

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

[Before Hon'ble Sri N.V.Vasudevan, JM & Shri J.Sudhakar Reddy, AM]

I.T.A Nos.756 & 912/Kol/2016

Assessment Year : 2013-14

Batanagar Education & Research Trust. -vs.- C.I.T. (Exemptions)
Kolkata Kolkata

[PAN : AABTB 3024 G]

(Appellant)

(Respondent)

For the Appellant : Shri Subash Agarwal, Advocate

For the Respondent : Shri G.Mallikarjuna, CIT(DR)

Date of Hearing : 11.09.2017.

Date of Pronouncement : 13.09.2017.

ORDER**Per Shri N.V.Vasudevan, JM**

These are appeals by the Assessee against two orders both dated 25.02.2016 of C.I.T. (Exemptions), Kolkata (i) 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 and (ii) withdrawing the approval granted to the Assessee u/s.80G(5) of the Act.

2. The Assessee is a trust. The objects of the Trust were providing relief to the poor and needy, medical relief, education and advancement of any other objects of general public utility. The fact that the objects of the trust are charitable in nature is not disputed, as the revenue has in an order dated 6.8.2010 of DIT(E), Kolkata granted registration to the assessee u/s 12A of the Act and by another order dated 31.8.2010 also granted approval u/s 80G(5) of the Act to the Assessee.

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.1,23,87,550/- 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.1,23,87,550 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. The CIT(E), in his impugned order has 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 3.1 and 3.2 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.

5. 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 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. “

6. It is not disputed that the name of the assessee figures in the said list and the fact that SHG & PH has admitted that Donations given by SHG and PH to the Assessee were against cash received from them in Financial Year 2012-13 of a sum of Rs.1,23,87,550/-.

7. Based on the Survey in the case of SHG & PH and the admission of SHG & PH that the Assessee was also a person who gave cash and got donations in return, a survey u/s.133A of the Act was conducted on 3.9.2015 in the case of the Assessee also. In the course of such survey the statement of Shri Rabindranath Lahiri, Managing Trustee of the Assessee was recorded. He in his statement admitted that the Assessee paid cash and got donations in return. The following were the relevant question & answer in the statement recorded on the aspect of bogus donations:

“Q.11 Please confirm the authenticity of the above mentioned 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.Y.s 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. Y.s 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 required 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. Ixmi 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. 98310 15157. 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 01.04.2014 to 04.09.2014 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 "Donation-II" having total amount of Rs. 6, 03, 07, 550/- is bogus and out of which s.5,96,28,973/- was returned back through RTGS to the above mentioned seven (7) persons following the instructions of the mediators. "

8. On the basis of the above material, the CIT(E) came to the following conclusion:

“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 SHG&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 thorough 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).

7. Keeping in view the above, provision of Section 12AA(3) is invoked and registration granted u/s.12AA is withdrawn/cancelled w.e.f. 01.04.2012 from the starting of financial year, the year the society was found to be involved in money laundering through receipt of bogus donation, ingenuine activities and not carrying out activities as per object of the trust.”

Since the registration u/s.12AA(3) was cancelled as a consequence, the approval granted to the Assessee u/s.80G of the Act was also cancelled.

9. 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. The following are the grounds of appeal raised by the Assessee.

“1. That, on the facts and in the circumstances of the case, the Ld. Commissioner of Income-tax (Exemptions) erred in alleging that the assessee-trust had violated the provisions of Sec.12-AA and Sec.80G(5)(vi) of the Income-tax Act, 1961, and that the activities of the assessee-trust were not genuine as well as not being carried out in accordance with its declared objects, and on the basis of such wholly unfounded allegations, he further erred in withdrawing and/or cancelling registration of the assessee-trust, with effect from 01-04-2012.

2. That, in consequence of the unfounded order withdrawing and / or cancelling u/s.12-AA(3) registration of the appellant-trust, the Ld. C.LT. (Exemption) further erred in withdrawing approval given u/s.80-G(5) of the Act with effect from 01-04-2012 .

3. That, the impugned order dated 25-02-2016, passed u/s.12-AA(3) of the Act, is arbitrary, bad in law and perverse.

4. That, the appellant-trust craves leave to adduce additional grounds and/or to withdraw or modify any of the foregoing grounds before, or at the time of hearing of the appeal. “

10. 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. 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.1,23,87,550 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.

11. 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.

12. The Id. DR placed reliance on the order of CIT(E). In particular, he brought to our notice the fact that the Assessee the Managing Trustee of the Assessee in the course of Survey admitted the fact that the donations received by them were bogus. In the light of such admission and the absence of any possible explanation to the Show cause notice issued u/s.12AA(3) of the Act, the impugned order has to be upheld and the appeals of the Assessee dismissed.

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 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. 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 has admitted that Donations given by SHG and 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.

14. In the result the appeals are dismissed.

Order pronounced in the Court on 13.09.2017.

Sd/-
[J.Sudhakar Reddy]
Accountant Member

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

Dated : 13.09.2017.

[RG PS]

Copy of the order forwarded to:

1. Batanagar Education And Research Trust, B7-360/NEW WARD No.30, Putkhali, Maheshtala, Kolkata-700 141.
2. C.I.T. (Exemptions), Kolkata.
3. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head Of Office/D.D.O., ITAT Kolkata Benches, Kolkata