CIT is empowered to cancel registration of trust under sec. 12A with retrospective effect

Summary – The Bangalore ITAT in a recent case of Sri Vidyaranya Seva Sangha., (the Assessee) held that By way of amendment introduced by Finance Act, 2010 with effect from 1-6-2010, Commissioner is empowered to cancel registration granted to assessee-trust under section 12A with retrospective effect subject to conditions specified in section 12AA(3)

Facts

- The assessee was a society registered under the Karnataka Societies Registration Act, 1960. It was registered under the provisions of section 12A.
- The society was formed for the purpose of carrying out charitable activities. Pursuant to said object, assessee had constructed a school building and old-age home etc. However, the school building was given on lease to 'A' on license fee of Rs. 5000 p.m. for a period of 30 years.
- Subsequently, the land was acquired by the Government of Karnataka for which certain compensation was paid to the assessee-society.
- The Commissioner took a view that the object of the assessee-society was not genuine since no activities had been carried on for long time. He, therefore, cancelled the registration granted under section 12A with effect from 1-4-2004.
- The assessee filed instant appeal contending that it could not be held that assessee was not carrying on any charitable activity. It was also submitted that the Commissioner was not justified in withdrawing registration under section 12A with retrospective effect from 1-4-2004 as the power of withdrawal of registration granted under section 12A was available only with effect from 1-6-2010.

Held

- The provisions of sub-section (3) of section 12AA empower the Commissioner to cancel registration granted under clause (b) of sub-section (1) of section 12A, where the Commissioner is satisfied that the activities of the trust or institution are not genuine and are not carried out in accordance with objects of the trust/institution. Therefore, conditions to be satisfied by the Commissioner before invoking provisions of sub-section (3) of section 12AA are that the objects of the trust are not genuine or not being carried on in accordance with objects of the trust.
- In the present case, assessee-society had not carried out any activity since 2001. The fact that school building was given on lease to another society for the purpose of running school did not amount to carrying on the activities of trust. It is neither the case of the assessee-society that leasing of building is one of the activities for which the society was set up. It is also undisputed fact that assessee-society has not been filing returns of income regularly except for assessment year 2011-12 in which there was a claim for exemption for capital gains arising on acquisition of land by the State Government. All these go to show that the assessee had been dormant and no activities were

pursued. Therefore, the Commissioner was justified in invoking provisions of sub-section (3) of section 12AA to cancel registration granted under section 12A.

- However, power of cancellation of registration obtained under section 12A came to be incorporated by way of amendment introduced by the Finance Act, 2010 with effect from 1-6-2010. Therefore, with effect from 1-6-2010, power vests with the Commissioner even to cancel registration granted under any clauses of sub-section (1) of section 12A. Now, the issue is whether the Commissioner is empowered even with effect from 1-6-2010 to withdraw registration of trust earlier registered under the provisions of section 12A of the Act with retrospective effect.
- It may be noted that with effect from 1-4-1997 a new provision *i.e.* a new section *i.e.* 12AA was enacted by the Parliament governing the procedure for registration of trust or institution. Even under this new section, in the beginning there was no provision for cancellation of registration once granted till the enactment of sub-section (3) with effect from 1-10-2004. This power of cancellation was confined only to trusts registered under the provisions of new section *i.e.* 12AA. However, subsequently by the amendment introduced by the Finance Act, 2010 with effect from 1-6-2010, power to cancel registration registered under section 12A was conferred. This demonstrates the intention of the Parliament that the Commissioner is empowered to cancel registration with retrospective effect subject to condition specified in sub-section (3) of section 12AA.
- If this is not the intention of the Parliament, there was no need to specifically provide that the Commissioner is empowered to cancel registration once granted under section 12A. If, one is to accept the contention of the assessee-society that under the provisions of sub-section (3) of section 12AA, Commissioner has no power to cancel the registration of the trust once granted under section 12A with retrospective effect, the amendment which was carried out by Finance Act, 2010 to the provisions of sub-section (3) of section 12AA empowering the Commissioner to cancel registration under section 12A becomes redundant or *otiose*, because the original provisions of section 12A governing the registration had ceased to operate after insertion of provisions of section 12AA with effect from 1-4-1997. Had the intention of the Parliament been not to confer the power of withdrawal of registration with retrospective effect, there was no need of amendment by Finance Act, 2010. Therefore, the purpose of the amendment is to confer on the Commissioner under sub-section (3) of section 12AA the power of withdrawing the registration once granted under section 12A or 12AA with retrospective effect. When interpreting a provision in a taxing statute, a construction, which would preserve the purpose of the provision, must be adopted.
- Therefore, the Commissioner is very much empowered to cancel registration of the trust once registered under section 12A with retrospective effect.
- It is not the case of the assessee-trust that the conditions specified in sub-section (3) of section 12AA were not present in the present case even from 1-4-2004 till date of the impugned order. As already held, the assessee trust had not been carrying on any activity during that period. The assessee had been afforded an opportunity of proving that the objects of the trust are genuine. The

assessee could not lead any evidence on record to establish that it has been carrying on the objects for which it was set up. Therefore, the argument that there was no opportunity cannot be accepted.

- In the result, appeal filed by the assessee trust is dismissed.