

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. No.1361/Bang/2014
(Assessment Year : 2011-12)

Maria Social Service Society,
St. Mary's Catholic Church,
Vinobhanagar, I Stage,
Shimoga-577 204.

.... Appellant.

Vs.

Commissioner of Income Tax,
Davangere, Karnataka.

..... Respondent.

Appellant By : Shri Narayana Murthy, Advocate.
Respondent By : Shri Sanjay Kumar, CIT-III (D.R)

Date of Hearing : 18.7.2016.

Date of Pronouncement : 19.8.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order Dt.19.12.2013 of Commissioner of Income Tax, Davangere passed under Section 12AA(3) of the Income Tax Act, 1961 (in short 'the Act') for cancellation of registration.

2. The assessee has raised the following concised grounds :

“1. The order of the CIT, Davangere is opposed to law, facts, weight of evidences, probabilities, facts and circumstances of the case.

2. The CIT erred in withdrawing the registration to the appellant u/s.12AA of the Income Tax Act.

3. The CIT erred in ignoring the objects of the Society being charitable in nature.

4. The Commissioner has erred in unduly emphasizing on the transfer of foreign contributions to Malankara Catholic Diocese of Puttur, without appreciating that it was the project of the appellant itself.

5. The CIT erred in misconstruing the apology of the appellant as adversarial and withdrawing the registration.

6. For these and other grounds that may be urged at the time of hearing, the appellant prays that the order of the CIT be cancelled and registration of the appellant u/s.12AA continued.”

3. The assessee is a registered organization run by Maria Social Service Society. The assessee society is a duly registered with the Registrar of Societies, Karnataka under Societies Registration Act as well as the Registration under Section 12A of the Act was granted vide order dt.27.4.2005. The assessee is also registered under Foreign Contribution Registration in 1976 with Ministry of Home Affairs.

4. There is a delay of 259 days in filing this appeal. The assessee has filed a petition for condonation of delay along with an Affidavit of **Fr. Philip Nellivila**, Secretary of the assessee society-trust as well as Affidavit from Auditor and the Authorised Representative of the assessee.

5. We have heard the learned Authorised Representative as well as learned Departmental Representative on condonation of delay and considered the relevant material on record. It has been explained that the impugned order of the CIT was served on 23.12.2013. However, the Secretary who was looking after the activity of the trust has undergone medical treatment and was not able to move. The assessee has furnished a Medical Certificate in support of the cause that the Secretary of the assessee trust was indisposed of due to medical reason. Since the assessee trust is very far away place at Shimoga and therefore it took time to engage a representative to file the appeal before the Tribunal and also conduct the proceedings. It was further explained that the Secretary of the trust could not go to Bangalore and pursue the matter as he was appointed as Chief Superintendent of Mangalore University Examinations in the month of Oct./Nov., 2014. Supporting document has been filed along with the Affidavit. Thus the assessee has pleaded that the delay in filing the appeal is neither intentional nor deliberate due to unavoidable circumstances beyond the control of the assessee.

6. On the other hand, the learned Departmental Representative has vehemently objected to the condonation of delay.

7. Having considered the rival submissions and material on record, we find that the assessee has explained that there was a sufficient cause of delay in filing the appeal. It is settled principle of law that while condoning the delay, the Court should take a lenient view regarding the sufficiency of reason. It is always a question whether the explanation or reason for delay is bona fide or is merely a device to cover an ulterior purpose on the part of the applicant or an attempt to save limitation in an under hand way. From the record, we find that there is nothing to suggest that the assessee has acted in *mala fide* and reasons explained are bogus or vague. Therefore while considering the sufficient cause a liberal view has to be taken. Whenever substantial justice and technical considerations are opposed to each other, cause of substantial justice has to be preferred. However it does not mean that litigant gets a free license to approach court at its will. In the case on hand, the assessee has explained the cause which was duly supported by the medical certificate as well as the delay in hiring the professional representative

for filing the appeal and representing before the Tribunal has also been duly supported by the Affidavits of the C.A. Therefore we are satisfied that the assessee had reasonable cause for not filing the appeal within the period of limitation and accordingly in the facts and circumstances of the case as well as in the interest of justice, we condone the delay in filing the present appeal.

8. During the appellate proceedings for the Assessment Year 2011-12, the Assessing Officer noted that the assessee trust has transferred Rs.1,23,00,323 to Malankara Catholic Diocese of Puttur on various dates. The Assessing Officer observed that this amount was a foreign contribution and was taken directly to capital receipt on the receipt side of payment and account. Accordingly, the Assessing Officer sent a proposal for withdrawal of registration granted under Section 12AA of the Act. The CIT accordingly issued a show cause notice dt.13.11.2013 calling for objection to the proposed withdrawal of Registration under Section 12AA. In response to the notices issued by the CIT, the assessee submitted that the foreign donation was sent to foreign currency account by the assessee specifically for the purpose of newly formed

Malankara Catholic Diocese of Puttur and the same was transferred to the account of **Malankara Catholic Diocese of Puttur**. Accordingly, the assessee submitted that this was not done deliberately but out of ignorance. The CIT held that the transfer of money by the assessee to **Malankara Catholic Diocese of Puttur** is not as per the objects of the assessee trust and further it is a violation of FCRA as the assessee has misused the foreign donation without the permission of competent authority. Accordingly, the CIT has held that the activities are not being carried out in accordance with the objects of the trust and consequently the registration granted under Section 12AA vide order dt.27.4.2005 was withdrawn.

9. Before us, the learned Authorised Representative of the assessee has submitted that the assessee society is run by the **Malankara Catholic Diocese of Puttur** who have devoted their life for services of humanity and to serve old sufferings. During the year 2010 for effective administrative convenience few areas of operations were diverted by creating a new **Diocese Adminstrar** known as **Malankara Catholic Diocese of Puttur** which is created through a religious order from the

Vatican, Rome. The learned Authorised Representative has pointed out that in the meantime few donors from abroad came forward to help the poor and to support some social developmental programs. Accordingly, the donation was received by the assessee for the specific purpose of giving the same to **Malankara Catholic Diocese of Puttur**. He has further submitted that the said trust namely **Malankara Catholic Diocese of Puttur** has been granted Registration under Section 12AA of the Act by the Department and therefore the objects of the said trust are considered as charitable in nature. The assessee is duly authorized for foreign contribution as per FCRA. Therefore receiving the foreign contribution is not prohibited by FCRA as it prohibit only unauthorized institution to accept foreign contribution. Thus the learned Authorised Representative has submitted that there is no violation of FCRA. Once the amount given to the other trust which has been granted Registration under Section 12AA, the same cannot be considered as not applied to the objectives of the trust.

10. On the other hand, the learned Departmental Representative has submitted that the Assessing Officer has clearly pointed out that the

assessee has received the foreign contribution on behalf of the other trusts and therefore this act of receiving the foreign contribution and transferring the same to the unauthorized trust is in violation of FCRA as well as the activity of the assessee are not in accordance with the objects of the trust. Thus the undisputed act of the transaction of receiving foreign contribution and transferring the same to the other trust has clearly established that the activities are not carried out by the assessee in accordance with the objects of the trust. He has relied upon the impugned order.

11. We have considered the rival contentions as well as the relevant material on record. The jurisdiction /power to cancel the registration can be exercised only when it is found that the activity of the institution / trust are not genuine or the activities are not being carried out in accordance with the objects of the trust. Section 12AA(3) conferred the jurisdiction to CIT to cancel the registration if the conditions provided under Section 12AA(3) are satisfied as under :

õ 12AA(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 ^{15a}[Principal Commissioner or] 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 cancelling 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.ö

There is no dispute that the objects of the assessee trust are charitable in nature as it was accepted at the time of grant of registration under Section 12AA. It is not the case of the CIT or of the revenue that there is any change in the nature of activity of the assessee or in the objects of the assessee. The impugned order of the Commissioner is based on the consideration which is not relevant for the cancellation of registration under Section 12AA(3) of the Act. The sole ground for initiating the proceedings for cancellation of registration as well as the consequential cancellation by the impugned order is the violation of FCRA as the assessee received foreign contribution which was transferred to another trust. It is not in dispute that the assessee is duly authorised by the competent authority under FCRA to receive the foreign contribution / donation. The issue of violation of FCRA does not fall under the jurisdiction of the Commissioner. In any case the competent authority has to decide the issue if any of violation of FCRA and in the absence of any such order of the competent authority it is not proper to assume

that the assessee has violated FCRA by receiving the foreign contribution and transferring the same to another trust. The provisions of section 12AA(3) mandates the cancellation of registration on satisfaction of either of twin conditions i.e. activity of the trust are not genuine or are not being carried out in accordance with the objects. When there is no change either in the objects of the assessee trust during the year under consideration or any diversion of the activity from the earlier year. Giving money to another trust would not amount to change of activity of the trust or the activities carried out by the assessee are not in accordance with the objects. However it may be a subject matter of application of money for the purpose of objects of the trust which falls under Section 11 of the Act. Therefore the issue of application of income is a subject matter of allowance of exemption under Section 11 in the assessment and cannot be a ground for cancellation of registration. It is pertinent to note that the Commissioner has accepted this fact that the fund given to other trust namely **Malankara Catholic Diocese of Puttur** was also granted registration under Section 12AA of the Act and therefore the objects of the said trust was also considered and accepted

as charitable in nature. Since this is a subject matter of assessment therefore we do not express any opinion or view on the issue of application of income for the purpose of exemption under Section 11 of the Act in the present proceedings. Thus when there is no change in the activity of the assessee as well as the objects of the assessee then the mere transfer of the fund to the other trusts registration under Section 12AA does not fall in the ambit of provisions of section 12AA(3) of the Act for cancellation of registration. In view of the above facts and circumstances of the case, we hold that the Commissioner was not justified in cancelling the registration and accordingly we set aside the impugned order of cancellation of registration.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on the 19th day of Aug., 2016.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member