

Court No. - 32

Case :- INCOME TAX APPEAL DEFECTIVE No. - 118 of 2013

Appellant :- Commissioner Of Income Tax

Respondent :- M/ Babu Mohan Lal Arya Smarak Educational Trust

Counsel for Appellant :- Shambhu Chopra

Case :- INCOME TAX APPEAL No. - 303 of 2013

Appellant :- Commissioner Of Income Tax (Central) Kanpur

Respondent :- Sharda Educational Trust

Counsel for Appellant :- Shambhu Chopra

Hon'ble Sunil Ambwani,J.

Hon'ble Surya Prakash Kesarwani,J.

The certified copy of the order has been filed in income tax appeal no.303 of 2013. The defect in Income Tax Appeal (Def.) No.118 of 2013 has been removed.

We have heard Shri Shambhu Chopra, learned counsel for the petitioner.

This income tax appeal arises out of judgment and order dated 24.5.2013 passed by the Income Tax Appellate Tribunal in ITA No.127/Agra/2013 and ITA No.128/Agra/2013 in the matter of Babu Mohan Lal Arya Smarak Educational Trust v. Commissioner of Income Tax (Central), Kanpur and Sharda Educational Trust v. Commissioner of Income Tax (Central), Kanpur respectively.

We have gone through the orders passed by the Commissioner of Income Tax (Central), Kanpur under Section 12AA of the Income Tax Act, 1961 dated 28.3.2013 by which the registration of the Trust under Section 12AA granted by registration dated 31.1.2006 w.e.f. 28.8.1998 was cancelled and the A.O. was directed to compute the income of the Trust as if there was no registration under Section 12A of the Act. We also gone though the orders passed by the ITAT dated 24.5.2013 by which appeals were allowed and the order passed by the Commissioner of Income Tax was set aside.

A search and seizure operation was carried out in the premises of the trust on 17.9.2010. During the course of search, certain documents were found which indicated that some receipt of cash against certain admission form number during the course of counseling by Gautam Budh Pravadhik University on 3.9.2010 to 5.9.2010. A show cause notice was issued to the assessee on 18.3.2013. The Commissioner of Income Tax (Admn.) relied on the seized document (Annexure A-32) at pages 76-77, which was recovered from the main office of BMAS Engineering College, Agra from the seat of Shri Manish Gupta, the main counsellor in

the Admission Cell. The papers were found in torn position and rearranged by pasting as per S.No.76 of Annexure A-32. These papers give details of 31 students along with their registration numbers and date of receipt of money against their names. During post search proceedings Shri Y.K. Gupta the Director and Shri Pradeep Kumar Gupta were also confronted on 20.09.2010. Both of them gave evasive reply. They could not offer any comment on seized papers. During assessment the A.O. raised questions vide notice u/s 142 (1) dated 5.2.2013 and show cause as to why the amount mentioned on the paper may not be treated as unaccounted donation from the students seeking admission in various courses. The assessee produced books of account for verifying the amount as required by the A.O. The A.O. noticed that the amount was not reflected in the books of account. During the assessment proceedings again an opportunity was given to the assessee explaining these entries of cash transaction with their regular books of account. Since the assessee failed to furnish any satisfactory reply, notice was given as to why registration granted under Section 12A of the Act may not be cancelled.

The Commissioner of Income Tax in his order against which appeal was allowed by the ITAT found that the assessee claimed that these papers do not belong to them. However, details written on the paper namely the name of Chitra Mangla, Add. 58, Krishna Babu Colony, Dayal Bagh, Agra and "10th Per-75% (2008)- ICSE, 12th Per - 75% (2010) -IBSE, Course applied for -B. Tech/ CSE. It is also seen that in the entries on 21.8.2010 against Sl. No.16, Form No.6970 is mentioned and against which a cash of Rs.30,000/- is written" indicates that in all these papers entries of cash receipt has been indicated and in some cases, DD is written, which clearly indicates that these amount received by the trust was against various admission of the form number indicated in the IInd column in all these dates in the seized paper. The Commissioner of Income Tax did not accept the denial and relying upon Section 292C of the Income Tax Act presumed the document to belong to the Managing Trustee and the Trust and that contents of such documents were true.

The ITAT considered the evidence found during search and seizure operations and held as follows:-

"Therefore, it is clear that the sole reason for cancellation of registration appears to tax the surplus of income over expenditure, otherwise in the absence of cancellation, the AO would not have been in a position to make such a huge and substantive additions against the assessee. The Id. CIT, therefore, just to help the AO, cancelled the registration within three days of giving show cause notice to the assessee without waiting for conclusion of assessment proceedings. Therefore, the decision of Hon'ble Orissa High Court in the case of Kalinga Institute of Industrial Technology (Supra) squarely apply in favour of the assessee and against

the revenue. We may note that since conditions of grant of registration and cancellation of registration are same and the assessee satisfies that the objects of assessee trust are educational and carried out activities for achieving their objects, therefore, cancellation of registration would not be justified in the matter. No addition could be made against the assessee of unaccounted donation/ capitation fees on the basis of seized computerized paper. It may also be noted that in A.Y. 2011-12, the AO in assessment order made addition of Rs.2,40,000/- of receipt of capitation fee on recovery of Annexure A-32 which is connected with other assessee Babu Mohan Lal Arya Smarak Educational Trust and in that case it was found to be dumb document and not admissible in evidence. Therefore, such is not an adverse circumstance against the assessee for cancellation of registration.

On going through the seized papers attached with the impugned order, we find that in one of the papers, name of Gautam Budh Technical University, Lucknow is mentioned and the seized papers contained and world cash only. There are some rough calculations therein. No specific amount is mentioned. No name of student of the assessee institution is mentioned. It would not be disclosing any cash received by the assessee trust from the students at the time of admission as observed by the Id. CIT. Only on the back of one paper, Chitra Mangala is noted, but no evidence was found of payment of any amount to the assessee trust. It, therefore, appears to be the dumb documents and would not lead anywhere to prove the case of the Revenue Department. The same seized papers, therefore, are not admissible in evidence against the assessee, as also denied by the assessee. The presumption u/s. 292 C of the IT Act has been rebutted. No evidence of actual receipt of on money/ donations/ capitation fee is found in search. No incriminating evidence or corroborative evidence was found in search against the assessee to support that the seized papers pertained to the assessee to prove receipt of any on money by the assessee trust. No person from investigation wing examined any of the student or parents to prove the payment of on money. Even the recovered documents have not been sent to any hand writing expert for getting their opinion to prove their nexus with the assessee trust and to put liability upon the assessee. In the absence of any corroborative evidence against the assessee and considering that the issue is same as is considered in the case of Sharda Educational Trust, therefore, following the same reasons for decision, we are of the view that the cancellation of registration is not justified in this case. We accordingly set aside the impugned order of Id. CIT and restore the registration granted u/s. 12A of the IT Act to the assessee since inception. In the result, the appeal in ITA No.127/Agra/2013 of assessee is allowed.

In the result, both the appeals of both the assesseees are allowed."

In our view the Income Tax Appellate Tribunal being the final Court of facts has recorded finding of fact on the material found during search and seizure operation and has come to conclusion that no evidence was found with regard to payment of any money to the assessee trust. The presumption under Section 292C of the Act was rebutted by denial of the assessee with no evidence of actual receipt of on money/ donation/ capitation fees was found in search. No incriminating evidence or corroborative evidence was found. The order of Income Tax Appellate Tribunal records findings of fact, which do not raise any substantial question of law to be decided by the High Court.

Both the income tax appeals are **dismissed**.

Order Date :- 7.11.2013

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