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CASE LAW UPDATE

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S.R. Trust v. PCIT-2

W.P. (MD) No. 14791 of 2021 & W.M.P. (MD) Nos. 11697 & 11698 of 2021, order of Madras High Court dated 18th August, 2021

❖ Summary

Cancellation of registration u/s 12AA already enjoyed by assessee-trust could take place only after disposal of application for fresh registration made under new regime.

❖ Facts of the Case

- The Assessee was a public charitable trust registered under section 12A(a).
- The trust had to make fresh application for fresh registration by adopting procedure under section 12AB as per Sec 12AA(5) introduced by the Finance Act, 2021 w.e.f 1st April, 2021.
- The application for fresh registration was filed and remained pending. Meanwhile the AO noticed some violation in dealing with finance by the assessee-trust and issued a show cause u/s 12AA(3) to cancel the registration enjoyed by the assessee-trust.
- The Assessee filed a writ petition contending the procedures for cancellation of the registration u/s 12AA(3) were not available for revenue w.e.f 1st April 2021.

❖ Tax Payer's Arguments

- The petitioner assessee argues the Section 12AA(5) has been inserted under the Finance Act, 2021, which says that 'Nothing contained in this section shall apply on or after the 1st day of April 2021'. Relying upon section 12AB, the procedures available under 12AA, either for grant of registration or for cancellation of registration are no more available w.e.f. the 1st day of April 2021. Instead, the new procedures are contemplated under section 12AB since has been introduced.
- Sub-section 3 of section 12AA has been invoked by issuance of notice dated 10-8-2021, whereas such provisions are no more applicable w.e.f. 1st day of April, 2021.



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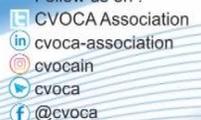
- The entire procedure as has been contemplated under section 12AB is the new procedure introduced, where the word 'subsequently', since has been intentionally made in the sub-section, it means, after the registration is undertaken within the meaning of section 12AB, then only, if any punitive action by way of cancellation or registration is to be undertaken by the revenue.

- Invoking the provisions of Sec 12AA(3) in the new regime is bad in law and the same could have been issued under new provisions applicable once the registration is granted.

❖ Tax Department's Argument

- The revenue contends that the word 'subsequently' occurred in sub-section 4 of section 12AB shall be construed that, whatever the violations noticed in respect of any trust or institution subsequent to its registration under the new regime as a fresh registrant that action can be prospectively taken subsequent to such registration which means those trusts or institutions, which are enjoying the registration under old regime either by section 12A or 12AA, the word 'subsequently' shall be construed that, during the existing registration under old regime, if any violation is noticed, that can also be dealt with under sub-section (4) or (5) of section 12AB under the new regime.
- The revenue also argues stating that a show cause notice was issued to the petitioner assessee and a personal hearing as contemplated under section 12AA(3) of the Act has been given through the impugned notice, pursuant to which the petitioner assessee can appear before the respondent and to show cause as to why the registration enjoyed by the petitioner trust shall not be withdrawn, by producing the relevant documents to the satisfaction of the revenue.
- Without utilizing the said opportunity of personal hearing, the petitioner assessee ought not to have rushed to challenge the impugned show cause notice through a writ petition which cannot be entertained by the High Court, as the parties, who suffered with show cause notice shall give show cause to the authorities concerned.

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❖ Findings of High Court

- There are exceptions to the general rule in entertaining the writ petition against the show-cause notice, where if such an interference is required for want of jurisdiction or violation of statutory provision, certainly, High court can entertain such petition by invoking the extraordinary jurisdiction of this court under article 226 of the Constitution
- Under the earlier regime either under section 12A or 12AA, once the registration is granted, unless and until it is cancelled by the authority for the reason stated or the procedure to be adopted as has been provided in the said sections, the trust or institutions can enjoy such registration endlessly.
- The applicability of the provision under section 12AA has become redundant with effect from 1-4-2021. Instead, section 12AB has been introduced under the heading 'Procedure for fresh registration' by the very same Finance Act, 2021, with effect from 1-4-2021.
- In this regard, sub-section (4) of section 12AB makes it clear that, if the registration of a trust or an institution is granted under sub-section (1) and ultimately, the Principal Commissioner/Commissioner is satisfied that the activities of the said trust or institution are not genuine or not being carried the objects of the trust or institution as the case maybe, he shall pass an order in writing cancelling the registration of the said trust or institution, after affording reasonable opportunity of being heard.
- Hence, the show cause notice issued by the department shall be kept in abeyance.
- The objection raised by the petitioner side thereby pointing out the legal position, in view of the new regime introduced with effect from 1-4-2021 is the Finance Act, 2021, as against the impugned notice, is well found.

❖ Author's Comments

- Practically, the petitioner shall have utilised the opportunity of being heard against the show cause notice issued by contending the legality of the notice issued. At the outset, the department has the power to initiate action to cancel the registration invoking the provisions of Sec 12AB(4) & (5) after the fresh registration under new regime is granted.