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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF JULY 2009

PRESENT

THE HON'BLE MR.JUSTICE D.V.SHYLENDRA KUMAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

Income Tax Appeal No. 57 of 2004

Between:

The Director of Income-tax
Rastrohana Building
Nrupatunga Road
Bangalore

.. Appellant

(By Sri M.V.Seshachala, Advocate)

And:

M/s Garden City Educational Trust
No.628/C, 11th Cross
1st Stage, Old Madras Road
Indiranagar
Bangalore

.. Respondent

(By Sri S.Parthasarathy, Advocate)

This income tax appeal is filed u/s 260A of the Income Tax Act, 1961 arising out of order dated. 25.08.2003 passed in ITA No.1659/Bang/2002 praying this Hon'ble may be pleased to formulate substantial

questions of law and allow the appeal and set aside the order of the Income Tax Appellate Tribunal and etc.

This appeal coming on for hearing this day, Shylendra Kumar J., delivered the following:

JUDGMENT

This appeal under Section 260A of the Income Tax Act by the Revenue is directed against the order dated 25.08.2003 passed by the Income Tax Appellate Tribunal in Income Tax Appeal No.1659/Bang/2002, a copy of which has been produced as Annexure-A to the memorandum of appeal.


2. The substantial questions indicated in the memorandum of appeal for examination of which the appeal has been admitted are as under:

"9. Whether the Tribunal was correct in holding that the assessee is entitled to registration in accordance with Section 12A of the Act as it is carrying on activity of charitable purpose in terms of Section 2(15) of the Act without examining the various



4. It appears one of the objects of the trust was imparting education and in the light of the trust running educational institutions and imparting education, was availing the facility of exemption in terms of sub-section (22) of Section 10 of the Income Tax Act up to the assessment year 1998-99.

5. In view of the amendment brought about by the Finance Act, 1999 deleting the provisions of sub-section (22) of Section 10, the assessee-trust could not claim exemption under the specific provision. But otherwise an organisation which had for its object education as one of its purpose could become an organisation which has a charitable purpose within the meaning of sub-section (15) of Section 2 of the Act and could have availed the benefits of exemption in terms of Sections 11 and 12 of the Act.



observations of the Commissioner indicated that the trust was not carrying on the activity of education with any charitable purpose, but it was carrying on the activity only for the remaining activities and even by imparting education that it did not qualify to be characterised as a charitable purpose and therefore, the Tribunal is in error in simply allowing the appeal and directing grant of registration.

12. Learned Standing Counsel would also submit that as it appeared, the order of the Tribunal had not indicated as to the date of grant of registration and not showing awareness to this aspect was again an error which had been committed by the Tribunal and therefore, the second substantial question of law has also been raised.

13. On the contrary, submission of Sri Parthasarathy, learned counsel for the respondent-

assessee is that the Tribunal is fully justified in allowing the appeal for the simple reason that it is by now well settled on authority of law that in an application under Section 12A, the Commissioner is only required to examine as to the nature and object of the trust as to whether the trust has any charitable purpose as its object and as to whether the trust is one carrying on that activity or totally otherwise.

14. Learned counsel for the assessee would also support the view taken by the Tribunal with further authorities other than those referred to by the Tribunal and particularly, the judgment of our Court in the case of SANJEEVAMMA HANUMANTHE GOWDA CHARITABLE TRUST VS. DIRECTOR OF INCOME TAX (EXEMPTIONS) reported in (2006) 285 ITR 327. Relying on this judgment, submission of Sri Parthasarathy is that the Commissioner is not required to examine the manner in which the funds are generated by the trust,



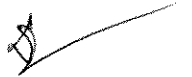
by the assessing officer and that could not have weighed before the Commissioner for refusing registration.

16. We are of the view that the applicant before the Commissioner did impart education in terms of Section 12A, as it is not in dispute that one of the objects or even the main object of the trust is imparting education. It is also not in dispute that the trust is imparting education and it is not as though some other activity which is not in the nature of education is sought to be passed off in the name of education. So long as the trust has education as one of its objects which is one of the enumerated heads which qualify and come within the scope of charitable purpose as enumerated in sub-section (15) of Section 2, it has to be accepted that the trust is having a charitable purpose as its object and may qualify for claiming exemptions in terms of Sections 11 and 12 subject to fulfilling conditions enumerated therein and if so, grant of



registration so long as the procedural requirements are complied is inevitable.

17. It is not the finding of the Commissioner that the applicant-assessee had not complied with any of the procedural requirements. The Tribunal is fully justified in observing that the manner of application of funds and as to whether the applicant-assessee can claim the benefit of exemption in terms of Sections 11 and 12 is a question which has to be examined by the assessing officer at the stage when it is urged and not by the Commissioner when such question is not before the Commissioner. It is hereby clarified and emphasized that while registration in accordance with the provisions of section 12-A of the Act is a condition precedent for claiming the benefits under sections 11 and 12 of the Act a registration as per section 12-A by itself, will not automatically confer the benefits of sections 11 and 12 on a trust, but the trust will get the benefit only on



complying with the requirements of sections 11 and 12 of the Act, which compliance can be examined by the assessing authority, while processing the return filed by the trust. Therefore, this appeal has to be dismissed.

18. However, with regard to the other question sought to be agitated viz., the second question, we find it is academic, as it is submitted this question does not actually arise from the order of the Tribunal which is impugned in this appeal.

19. It is also submitted by Sri Parthasarathy, learned counsel for the assessee that the Tribunal had independently examined this question and passed orders through a subsequent orders on an application filed by the assessee under Section 252(4) of the Act. Be that as it may, neither that order is under appeal nor the question is before us and as the question posed is not one arising out of the present order in appeal, it is



not necessary for us to examine this question, as it is purely academic in this appeal.

20. However, we make it clear that it is open to the Revenue to agitate that question as and when it arises and if and when the matter is pursued by the Revenue. Without prejudice this appeal is dismissed.

Sd/-
Judge

Pmg/

Sd/-
Judge