

**HIGH COURT OF JUDICATURE OF ALLAHABAD**

CIVIL MISC. WRIT PETITION NO. 393 OF 2007.

**Allahabad Agricultural Institute, Allahabad & another v. Union of India & others.**

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Hon'ble Sushil Harkauli, J.

Hon'ble R.K. Rastogi, J.

The essential facts necessary for adjudication of this writ petition are that, on 16.8.1975, the petitioner no. 1 had obtained registration under Section 12-A of the Income Tax Act, 1961 (hereinafter called the Act for brevity) on the basis of a memorandum of association of the petitioner-society, which contained six objects, detailed in paragraph no. 3 of the show-cause notice dated 8.12.2006 which was issued to the petitioner no. 1 by the Additional Commissioner of Income Tax, Range II, Allahabad (Annexure 4 to this writ petition).

Thereafter, with effect from 15.3.2000, the petitioner altered the objects in the memorandum and now after amendment there are in all 14 objects, which are referred to in paragraph no. 4 of the same show-cause notice dated 8.12.2006. The said show-cause notice dated 8.12.2006 specifically mentions in the said paragraph no. 4 that out of present 14 objects in the Memorandum of Association of the petitioner, there are included certain objects which are 'religious in nature'; and the present Memorandum also includes certain objects which are entirely different from the objects on the basis of which registration under Section 12-A of the Act was granted to the petitioners.

The show-cause notice alleges that the petitioners have changed the objects of the society and have not obtained any fresh registration under Section 12-A of the Act with regard to the changed objects and therefore it requires the petitioners to explain as to why it may not be inferred that the registration under Section 12-A of the Act granted to the petitioners ceases to survive due to

the said change in the objects and, consequently, why the benefit of Sections 11 and 12 of the Act be not denied to them, which has been claimed in their return of income.

The petitioners submitted a reply dated 12.12.2006, a copy of which has been enclosed as Annexure '5' to the writ petition. The I.T.O. 2 (3), Allahabad, passed the assessment order dated 26.12.2006 (Annexure '7' to the writ petition) under Section 143(3) of the Act.

The I.T.O. held, in the said order, that a comparison clearly shows that the original objects have been totally altered in the year 2000. The I.T.O. also says in that order that the petitioner-society failed to give intimation about the change/alteration in its objects to the Commissioner of Income Tax in accordance with Rule 17-B and Form 10-A. He pointed out that Form 10-A, which is to be used in applying for registration under Section 12-A, itself contains an undertaking in the following words:

"I undertake to communicate forthwith any alteration in the terms of the trust or in the rules governing the institution, made at any time hereafter."

The I.T.O. says that this undertaking was not fulfilled. The I.T.O. says that even the changed name of the society was not intimated to the Commissioner. Thus, the I.T.O. held that the registration granted to the petitioners would not survive after the wholesale change in the objects of the petitioner-society and, therefore, the petitioners' case would be treated as if they had no registration under Section 12-A of the Act.

Against the assessment order, the petitioners preferred an appeal wherein the interim prayer is yet to be considered. However the assessing officer has by order dated 20-2-07 (Annexure 16) refused the petitioners' prayer for stay of demand.

Before us, learned counsel for the petitioners has argued that having regard to

the provision of Section 12-AA (3) of the Act the Commissioner alone has the power to cancel the registration of the trust or institution by passing an order in writing where the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with its objects. The argument proceeds to say that because the Commissioner has yet to pass a cancellation order, the I.T.O. could not have held the registration to be non-existent, expired, or having become redundant, because such decision by the I.T.O. would virtually mean exercise by I.T.O. of the powers conferred upon the Commissioner by the Statute.

The argument is misconceived. The registration is granted by the Commissioner. It can be cancelled by the Commissioner under section 12-AA (3). However, the words of that statutory provision show that it applies where the objects of the trust or institution remain the same on paper, but the actual activities of such trust or institution are contrary to the said objects or are fictitious or fraudulent or not genuine or not within the scope of those objects.

However, where the objects of the trust or institution, which were the basis of grant of registration, are altered after such grant of registration, the very foundation of the registration having been removed by a voluntary act of the assessee, the registration would not survive. The immediate intimation required to be given by the assessee to the Commissioner of Income Tax is perhaps merely to enable him to keep his (Commissioner's) records updated. If, for the sake of argument, it is assumed that the intimation is required to be given to enable the Commissioner to exercise the power of cancellation, even then where the petitioners had failed to give such intimation, they cannot be permitted, in the discretionary jurisdiction under Article 226 of the Constitution of India, to plead the defence that the Commissioner has not cancelled the registration.

Further, in a situation where the objects of the trust or institution have been altered wholesale after the grant of registration and intimation of the alteration has not been given to the Commissioner, the order of the assessing authority on the assumption that the registration, which was granted on the basis of a

particular representation, held out by the assessee no longer survives or holds good, would not call for interference by this Court in exercise of its equitable and discretionary jurisdiction. To sum up, we are unable to exercise our discretion to enable the assessee to continue to utilize and enjoy the registration despite the wholesale change in the objects without giving its immediate intimation to the Commissioner.

On an earlier occasion the petitioners had filed Civil Misc. Writ Petition No. 1851 of 2006 wherein the petitioners had attempted to raise the plea that the new objects were, for all practical purposes, the same as the original objects. The plea was not considered at that stage because by the time the writ petition came up for arguments, the assessment had already been completed and an appeal was permissible under the Act.

We have not been shown that the original objects and the altered objects of the petitioner in its memorandum of association are practically the same or are charitable. Prima facie such issues are pure questions of fact. The appellate authority, where the appeal of the petitioner against the assessment order dated 26.12.2006 is pending, has not yet granted an interim order. Prima facie, when a person deliberately makes an alteration in the objects or in the memorandum of association, it will be presumed that the alteration has been made because some change is required. Alterations are not made for the fun of it. Thus the petitioners will therefore be under a heavy burden to demonstrate similarity if they wish to press such a plea. We have no reason to doubt that if pressed, this aspect whether the alteration of the objects does or does not take the activities of the petitioners now permissible under the new objects outside the scope of the original objects will be considered by the appellate authority on the next date while considering whether the petitioners have a prima facie case for grant of an interim order.

Learned counsel for the petitioners relies upon a circular dated 21.8.1969, issued by the Board, and a decision of a learned Single Judge of this Court reported in 1996 (217) ITR 641 (Mrs. R. Mani Goyal v. Commissioner of Income

Tax and another) wherein, relying upon the said circular, recovery was stayed. We have examined that circular as well as the said decision and we are of the opinion that neither the circular nor that decision is an authority for holding that the interim stay of recovery must be granted in every appeal under the Act irrespective of merit merely because the income determined on assessment, is double of the amount shown in the return. The circular is merely a guideline to be considered while judging the strength of the prima facie case of the appellant for the purpose of granting or denying the interim order. In other words the circular merely means that where there is some prima facie case, and in addition to the prima facie case, the assessed income is substantially more than the returned income, the recovery in that event should remain in abeyance during appeal. It would be difficult to accept that even where there is no prima facie case at all, recovery should be stayed merely because the assessed income is much higher than the returned income.

Learned counsel for the petitioners has then relied upon a decision of the learned Single Judge of this Court reported in 2003 UPTC 814 (M/s. Shivangi Steels Pvt. Ltd., Agra v. Assistant Commissioner, Income Tax and another).

This decision lays down that the decision rejecting stay application under Section 220(6) of the Act should contain some reasons to indicate the basis on which the discretion under that provision has been exercised. Relying upon the said decision the petitioners have attempted to challenge the order dated 20.2.2007 of the Assistant Commissioner of Income Tax, Range II, Allahabad, which rejects the application of stay. The reason mentioned in that order is as follows:

"After careful consideration of assertions contained in your abovementioned application no case is made out for stay of demand."

Firstly, this order indicates that mind has been applied to the assertions which have been found contained in the application dated 15.2.2007. Secondly, even if adequate reasons have not been given by the assessing officer in the order

dated 20.2.2007, as required by the decision in the case of M/s. Shivangi Steels (supra) that is merely a technical ground on part of the petitioners. In order to persuade this Court to grant an interim stay, during pendency of the appeal, as desired by the petitioners in this writ petition, the petitioners were required to show, in addition to the lack of reasons in the order dated 20.2.2007, that the assertions contained in their application dated 15-2-07 constituted a substantial prima facie case in favour of the petitioners, i.e. the petitioner ought to have demonstrated, prima facie, that the assessment order, which is under challenge in the appeal, contained at least prima facie an error sufficient to justify stalling the demand. No such thing was shown to us.

In view of what has been stated above, we find ourselves unable to grant any relief in this writ petition. It is, accordingly, dismissed.

Dated: 26.03.2007.