

I-10 UNREPORTED
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 361/2007**

Director of Income Tax (Exemption) Appellant
Through: Ms.P.L. Bansal, Advocate.

versus

PRADAN Property Holding Trust Respondent
Through: Mr. Pradeep K. Bakshi and Mr. Rajat
Navet, Advocates.

% **DATE OF DECISION: August 16, 2010**

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T (O R A L)

16.08.2010

: A.K.SIKRI, J.

The issue in this appeal relates to the grant of registration to the respondent-assessee under Section 12AA of the Income Tax Act, 1961 (for short 'the Act'). For this purpose, indubitably, the competent authority has to see that the applicant satisfies the conditions stated in Section 12AA of the Act namely it is created for and is doing charitable activities. In such circumstances, once the registration is given, such type of assessee is exempted from payment of tax on the income derived from the property held for charitable or religious purposes as well as the income which such Trust receives by way of contributions.

2. There is a Society registered under the Societies Registration Act, known as the Professional Societies for Development Action (PRADAN), which society is again a charitable society. This PRADAN decided to create the respondent-Trust as a public charitable trust by the PRADAN Property Holding Trust Deed dated 1st August, 2000. That Trust Deed, which is duly registered, mentions the aims and objects with which the said Trust is created. This respondent-Trust applied for exemption under Section 12AA of the Act by making an application before the Director of Income Tax (Exemption)/the appellant herein. The application of the respondent was, however, rejected by the appellant vide orders dated 30th July, 2001. The main reason given by the appellant was that this trust was interested in holding the properties rather than in running the charitable institutions therein. The appellant also remarked in his order that PRADAN itself was a charitable institution and, therefore, there was no need to create a trust separately. The respondent preferred an appeal against this order of the appellant by carrying the matter to the Income Tax Appellate Tribunal. The Tribunal reversed the order of the appellant and vide its decision dated 17th July, 2006, directed the appellant to grant registration to the Trust under Section 12AA of the Act. The relevant portion of the Tribunal's order which is self-explanatory and contains the entire discussion reads as under: -

“3. We have considered the matter. We have also gone through the Trust Deed. Memorandum of Association and Rules and Regulations as well as the Annual Report relating to Pradan. As the aims and

objects of the assessee trust, which we have extracted above would show, the assessee is certainly a charitable trust engaged in charitable activities. The director of Income-tax (Exemptions) is not correct in saying that the Trust existed only for holding the properties for developmental activities of Pradan. No doubt that is also one of the objects of the Trust but there are other objects also such as conducting research in the field of women's issues, NGOs and supporting the NGOs in their assistance to the poor people of India, assisting in the promotion of self help groups for women, mutual savings and credit etc. and also to undertake activities for imparting knowledge in the field of vocational training programs for the poor with a view to improve their livelihood etc. These are certainly charitable objects. That apart we do not see how the holding of properties received by way of grants and donations and putting them for the use of other charitable institutions engaged in developmental activities, especially for Pradan, cannot be said to be charitable object. For several reasons, it appears to have been decided by Pradan which is itself a charitable organization, duly registered, that another Trust would be floated for purpose of holding the funds receive by way of grants or donations to be channelized into developmental activities by Pradan. The aims and objects of the assessee trust do not contain any object which cannot be said to be charitable object. Under section 12AA, the Director of Income-tax (Exemptions) is obliged to satisfy himself about the charitable nature of the objects of the trust of institution and the genuineness of its activities. In the case before us, it appears to us that the Director of Income-tax (Exemptions) has merely stated that there was no need to register the assessee trust separately. He has further stated that the assessee does not carry on any independent charitable activity. This aspect of the matter will have to be considered at the time of the assessment by the Assessing Officer. The limited enquiry to be conducted by the Director of Income-tax (Exemptions) exceeded the authority conferred upon him u/s 12AA of the Act. As we have already sent the aims and objects of the assessee trust are charitable in nature, including the object that it shall hold the properties received by way of grants and donations to be used for charitable activities

conducted by other charitable institutions particularly Pradan. We, therefore, set aside the order of the Director of Income tax (exemptions) and grant registrations to the assessee trust u/s 12AA. The appeal is allowed with no order as to costs.”

3. Ms. Bansal, the learned counsel appearing for the appellant submits that vide the aforesaid Trust Deed, the Settlor-PRADAN, has contributed only Rs.5000/-; the properties would remain with the Settlor and in such a circumstances, it would not be permissible for the assessee to seek exemption from payment of tax, in as much as Section 11 of the Act provides that the tax is not to be levied on the income only if it is derived from the property also under the Trust. We are not able to appreciate this argument, which may not be relevant while deciding the issue as to whether the respondent-Trust was entitled to registration under Section 12AA of the Act or not. For that, the only question which was to be determined was whether it is a Trust carrying on charitable or religious activities. If, for any assessment year in the returns filed by the assessee-Trust, it claims exemption of income under Section 11 in respect of a property which is not held by it but by PRADAN, it would be for the Assessing Officer to consider as to whether the assessee would be entitled to such exemption or not as the property is not held by the assessee but by PRADAN. We state, at the cost of repetition, that this is not the issue before us in these proceedings. It has been discussed by the Tribunal and has also come on record that PRADAN is essentially a Society engaged in charitable activities. A copy of the Trust Deed is filed by the respondent on the record of this case and a perusal thereof

clearly demonstrates that the trust is created by PRADAN for the purposes of holding properties and certain assets of PRADAN so as to “more meaningfully deploy and use the same for various development activities being carried by PRADAN all over India”. Thus, the basic aim and object of the respondent-Trust is to ensure that the charitable activities being organized by PRADAN reach the wider spectrum all over India to those who deserve them, i.e., poor persons as well as women. It may also be highlighted that as per clause 15 of the Trust Deed, it is made irrevocable and even in case of merger or dissolution, no part of the funds or properties are to be distributed among the trustees or even to the Settlor. We are, therefore, of the opinion that the Tribunal has rightly given direction to the appellant to grant the registration to the respondent under Section 12AA of the Act. Finding no infirmity with that order, we dismiss this appeal.

**A.K. SIKRI
(JUDGE)**

**REVA KHETRAPAL
(JUDGE)**

August 16, 2010
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