

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “B”, MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.363/Mum/2012 (Assessment Year- 2009-10)

M/s Mumbai Port Trust, Port Bhawan, Soorji Vallabhdas Marg, Ballard Estate, Mumbai-400001 PAN: AAATM5001D	Vs.	DIT(Exemption), 6 th Floor, Piramal Chambers, Parel, Mumbai-400012
(Appellant)		(Respondent)

Assessee by : Shri Hari Raheja with Mani Jain
(AR)

Revenue by : Ms. S. Padmaja (CIT-DR)

Date of hearing : 01.02.2018

Date of Pronouncement : 23.02.2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee under section 253 of income tax act is directed against the order of Director of Income tax (Exemptions) Mumbai, dated 22 November 2011 for assessment year 2009-10. The assessee has raised following grounds of appeal:

(1) On the facts and in the circumstances of the case and in law the learned Director of income tax (Exemption) erred in cancelling the restoration under section 12A of income tax Act with effect from assessment year 2009-10, holding that appellant is not engaged in activities which are covered within the meaning of charitable purpose appearing in section 2 (15) of the Income tax Act.

2. Brief facts of the case are that assessee the assessee is constituted under the provisions of Major Port Trust Act 1963 and as per object of the Port Trust.

The activities carried out by assessee trust is of 'General Public Utility' within the meaning of charitable purpose as defined under section 2(15) of the Income-tax Act. The assessee was granted a registration under section 12 AA with effect from 1 April 2002. The registration was withdrawn /cancelled by DIT (Exemption) on 29th of August 2007. However, on appeal before Tribunal the same was restored by the order vide dated 16th March 2009 order in ITA 6352/M/2007. Accordingly, fresh registration certificate under section 12AA was issued on 8th September 2009. The learned DIT (Exemptions) on the proposal received from ADIT (Exemptions) Mumbai, for cancelling the registration on the ground that the assessee has carried activities in the nature of trade, commerce or business etc and gross receipts therefrom are in excess of Rs. 10 lakh. Thus the provision of section 2(15) of the Income-tax Act is attracted for assessment year 2009-10. Accordingly, a notice dated 14 October 2011 was issued to the assessee, to show cause as to why the registration granted under section 12AA should not be withdrawn by invoking the provision of section 12AA(3) of the Act. The assessee filed its reply dated 11.11.2011. The assessee in its reply contended that the assessee is deriving income from various sources including income from Business & Profession, Capital Gain and Income from Other Sources. It was further contended that the plain reading of amended proviso of section 2(15) implied that only the income from Business & Profession is not eligible for exemption under

section 11 of the Act, whereas the Income from Other Sources is eligible for exemption under section 11. The reply of assessee was not accepted by the Id. DIT(E). The Id. DIT(E) observed that the proviso of section 2(15) make it clear and bring all action of a trust which are resulting in receipt as a part of earning under the ambit of said proviso. The assessee earned income of Rs. 446.21 Crore under the head Cargo Handling and the Storage Charges, Rs. 278.99 Crore from Prot & Dockyard Charges, Rs. 10.36 Crore from Railway such as Freight and Haulge, Siding Charges, Terminal Charges and Rs. 73.19 Crore as Rental of Estate. The assessee is exploiting its property commercially and in a systematic manner regularly. The Id. DIT(E) while referring Circular No.11 of 2008 dated 19.12.2008 observed that once Trust/Institution is engaged in the activity as envisages in the proviso to section 2(15), then it would not be entitled to claim that its object is for charitable purpose. The Id. DIT(E) concluded that assessee-trust is directly hit by proviso to section 2(15) introduced w.e.f. AY 2009-10. The assessee-trust/Institution once loses its charitable character than there is change in the status of assessee and it is no longer can be held to be for charitable purpose and it became non-genuine for the purpose of section 11 and loses its charitable status and accordingly cancelled the registration under section 12AA w.e.f. AY 2009-10. Thus, aggrieved by the order of Id. DIT(E), the assessee has filed the present appeal before us.

3. We have heard the ld. AR of the assessee and ld. DR for the Revenue and perused the material available on record. The ld. AR of the assessee submits that the jurisdiction of DIT(E) for cancellation of registration already granted is very limited. The jurisdiction for cancelling registration under section 12AA can only be invoked if the activities of the Trust are not genuine and the activities of the Trust or Institution are not being carried out in accordance with the object of the Trust. Section 12AA(3) specifically mandate that when twin condition are violated, the DIT(E) can cancel the registration. There is no change in the object and the activities of the assessee-trust. The ld. AR further submits that in view of the Circular No.12 of 2016 dated 27.05.2016 issued by Central Board of Direct Taxes (CBDT) clearly mandate that temporarily excess receipts beyond the specified cut off in one year may not necessarily outcome of alteration in nature of activities of the Trust or Institution for cancelling the registration already granted. The ld. AR further submits that sub-section (8) of section 13 amended by Finance Act 2012 specifically provide that the Trust/Organization would not get tax benefit of exemption in a particular year in which its receipt from commercial activities exceeds the threshold limit. In support of its submission, the ld. AR of the assessee relied upon the CBDT Circular No. 21/2016 dated 27.05.2016, decision of jurisdictional High Court in DIT(E) vs. M/s. Khar Gymkhana ITA No. 2349 of 2013 dated 06.06.2016, Madras High Court in Tamil Nadu Cricket

Association vs. DIT(E) [2013] taxmann.com 250 (Madras), decision of Mumbai Tribunal in Bhakti Kala Kshetra vs. DIT(E) [2017] 79 taxmann.com 66 and Amritsar Tribunal in Kapurthala Improvement Trust vs. CIT in ITA No. 732(Asr) of 2013. On the other hand, the ld. DR for the Revenue supported the order of ld. DIT(E). It was further submitted that the activities carried out by assessee trust within the nature of trade and commerce. The assessee's receipt from Cargo Handling and the Storage Charges is Rs. 446.21 Crore, Rs. 278.99 Crore from Prot & Dockyard Charges, Rs. 10.36 Crore from Railway such as Freight and Haulge, Siding Charges, Terminal Charges and Rs. 73.19 Crore as Rental of Estate. The assessee is exploiting its property commercially and in a systematic manner regularly. The assessee is directly hit by the proviso of section 2(15) of the Act. In support of her submission, the ld. DR relied upon the decision of Hon'ble Bombay High Court in DIT vs. North Indian Association [2017] 79 taxmann.com 410 (Bom) and decision of Tribunal in MIG Cricket Club vs. DIT(E) in ITA No. 602/M/2012 & 4638/M/2013 dated 18.04.2017.

4. We have considered the rival submission of the parties and have gone through the order of ld. DIT(E). The ld. DIT(E) cancelled/withdrawn the registration granted under section 12AA on the fact that the business receipt of the assessee during the year were exceeded than the prescribed limit under proviso to section 2(15). In our view, the basic dispute in the present appeal is whether in view of the amended section 2(15), restricting

the definition of charitable purpose by excluding carrying any trade, commerce and business in receipt of an amount in excess of prescribed limit would itself entitle the Id. DIT(E) to cancel registration under section 12AA of the Act. The CBDT has issued the following Circular No. 21/2016 regarding cancellation/withdrawal of registration, which is extracted below:

CIRCULAR NO.21/2016 [F.NO.197/17/2016-ITA-I], DATED 27-5-2016

Sections 11 and 12 of the Income-tax Act, 1961 ('Act') exempt income of charitable trusts or institutions, if such income is applied for charitable purpose and such institution is registered under section 12AA of the Act.

2. Section 2(15) of the Act provides definition of "charitable purpose". It includes "advancement of any other object of general public utility" provided it does not involve carrying on of any activity in the nature of trade, commerce or business etc. for financial consideration. The 2nd proviso to said section, introduced w.e.f. 1-4-2009 *vide* Finance Act 2010, provides that in case where the activities of any trust or institution is of the nature of advancement of any other object of general public utility and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from such commercial activities does not exceed Rs. 25,00,000/- in the previous year, the purpose of such trust/institution shall be deemed as "charitable" despite it deriving consideration from such activities. However, if the aggregate value of these receipts exceeds the specified cut-off, the activity would no longer be considered as charitable and the income of the trust/institution would not be eligible for tax exemption in that year. Thus an entity, pursuing advancement of object of general public utility, could be treated as a charitable institution in one year and not a charitable institution in the other year depending on the aggregate value of receipts from commercial activities. The position remains similar when the first and second provisos of section 2(15) get substituted by the new proviso introduced w.e.f. 1-4-2016 *vide* Finance Act, 2015, changing the cut-off

benchmark as 20% of the total receipts instead of the fixed limit of Rs.25,00,000/- as it existed earlier.

3. The temporary excess of receipts beyond the specified cut-off in one year may not necessarily be the outcome of alteration in the very nature of the activities of the trust or institution requiring cancellation of registration already granted to the trust or institution. Hence, section 13 of the Act has been amended *vide* Finance Act, 2012 by inserting a new sub-section (8) therein to provide that such organization would not get benefit of tax exemption in the particular year in which its receipts from commercial activities exceed the threshold whether or not the registration granted is cancelled. This amendment has taken effect retrospectively from 1st April, 2009 and accordingly applies in relation to the assessment year 2009-10 onwards.

4. In view of the aforesaid position, it is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.

5. With the introduction of Chapter XII-EB in the Act *vide* Finance Act, 2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA may lead to a charitable institution getting hit by sub-section (3) of section 115TD and becoming liable to tax on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax-liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to section 2(15) comes into play. The process for cancellation of registration is to be initiated strictly in accordance with section 12AA(3) and 12AA(4) after carefully examining the applicability of these provisions.

6. The above may be brought to the notice of all concerned.

5. The jurisdictional High Court in case of DIT(E) vs. Khar Gymkhana, while hearing a similar question of law held that mere receipts on account of business being in excess of limits specified in proviso to section 2(15) would not result in cancellation of Registration granted under section 12AA unless there is a change in nature of activities of institution.
6. The Hon'ble Madras High Court in case of Tamil Nadu Cricket Association vs. DIT(E) (supra) held that where Commissioner after satisfying himself about genuineness of objects of assessee, a cricket association, granted registration to it under section 12AA on 28-3-2003 and later on 19-7-2011 he having noticed that assessee was receiving income from holding of cricket matches cancelled registration, since objects remained as they were in year 2003, cancellation of registration was not justified. The co-ordinate bench of Mumbai Tribunal in Bhakti Kala Kshetra vs. DIT(E), Mumbai (supra) held that even if assessee trust was hit by monetary limits contemplated under section 2(15) with effect from 1.4.2009, same would only adversely affect entitlement of assessee towards claim of exemption under section 11; however, same could not lead to cancellation/withdrawal of registration granted under section 12A/12AA.
7. In our view, under the scheme of the Act for cancelling registration is clear. The status of registration under section 12AA will not be affected as recognized under sub-section (8) of section 13, on the availability of

receipts in excess of prescribed limit. The assessee will be disentitled for exemption under section 11, if the income of the assessee from the activities is hit by the proviso to section 2(15) in any Assessment Year. We are of the view that the cancellation of registration under section 12AA of the Act, can only take place, when the activities of the trust or institution are not genuine and/or not carried inconsonance with its object. The Circular No.21/2016 issued by CBDT came in rescue to the assessee-trust in the present case. The submission of Id. DR that activities of the Trust is not genuine because it is hit by proviso to section 2(15) of the Act, is in fact negated by this Circular. The Circular clearly provides that mere receipt on account of business receipt in excess of limit in the proviso would not result in cancellation of registration granted under section 12AA, unless there is change in the nature of activities of the assessee. The Id. DIT(E) has not given any finding as to whether there is change in the nature of activities of the assessee during the relevant Assessment Year, except placing reliance on the proposal of ADIT(E). The ratio of decision relied by Id. DR in case of MIG Cricket Club vs. DIT(E) (supra) are not applicable on the fact of the present case. In MIG Cricket Club vs. DIT(E) (supra), on investigation it was concluded that the activities of assessee was not genuine and the matter was restored to the file of Id. DIT(E) for determination about genuinity of its activity. The other decision relied by Revenue in DIT(E) vs. North India Association (supra) is in favour of

assessee wherein while dismissing the appeal of Revenue, the Hon'ble jurisdictional High Court held that merely because in one year income of assessee-trust exceeded prescribed limit provided under section 2(15), by itself could not warrant the cancellation of registration of Trust.

8. In view of the above discussion, the appeal of the assessee is allowed, the ld. DIT(E) is directed to restore the registration certificate granted under section 12AA dated 08.09.2009. Thus, we accept the present appeal of the assessee.

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

Order pronounced in the open court on 23rd day of February 2018.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

Mumbai; Dated 23/02/2018

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

BY ORDER,
(Asstt.Registrar)
ITAT, Mumbai