the case of SHG and PH on 27-1-2015, it was explained that SHG&PH's source of income was the money received in the form of donations from corporate bodies as well as from individuals. In the said statement it was explained that there were about nine brokers who used to bring donations in the form of

cheque/RTGS to SHG and PH. The Donations received would be returned by issue of cheque/RTGS in the name of companies or organization specified by the nine brokers. SHG and PH would receive 7 or 8% of the donations amount. It was also stated in such statement since the assessee was entitled to exemption u/s 80G and u/s 35 of the Act their organization was chosen by the brokers for giving donations to SHG and PH as well as for giving donations by SHG and PH. Till now the Assessee's name did not figure in the statement recorded on 27-1-2015. However, pursuant to the Survey in the case of SHG & PH proceedings for cancellation of registration u/s 12A of the Act granted to them were initiated. In such proceedings, Smt. Samadrita Mukherjee Sardar (in a letter dated 24-8-2015) had given a list of donations which were given by them after getting cash of equivalent amount. It is not disputed that the name of the assessee figures in the said list and the fact that SHG & PH to the Assessee were against cash received from them in Financial Year 2012-13 of a sum of Rs. 1,23,87,550/-. Even at this stage all admissions were by third parties and the same were not binding on the Assessee. However, in a survey conducted in the case of the Assessee on 24-8-2015, the Managing Trustee of the Assessee admitted that it gave cash and got back donations. We have already extracted the statement given by the Managing Trustee. Even in the proceedings for cancellation of registration, the Assessee has not taken any stand on all the evidence against the Assessee. In such circumstances, we are of the view that the conclusions drawn by the CIT(E) in the impugned order which we have extracted in the earlier part of the order are correct and calls for no interference. It is clear from the evidence on record that the activities of the Assessee were not genuine and hence their registration is liable to be cancelled u/s. 12AA(3) of the Act, and was rightly cancelled by the CIT(E). We therefore, uphold his orders and dismiss both the appeals by the Assessee."

With this view, the appeals preferred by the Trust were dismissed.

7. The Trust being aggrieved, filed Income-tax Appeal No. 116 of 2018 before the High Court. By its order dated 4-7-2018, following questions were framed as substantial questions of law:

- "(i) Whether the Tribunal and the Commissioner of Income-tax (Exemptions) were right in law in directing the cancellation of registration of the Appellant granted under section 12AA to the Appellant Trust on the ground that the Trust had received bogus donation from School of Human Genetics and Population Health?
- (ii) Whether statement recorded in the course of survey under section 133A of the Act has any probative or evidentiary value?

8. It was submitted on behalf of Trust that it had received donations from various donors and the Trust was under no obligation to verify the source of the funds of the donor or whether those funds were acquired by performance of any unlawful activity. It was further submitted that the funds were applied for the purposes of trust and that there was no evidence to suggest that those funds were applied for any illegal or immoral purposes or that the Trust was a namesake and some other activities were being carried out.

9. After considering rival submissions, the High Court allowed the appeal with following observations:

"On the basis of the evidence and the authorities cited before the adjudicating bodies below, we say that the respondent revenue has not been able to establish the case so as to warrant cancellation of the registration of the appellant trust under section 12AA(3) of the Act. The respondent also has not been able to prove any complicity of the appellant trust in any illegal, immoral or irregular activity of the donors.

In that view of the matter, we answer the question (i) in the order dated 4th July 2018 in the

negative and in favour of the assessee. We have not found it necessary to go into the issue raised in question (ii).

The order of cancellation of the registration of the trust is set aside. The respondent is directed to restore its registration within three weeks of communication of this order. However, this will not bar any action against the appellant in respect of any future activities.

The appeal is hereby allowed to the extent above."

10. In this appeal, we have heard Mr. N. Venkataraman, learned ASG in support of the appeal and Mr. Rana Mukherjee, learned Senior Advocate for the Trust.

It is submitted by the learned ASG that the answers given to the questionnaire clearly show a definite tendency on part of the Trust to return in cash, the donation it received from several entities.

Mr. Mukherjee, learned Senior Advocate appearing for the Trust submitted that the conclusions drawn by the High Court were quite correct and did not call for any interference.

11. The answers given to the questionnaire by the Managing Trustee of the Trust show the extent of misuse of the status enjoyed by the Trust by virtue of registration under section 12AA of the Act.

These answers also show that donations were received by way of cheques out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly show that those were bogus donations and that the registration conferred upon it under sections 12AA and 80G of the Act was completely being misused by the Trust. An entity which is misusing the status conferred upon it by Section 12AA of the Act is not entitled to retain and enjoy said status. The authorities were therefore, right and justified in cancelling the registration under sections 12AA and 80G of the Act.

12 The High Court completely erred in entertaining the appeal under Section 260A of the Act. It did not even attempt to deal with the answers to the questions as aforesaid and whether the conclusions drawn by the CIT and the Tribunal were in any way incorrect or invalid.

In our view, this appeal, therefore, deserves to be allowed.

13. Setting aside the judgment and order presently under challenge, we allow this appeal and restore the order passed by the CIT and the Tribunal. No costs.

ANNEX

[2021] 129 taxmann.com 29 (Calcutta)

HIGH COURT OF CALCUTTA

Batanagar Education & Research Trust v. Commissioner of Income tax(Exemptions), Kolkata

I. P. MUKERJI AND AMRITA SINHA, JJ.

IT Appeal NO. 116 OF 2018

OCTOBER 9, 2018

N.K. Poddar, Sr. Adv., V. Tibrewal, Avra Majumdar Advs. for the Appellant. Smita Das De, Adv. for the Respondent.

ORDER

The Court.- Two appeals of the assessee were dismissed by the Income-tax Appellate Tribunal (hereinafter referred to as "the tribunal") on 13th September 2017. The assessee is in appeal before us against that order under section 260A of the Income-tax Act, 1961.

The registration of the appellant assessee as a trust was cancelled by the respondent in exercise of powers under section 12AA(3) of the said Act.

The said provision is as follows:

"12AA. *Procedure for registration.*—(1)

[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]]], and subsequently the [Principal Commissioner of Commissioner] is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing canceling the registration of such trust or institution:

provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard]."

Thus, before the section can be applied, the Principal Commissioner has to be satisfied that the activities of a trust were not genuine or were not being carried out in accordance with the objects of the trust or institution. In such circumstances, he could cancel its registration. The use of the expression "the activities of such trust or institution are not genuine" suggests that the trust, in the opinion of the Commissioner, should be proved to be carrying on some other activity in the garb of a trust with benevolent purposes. That would make the activity not genuine. Or the trust could be involved in any unlawful activity.

The second part of the said sub-section could imply that the trust was being utilised for some other purpose than one for which it was created. For example, a religious and charitable trust is found to be operating for the benefit of a particular person.

As is established by evidence, the trust in this case had several donors. Mr. Poddar argued, and in our opinion rightly, that when the trust received donations, it was under no obligation to verify the source of the fund of the donor or whether such fund was acquired by performance of any unlawful activity. At least the appellant trust did not make the inquiry and accepted donations innocently.

Mr. Poddar also submitted that these funds were applied for the purpose of the trust. There was no evidence to suggest that these funds were applied for any illegal or immoral purpose or that the trust was namesake and that some other activity was carried on with those funds in the garb of the trust. Any such fault could not be established by the respondent commissioner.

Mr. Poddar cited the following authorities.

1. *CIT v. Red Rose School* reported in [2007] 163 Taxman 19, paras 28-32 & 42-45 (All).
2. *CIT v. Islamic Academic of Education*, an unreported judgment passed by the High Court at Karnataka dated 9th September 2014 in ITA No. 805 of 2008.
3. *CIT v. Apeejay Education Society* reported in (2015) 232 Taxman 619, paras 6-9 (P&H)
4. *CIT v. Mumbai Metropolitan Regional Iron and Steel Market Committee* reported in [2018] 404 ITR 171 (Bom).
5. *CIT v. Chaudhary Son Pal Singh* reported in [2018] 401 ITR 509 (ALL).
6. *CIT v. S. Khader Khan Son* reported in [2015] 14 SCC 491 (SC)

7. *CIT v. S. Khader Khan Son* reported in [2008] 300 ITR 157 (Mad).

However, Mrs. Smita Das De for the respondent revenue very strongly argued that there were many such trusts which have been created to be used for illegal purpose or for "money laundering".

On the basis of the evidence and the authorities cited before the adjudicating bodies below, we say that the respondent revenue has not been able to establish the case so as to warrant cancellation of the registration of the appellant trust under section 12AA(3) of the Act. The respondent also has not been able to prove any complicity of the appellant trust in any illegal, immoral or irregular activity of the donors.

In that view of the matter, we answer the question (i) in the order dated 4th July 2018 in the negative and in favour of the assessee. We have not found it necessary to go into the issue raised in question (ii).

The order of cancellation of the registration of the trust is set aside. The respondent is directed to restore its registration within three weeks of communication of this order.

However, this will not bar any action against the appellant in respect of any future activities.

The appeal is hereby allowed to the extent above.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

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