

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.4451 OF 2021****COMMISSIONER OF INCOME
TAX (EXEMPTIONS), KOLKATA****APPELLANT(S)****VERSUS****BATANAGAR EDUCATION
AND RESEARCH TRUST****RESPONDENT(S)****J U D G M E N T****Uday Umesh Lalit, J.**

1. This appeal challenges the judgment and order dated 09-10-2018 passed by the High Court at Calcutta in ITA No.116 of 2018 setting aside (i) the order dated 25.02.2016 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 13.09.2017 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 06.08.2010 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 04.12.2015.

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 now 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 “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.* 01.04.2012. 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 04.07.2018, 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.

.....**J.**
(UDAY UMESH LALIT)

.....**J.**
(AJAY RASTOGI)

**NEW DELHI,
AUGUST 02, 2021.**