

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No. 1165/Kol/2016

Sri Mayapur Dham Pilgrim and
Visitors Trust, Nadia
[PAN : AAATM 4948 D]
(Appellant)

-vs.-

C.I.T. (Exemptions)
Kolkata

(Respondent)

For the Appellant : Shri A.K.Tibrewal, FCA

For the Respondent : Shri Goulen Hangshing, CIT(DR)

Date of Hearing : 18.04.2017.

Date of Pronouncement : 03.05.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Assessee against the order dated 17.03.2016 of C.I.T. (Exemptions), Kolkata passed u/s 12AA(3) of the Income Tax Act, 1961 withdrawing/cancelling the registration w.e.f. 01.04.2012 granted to the assessee u/s 12A of the Act.

2. The Assessee is a charitable trust having come into existence pursuant to a deed of trust on 22.02.1989. The fact that the objects of the trust are charitable in nature is not disputed, as the revenue has in an order dated 23.03.1991 of DIT(E), Kolkata granted registration to the assessee u/s 12A of the Act as well as approval u/s 80G((vi) of the Act by order dated 31.08.2010.

3. The activities of the assessee during the financial year 2013-14 are as follows :-

“1. Built, maintain and operate guest house for the comfortable stay of pilgrims and visitors to the Holy land of Sreedham Mayapur.

2. Built, maintain and operate guest cottages for benefit of poor and low income group of pilgrims and visitors to the Holy land of Sreedham Mayapur.

3. Constructed roads, gardens and lotus pond for beautification and cleanliness and comfortable stay and entertainment of the visitors during their stay at Mayapur .

4. Provided water and sanitary facilities for the benefit of visitors to Mayapur .
 5. Provided medical camp and distributed medicines free of cost to. the villagers as a part of social welfare measure by arranging regular medical checkup by specialist doctors.
 6. Conducted seminars and classes to identify and develop various sites of public interest.
 7. Free distribution of food to the poor and distressed village people was carried out on regular basis.
 8. Free distribution of clothes and children's garments was also carried out from time to time for benefit of poor villagers.
 9. In order to promote village and cottage industries products, the Trust used to regularly collect various products made by the local villagers for distribution to the pilgrims and visitors to Mayapur.”
3. The C.I.T.(Exemptions), Kolkata issued a show cause notice dt. 04.12.2015 to the assessee proposing to cancel the registration granted to the assessee u/s 12A of the Act for the reason that in a survey conducted u/s 133A of the Act, on an entity by name School of Human Genetics and Population Health, Kolkata (SHG and PH) by the Investigation Wing of Kolkata on 27.01.2015 it transpired that the objects of the assessee were not genuine and the trust is not carrying out its activities in accordance with the objects of the Trust. It has further been mentioned in the show cause notice that during the survey operation statement of Smt. Moumita Raghavan, Treasurer of SHG and PH was recorded under oath and in her statement she admitted that SHG and PH was in the business of providing book entry of Donations to different individuals and organizations. It has further been mentioned in the show cause notice that the assessee has received donation of Rs.18 lakhs in A.Y.2013-14 from the aforesaid organization and since it transpired that the said organisation was providing accommodation entries of donations, received, the donation of Rs.18 lacs received by the assessee from the said organization was also bogus. The CIT(Exemptions) accordingly proposed to invoke his powers u/s 12AA(3) of the Act to cancel the registration granted to the assessee.

4. In reply to the aforesaid show cause notice the assessee submitted that its activities were charitable in nature and that the trust has not violated any law or indulged in money laundering activities. The assessee pointed out that it had issued appeal letters for donation to the institution in question and they have given a donation by bank transfer to the assessee's account. The assessee submitted that whatever cash collections, the assessee receives from guest house and food distribution are deposited in the bank account regularly and no cash was kept in hand. The assessee also pointed out that its name appearing in the list of alleged bogus donations allegedly given by Secretary of SHG and PH could be due to error on their part.

5. The CIT(E) however made a reference to the statement recorded in the course of survey u/s 133A of the Act of Smt. Samadrita Mukherjee Sardar, Secretary of School of Human Genetics and Population Health (SHG&PH) and the statement of Smt. Moumita Raghavan, Treasurer of SHG&PH. These statements are reproduced in para 4.1 and 4.2 of the impugned order of the CIT(Exemptions). The gist of the statement of Smt. Moumita Raghavan is that SHG&PH's source of income was the money received in the form of donations from corporate bodies as well as from individuals. She in her statement 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. The assessee would receive 7 or 8% of the donations amount. Her further statement was that 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. The gist of the statement of Smt. Samadrita Mukherjee Sardar, Secretary of SHG&PH was also identical. In reply to question no.13 as to how the money received as donations are given back, she explained that cheques are issued in the names of various companies/organizations specified by the brokers and the sums so returned are shown as expenses in the books of SHG&PH.

6. In the proceedings for cancellation of registration u/s 12A of the Act in the case of SHG&PH Smt. Samadrita Mukherjee Sardar had given a list of donations and the source of those donations were given by her as follows :-

“This is to confirm that donations paid by our society to various trusts/societies under the head research & development expenses in our income & Expenditure Account for the respective years. However, while preparing the revised account filed before the Hon'ble Settlement Commission, Kolkata these donations have been shown as parts of refund made against donations received. “

7. According to the Revenue the name of the assessee figures in the list paid of Donations given by SHG and PH against cash year-wise for a sum of Rs.18 lakhs. Based on the above statements of Secretary and Treasurer of SHG and PH the CIT(E) concluded that the reply of the assessee was a routine reply and that the assessee was given the statement of Smt. Moumita Raghavan and Smt. Samadrita Mukherjee Sardar and other documents were also given opportunity to cross examine those persons but the assessee did not avail of the opportunity. The CIT(Exemptions) accordingly proceeded to discuss the provision of section 12AA(3) and finally concluded that the assessee's registration u/s 12A of the Act was liable to be cancelled as the activities of the assessee were not genuine and were not being carried out in accordance with its objects.

8. Aggrieved by the order of CIT(Exemptions) cancelling the registration granted u/s 12A of the Act the assessee has preferred the present appeal before the Tribunal.

9. We have heard the submissions of the Id. Counsel for the Assessee and the Ld. DR. the Ld. Counsel for the assessee submitted that the conclusions of the CIT(E) in the impugned order are purely based on surmises and conjectures. In para-2 of the impugned order the CIT(E) has referred to the facts with regard to survey u/s 133A of the Act on 27.01.2015 in the premises of SHG&PH, Kolkata and the statement of Smt. Moumita Raghavan, Treasurer of SHG&PH that SHG&PH was in the business of providing entry to different individuals and organizations by

- (a) Accepting donations and returned the same through web of financial transactions after retaining commission and
- (b) Accepting money by cash or through web of financial transactions and making donations after retaining commission.

The CIT(E) has concluded that since the assessee received donation amounting to Rs.18 lakhs in A.Y.2013-14 from SHG&PH the donation received by the assessee is also bogus and that the assessee has returned money representing the value of gift back to SHG&PH. He drew our attention to the fact that all the general donation received during the F.Y. 2012-13 by the assessee including the donation received from SHG&PH have been duly reflected in assessee's books of accounts and profit and loss account (page 38 of the paper book s the list of general donations and page 105 of the paper book is Income and Expenditure account for the year ending 31.03.2013). He also brought to our notice that the return of income filed for A.Y.2013-14 clearly indicates the donation received, application of income of the assessee for charitable purposes and accumulation of unutilized income. In the light of the above documents, the allegation of CIT(E) in the show cause notice that the assessee returned donation received back to SHG&PH is unsustainable.

10. The Id. Counsel for the assessee drew our attention to the statement of Smt. Moumita Raghavan and that of Smt. Samadrita Mukherjee Sardar, the Treasurer and Secretary of SHG&PH and pointed out that in their statements they have not said anything about the donations given by SHG&PH and that they have only narrated about the donation given to SHG and PH. He also brought to our notice that the CIT(E) in the impugned order has placed reliance on a letter dated 24.08.2015 by Smt. Samadrita Mukherjee Sardar, the Secretary of SHG&PH, in the course of proceedings initiated by CIT(E) for cancellation of registration granted u/s 12A of the Act to SHG&PH wherein she had admitted that SHG&PH had received income by providing accommodation entries for donation through certain mediators. The donations received were refunded back as per the instruction of the mediators after retaining service charges. It is also

claimed by the Revenue that in the said letter SHG and PH admitted that the refunds made were in the form of donations to different parties as per the instruction of middlemen and by debiting such donations and booking donations as expenses of SHG&PH. There is also a reference to the fact that a settlement application u/s 245C of the Act before the Hon'ble Income Tax Settlement Commission (Income Tax and Wealth Tax) for A.Y.2012-13 to 2014-15 had been filed by SHG&PH. In such an application the entire income including the income arising out of accommodation entries for donation have been offered for taxation without claiming any exemption. The Id. Counsel for the assessee submitted that the above letter does not establish the fact that donations of Rs.18 lakhs received by the assessee from SHG&PH was a bogus donation. It was his contention that as far as the assessee is concerned an appeal for donation was made and the donations were received. In the aforesaid letter there is no specific reference to the name of the assessee as the recipient of bogus donations given by SHG&PH.

11. It was submitted that the CIT(E) in the impugned order has placed reliance of another letter dated 24.10.2015 which again is a letter filed by the Secretary of SHG&PH in the course of proceedings for cancellation of their registration u/s 12A of the Act. In this letter it is alleged that there is a reference to the fact that donations paid by SHG&PH were booked under the head 'Research and Development' in their income and expenditure account and have been shown as refund made against the donations received.

12. The Id. Counsel for the assessee submitted that copies of both letters were never furnished to the assessee and they were not confronted with the aforesaid letters. It was also submitted that the assessee in reply to the show cause notice issued before cancellation of registration u/s 12A of the Act by its letter dated 24.12.2015 clearly mentioned that they have received donations and have not indulged in any money laundering activities at any time and that the donations in question were genuine. The Id. Counsel for the assessee brought to our notice declaration of the Chairman and the

Trustee of the assessee filed before the CIT(E) wherein they have denied that the assessee gave cash to the donor and subsequently received donation by RTGS.

13. The Id. Counsel for the assessee brought to our notice that in para 6.1. of the impugned order the CIT(E) has referred to the fact that on 13.01.2016 the assessee trust was given an opportunity to cross examine the Secretary and Treasurer of SHG&PH. In this regard a copy of the order sheet entries in the proceedings before CIT(E) were filed before us and the same is given as **Annexure** to this order. It was brought to our notice that on 14.01.2016 the trustee of the assessee had appeared and it was on this date that the declaration of the trustee referred to earlier was filed before CIT(E). Therefore it is not correct to contend that the assessee was given opportunity to cross examine the Treasurer and Secretary of SHG&PH.

14. The Id. Counsel for the assessee pointed out that the registration already granted to the trust or an institution u/s 12A can be cancelled only after fulfilling the conditions laid down in section 12AA(3) of the Act viz. (a) if the Commissioner is satisfied that the activities of the trust/institution are not genuine and (b) the activities are not being carried out in accordance with the objects of the trust/institution. With regard to both the above conditions there is neither an allegation by CIT(E) in the impugned order nor facts exist which can justify coming to a satisfaction regarding the existence of both the aforesaid conditions. It was submitted that evidence and material gathered from a third party can be used against an assessee only after confronting the same to the assessee and allowing opportunity of cross examination of the deponent (if the material is oral evidence). It was submitted that in the absence of doing so, the order passed, placing reliance on such inadmissible evidence, should be held to be a nullity. In this regard reliance was placed by him on the decision of the Hon'ble Supreme Court in the case of *Andaman Timber Industries vs Commissioner of Central Excise* (2015) 62 taxmann.com 3 (SC) and *Kishinchand Chellaram vs. CIT* (1980) 125 ITR 713 (SC). The following decisions rendered in the context of section 12AA(3) of the Act where identical proposition as above were also referred to :

- 1) Jha Educational Trust vs CIT(E) in ITA Nos.931-933/Kol/2016 Judgment dated 17.03.2017
- 2) Bhutoria Memorial Trust vs CIT(E) in ITA No.537/Kol/2016 Judgment dated 09.11.2016.

15. It was also submitted that the CIT(E) in the impugned order has drawn conclusions in para-8 of his order that over the years huge amount has been converted by providing accommodation entries and that looking into the volume and depth of the laundering activities the assessee defied the purpose behind granting exemption u/s 11 of the Act without any basis or material to substantiate such conclusion. It was also submitted that there are allegations that the assessee pumped in unaccounted money generated in business through bogus corpus donations. It was submitted by him that all these allegations are purely based on surmises and conjectures without bringing out any evidence on record. It was also submitted that the final conclusion in para 8.4. that the activities of the society are not genuine and are not being carried out in accordance with the objects of the Trust are again unsustainable conclusions.

16. Reference was also made to the decision of the Hon'ble Karnataka High Court in the case of CIT vs Islamic Academy of Education in IT Appeal No.805 of 2008 order dated 9th September, 2014 and CIT vs Red Rose School 163 Taxman 19 (All.).

17. The ld. DR placed reliance on the order of CIT(E). According to him in the event of the assessee claiming that it had not got an opportunity of cross examination of the Secretary and Treasurer of SHG&PH, such opportunity should be afforded to the assessee and for this purpose the issue should be remanded back to the CIT(E). According to him failure to afford opportunity of cross examination cannot render the impugned order of the CIT(E) a nullity.

18. We have given a very careful consideration to the rival submissions. We have also perused the statement of Smt. Moumita Raghavan and that of Smt. Samadrita Mukherjee Sardar, the Treasurer and Secretary of SHG&PH. These statements are placed at pages 7 to 18 of the assessee's paper book. As we have already mentioned

while narrating the facts of the case, the gist of the statement of the Secretary and treasurer was that nine brokers whose names have been given in answer no.11 by Smt. Samadrita Mukherjee Sardar, used to give donations to SHG&PH., in the form of cheques/RTGS and simultaneously used to ask for return cheques in the name of certain companies/organisations. The SHG&PH would receive a commission of 7 to 8% of the donation amount. It is not in dispute before us that none of the nine brokers referred to in the statement have been examined by the revenue authorities. There is nothing incriminating so far as the assessee is concerned with regard to the gifts given by SHG&PH in favour of the assessee. Based on the statements of the Treasurer and Secretary of SHG&PH it cannot be concluded that the assessee had paid cash to the Treasurer and Secretary of SHG&PH and got back donation in the form of cheques after paying the commission due to SHG&PH.. The CIT(E) in the impugned order has placed reliance on the letters dated 24.10.2015 and 24.08.2015 of Smt. Samadrita Mukherjee Sardar in the proceedings for cancellation of registration u/s 12A of the Act in the case of SHG&PH. In the letter dated 24.10.2015 it is alleged that the list of donations paid by SHG&PH at the instruction of the brokers also included the donation to the assessee of Rs. 18 lakhs. It is an admitted position that the copies of these letters were not furnished to the assessee and an opportunity of cross examination of Smt. Samadrita Mukherjee Sardar afforded to them. In the declaration dated 11.1.2016 as well as in the letter dated 24.12.2015, the assessee has denied that the donation in question was a bogus donation and that the assessee had paid equivalent cash to the donors. In the light of such denial, the CIT(E) ought to have confronted the material against the assessee and ought to have afforded an opportunity of cross examination to the assessee. Without doing so the CIT(E) is not entitled to use the material gathered against the assessee. The decision of the Hon'ble Supreme Court in the case of Andaman Timber Industries vs CCE (supra) clearly supports the plea of the assessee that reliance cannot be placed on such statement without affording right of cross examination and doing so is a serious flaw which makes his order a nullity as it amounts to violation of principles of natural justice. It is

clear from a perusal of the impugned order that except the statement recorded at the time of survey and letters given in the course of proceedings for cancellation of registration granted u/s 12A of the Act of SHG&PH there is no other material against the assessee to come to a conclusion that the assessee has indulged in receiving any bogus donations.

19. The fact that assessee's name figures in the list of donations given by SHG&PH as submitted by them in an application filed before the Settlement Commission of Income Tax u/s 245C of the Act, throws doubts about the genuineness of the Donation received by the assessee from SHG&PH. As far as the assessee is concerned all general Donations received by it during the F.Y. relevant to A.Y. have been duly accounted for and spent for charitable purpose. The money representing the Donation from SHG&PH cannot be said to be money of the assessee. The case of the Revenue also is that the money representing the Donation is not that of assessee. The charge of the Revenue is that money representing the value of Donation has been laundered. The question as to whose money was laundered and by whom is not spelt out in the impugned order. There is no material brought on record to come to a conclusion that the assessee was part of the scheme of money laundering and that the Donation received by the assessee from SHG&PH was also part of such scheme of money laundering. The assessee is a charitable Trust and receives donations from donors and has utilized the Donations for charitable purpose. In the given facts and circumstances it cannot be concluded that the assessee is not carrying out its objects or that the assessee's activities are not genuine.

20. Apart from the above, the grounds for cancellation for registration u/s 12AA(3) is that the activities of the trust should not be genuine or the activities of the trust are not being carried out in accordance with the objects of the trust. There is neither an allegation in the impugned order nor finding that any of the aforesaid conditions exist in the case of the assessee. We therefore are of the view that the cancellation of registration granted to the assessee u/s 12A of the Act cannot be sustained and the impugned order is hereby quashed. The appeal of the assessee is accordingly allowed.

21. In the result the appeal by the assessee is allowed.

Order pronounced in the Court on 03.05.2017.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 03.05.2017.

[RG PS]

Copy of the order forwarded to:

- 1.Sri Mayapur Dham Pilgrim and Visitor's Trust, P.O. Sri Mayapur, P.S. Nabadwip, Dist. Nadia, W.B. PIN 741313.
2. C.I.T. (Exemptions) Kolkata. .
- 3..CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches