$~2, 3 & 5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: May 14, 2015

\+ ITA 1312/2010
COMMISSIONER OF INCOME TAX ..... Appellant

\+ ITA 1322/2010
DIRECTOR OF INCOME TAX ..... Appellant

Through: Mr.Rohit Madan, Adv.

versus

RAM KISHAN KULWANT RAI CHARITABLE TRUST
..... Respondent

Through: Mr.Sandeep Mittal, Adv.

\+ ITA 16/2013
DIRECTOR OF INCOME TAX (EXEMPTION)
..... Appellant

Through: Mr.N.P.Sahni, Sr.Standing Counsel and Mr.Nitin Gulati,Jr.Standing Counsel.

versus

IILM FOUNDATION (NEW) ..... Respondent

Through: Mr.Sandeep Mittal, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. S. RAVINDRA BHAT
%

1. This order is proposed to decide three connected appeals, i.e. ITA Nos. 1312/2010, 1322/2010 and 16/2013. The substantial question of law

framed in the first two appeals, i.e. 1312/2010 and 1322/2010 is as follows:

"*Whether in the circumstances of the case, the Assessing Officer could have rendered findings questioning the exemption under Section 12-A enjoyed by the assessee, on the basis of the donation which was made to the Ram Krishna and Sons Charitable Trust."*

2. The question of law which arises in ITA 16/2013 is:

"Whether in the circumstances of the case ITAT was justified in setting aside the order of the Director of Income Tax (Exemption), which had cancelled the assessee's registration under Section 12A."

3. Brief facts are that the assessee was registered as trust on 01.02.2001. Its application for registration as a charitable trust was granted on 27.12.2001. On 30.06.2002 the assessee received the IILM Undergraduate Business School,from the Ram Krishna and Sons Charitable Trust (RKSCT). It is not in dispute that the assessee has established and manages other educational institutions and has derived income from them. For Assessment Year (AY) 2003-04 and 2004-05, based upon certain remittances made by the assessee to RKSCT, the AO held that the assessee was not in fact carrying on charitable activities and was, therefore, not entitled to the benefit of Section 12A of the Income Tax Act, 1961. Thus the Assessment orders were carried in appeal; the CIT (Appeals) confirmed them. On further appeal the Income Tax Appellate Tribunal (ITAT) granted relief to the assessee. The ITAT reasoned that the AO was not empowered to comment either on the correctness or otherwise of the certificate which had been granted under Section 12A and that the appropriate statutory authority in that regard was the Director of Income Tax (DIT) (Exemption).

Against the orders of ITAT, Revenue's appeals have arisen in ITA 1312/2010 & 1322/2010.

4. Having regard to the submissions of the parties and the provisions of Section 12A, we are of the opinion that the ITAT's finding as to the absence of power of the AO to doubt the certificate granted under Section 12A cannot be faulted. Whilst the AO is certainly empowered to examine the nature of expenditure in the application of trust, he cannot go behind the certificate issued under Section 12A. Such being the established position, the question of law framed in these appeals is to be answered against the Revenue and in favour of the assessee.

5. The second question which arises for consideration in ITA No.16/2013 is as to the legality of the revocation of the certificate under Section 12-A ordered by the DIT (Exemption). The order took note of the decision of the AO for AY 2003-04 and 2004-05 and thereafter the concerned authorities appears to have issued show cause notice to the assessee on 03.12.2009. The assessee appears to have responded on 26.05.2010, and relied almost unsuccessfully upon the Appellate's order, for the AY 2003-04 and 2004-05. It also relied upon the orders of the ITAT. The DIT (Exemption) after discussing the replies and submissions of the assessee held as follows:

> "*The submissions made in the above letter and verbal discussion held with the AR of the applicant, the same were not found convincing and acceptable, as the assessment proceedings u/s 12AA(3) are separate proceedings from each other and the outcome of one proceedings does not have any impact on the other proceedings. Being a charitable institution, there is obligation on its part to conduct its activities in more transparent and reliable manner. General public, even*

Government agencies are looking towards charitable organizations for various philanthropic purposes. As a consequence of such trust voluntary donations and grants are being given to such charitable institutions to carry philanthropic activities for the benefit of the general public and society at large. Further, tax incentives have been extended not only to these charitable institutions exempting their income from tax but also the donors to these charitable institutions are given tax benefits as well. In this background it is mandatory on the part of these voluntary organizations to keep their activities transparent and to maintain their books of account in reliable manner. In the instant case, on going educational institution has been transferred to the assessee society in the books of account as voluntary received whereas in actual conduct, the assessee society has repaid crores of rupees year after year to the institution which transferred the educational institution i.e. IILM Undergraduate Business School (IILM-UBS). The entire transaction of transfer and the so called donation to such institution is nothing but a colorable device to subvert the provision of the law and to gain benefits among specified person u/s 13 of the Income Tax Act, 1961. The activity of the Trust does not fall within the meaning of Charitable activity, as the transfer of running Business School from Ram Krishan and Sons Charitable Trust to Ram Krishan Kulwant Rai Charitable Trust (the assessee trust) is purely a business transaction for the benefit of common trustees and not in favour of general public.

6. In view of the above fact and considering the reply of the assessee, it is established beyond reasonable doubt that the society has violated the provisions of Section 2(15), activity by the society, it does not quality for registration u/s 12A. Accordingly, registration granted u/s 12A to the assessee society is cancelled from A.Y. 2003-04."

6. In appeal, the ITAT accepted the assessee's contention and held as follows:

"*The bare perusal of the clause would reveal that registration already granted to the assessee can be cancelled if the activities of the trust are not genuine or the activities of the trust are not carried on in accordance with the objects of the trust. The Ld. DIT in order to demonstrate the activities of the trust are not genuine or not carried out in accordance with the objects has observed that the entire transaction of transfer and the so called donation to such institution is nothing but a colorable device to subvert the provisions of law and to gain benefits amongst specified persons u/s 13 of the Income Tax Act 1961. Ld. DIT has not specified how it is a colorable device and how any specified person under Section 13 would gain benefit. Both the trusts are enjoying benefit under Section 12A. Let us take a hypocritical example. The assessee, if not acquired the institution by donation and it had not donated a sum of ₹ 4.43 crore to RKSCT then probably there would be no prejudice to the revenue and there could be no grievance. The receipt ought to be received by RKSCT and it would then treated as application of income by that trust towards its objects. Ld. DIT has not pointed out as to how donations made by assessee are not in accordance with the objects and it cannot be treated as genuine activities of the trust. This is not the only institution run by the trust, the RKSCT is running various other institutions and its activities have not been doubted. The show cause notice is based on the observations of the AO in asstt. Year 2003-04. However, those observations were not upheld by the Ld. First Appellate Authority as well as by ITAT. Copy of the Tribunal orders have been placed in the paper book on pages No.185 to 211. These are the orders for asstt. Year 2003-04 to 2006-07. On due consideration of the facts and circumstances, we do not find any ground or cancellation of registration. Therefore, we allow the appeal of assessee and quash the order of Ld. DIT, the registration already granted to the assessee is restored back."*

7. We have heard the counsel for the parties. Whilst there can be quarrel with the ITAT's generalization that the Director of Income Tax, in order to

hold that the exemption certificate under Section 12A has to be revoked, is to base himself or herself on material and cogent reasoning, at the same time, the circumstances in this case are such that the assessee ought to have displayed more vigilance. The AO in the present case noticed that after the donation of the institution to the assessee on 26.05.2002 a significant portion of income i.e. fee collection etc., was donated to the RKSCT. Now, when the notice was issued under Section 12A by the Director of Income Tax, the assessee was under a duty to furnish particulars and satisfy the authority as to how and why the amounts made over to Ram Krishan & Sons Charitable Trust from its earnings through its charitable activities were either not a device, or were permissible under its trust. Given the significance of the amounts involved i.e. ₹ 2.74 crore and ₹60 lakhs in AY 2004-05 and ₹4,43,37,505/- crores in AY 2003-04, the assessee was certainly expected to give an explanation better than the one it argued that the AO's reasoning was not supported by law as he was not the authority to doubt such expenditure. The obligation required of a charitable trust enjoying the benefit of tax exemption under Section 12A is clearly categorical in that it has applied for registration under Section 80G(5) towards its charitable activities. In these circumstances the DIT (Exemption) was certainly within her rights to insist on a proper explanation which in the circumstances of the case, the assessee failed to provide – perhaps more as a result of its mistake on his mis-apprehension that the entire basis for the revocation proceedings or the AO's opinion for AY 2003-04 and 2004-05. Once the notice under Section 12A proposing revocation was issued in the independent nature of the proceedings had to be satisfied. The assessee was under an obligation to provide such material to satisfy that the donation fulfilled the objective and

were of charitable nature and as such rendered any proposed action for revocation unwarranted.

8. For the above reason, this Court is of the opinion that the impugned order of the ITAT cannot be sustained and it is set aside. At the same time we are of the opinion that the DIT's order also has to be set aside. The matter is remitted to the DIT (Exemption) for fresh examination after consideration of such material as the assessee may choose to place on record within the next four weeks.

9. The ITA No. 16/2013 is partly allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MAY 14, 2015
mr