IN THE HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD

*** * ***

INCOME TAX TRIBUNAL APPEAL Nos.19, 20, 21, 24, 25, 27, 28, 38, 42, 44, 56, 79, 80, 81, 226, 229, 230, 232, 235, 237 of 2019 AND 42 of 2020

Between:
The Commissioner of Income-tax (Exemptions),
Hyderabad.

Appellant

VERSUS

Hyderabad Metropolitan Development Authority,
(formerly known as HUDA),
1-8-23, Paigah Palace,
Opp: Rasoolpura Police Station,
Begumpet, Hyderabad.

Respondent

COMMON JUDGMENT PRONOUNCED ON: 06.02.2026

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

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Respondent

! Counsel for appellant : Mr. Vijhay K. Punna, learned Senior Standing Counsel for Income Tax Department.

^Counsel for respondent : Mr. A.V. Krishna Koundinya, learned Senior Counsel appearing on behalf of Mr. A.V.A.Siva Kartikeya.

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> HEAD NOTE:

? Cases referred

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THE HON'BLE SRI JUSTICE P.SAM KOSHY

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…Respondent

COMMON JUDGMENT: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Since the *lis* involved in this batch of appeals is between the same parties, and the contentions put forth on either side also being the same, they were heard together and are decided by this Common Judgment.

2. Heard Mr. Vijhay K. Punna, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the appellant; and Mr. A.V. Krishna Koundinya, learned Senior Counsel appearing on behalf of Mr. A.V.A.Siva Kartikeya, learned counsel for the respondent.

3. These are 21 appeals preferred by the Revenue pertaining to different assessment years starting from 2003-04 to 2013-14. The assessment year involved in these 21 appeals for ready reference is mentioned below in the tabular form, viz.,

Sl. No.	**ITTA No.**	**Assessment Year**
01.	19 of 2019	2007-09
02.	20 of 2019	2006-07
03.	21 of 2019	2003-04
04.	24 of 2019	2004-05
05.	25 of 2019	2005-06
06.	27 of 2019	2007-08
07.	28 of 2019	2009-10
08.	38 of 2019	2008-09
09.	42 of 2019	NA
10.	44 of 2019	2010-11
11.	56 of 2019	2003-04
12.	79 of 2019	2006-07
13.	80 of 2019	2004-05
14.	81 of 2019	2005-06
15.	226 of 2019	2013-14

16.	229 of 2019	2013-14
17.	230 of 2019	2012-13
18.	232 of 2019	2011-12
19.	235 of 2019	2011-12
20.	237 of 2019	2012-13
21.	42 of 2020	2014-15

4. The whole dispute revolving around the present batch of appeals pertains to the entitlement of exemption under Section 12A of the Income Tax Act, 1961 (for short the 'Act of 1961') so far as the respondent / assessee establishment is concerned.

5. The assessee in the instant case is Hyderabad Metropolitan Development Authority, which was earlier known as Hyderabad Urban Development Authority. The assessee is an establishment originally established under Section 3 of the Andhra Pradesh Areas Urban Development Act, 1975 (for short the 'Act of 1975'). The assessee otherwise meets all the requirements and is also considered to be a local authority under the said Act of 1975. It was only under the Hyderabad Metropolitan Development Authorities Act, 2008 (for short the 'Act of 2008') the Hyderabad Urban Development Authority

got merged into Hyderabad Metropolitan Development Authority (for short 'HMDA').

6. The assessee is one which has been established in order to provide for better planning, coordination, supervision, promotion and securing a planned development for the city of Hyderabad and aimed with a broader intention of providing better living conditions to the people of Hyderabad. Right from its establishment in the year 1975, the assessee was enjoying exemption available to it under Section 10(20A) of the Act of 1961, which is a provision of law dealing with income which does not form part of the total income. The said provision of Section 10(20A) stood omitted under the Act of 1975 w.e.f. 01.04.2003 i.e. the assessment year 2003-04.

7. After omission of the aforesaid provision, there was no further attempt made by the assessee so far as the exemption is concerned. Subsequently in the year 2007, to be precise on 15.03.2007, the assessee preferred an application in Form 10A seeking registration under Section 12A of the Act of 1961 for the assessment year 2003-

04 onwards till 2006-07. However, the CIT (Exemptions) rejected the said application on 20.09.2007. The order of rejection of the application preferred by the assessee was subjected to challenge in an appeal before the Income Tax Appellate Tribunal (for short the 'Tribunal') with a delay of 1804 days on 30.10.2012. Meanwhile, however, the assessee had also moved another application seeking registration under Section 10(23C) of the Act of 1961, which too was rejected by the competent authority on 02.12.2012. Being aggrieved by said rejection, the assessee preferred a Writ Petition i.e. Writ Petition No.23208 of 2013 which is still pending consideration before the High Court.

8. The assessee finally preferred an application under Section 12A of the Act of 1961 by way of Form 10A seeking exemption. The authority concerned rejected the said application on 20.09.2007 on the ground of delay. The assessee thereafter preferred an appeal before the Tribunal. The Tribunal also rejected the appeal on the ground of delay *vide* order dated 24.10.2013. Aggrieved by the said order, the assessee preferred an appeal before the High Court, which too got

dismissed on 11.06.2014. The assessee thereafter carried the matter to the Hon'ble Supreme Court and the Hon'ble Supreme Court *vide* order dated 26.10.2015 has set aside the order of the High Court and after condoning the delay, remanded the matter back to the Tribunal. The Tribunal after hearing all the parties, remanded the matter back to the competent authority for fresh adjudication for the purpose of registration of the application filed by the assessee under Section 12A of the Act of 1961. Upon the matter being remanded back, the CIT (Exemptions) granted registration for the assessment years 2007-08 and 2008-09, but rejected the benefit for assessment year 2009-10 on the ground that aggregate value of certain commercial receipts exceeded Rs.25,00,000/-.

9. Aggrieved by the same, the assessee preferred an appeal before the Tribunal which was registered as ITA No.03/Hyd/2017. During the pendency of the appeal, the Assessing Officer meanwhile passed assessment orders making various additions in the absence of registration under Section 12A of the Act of 1961 for various assessment years 2003-04 to 2013-14. It is these orders passed by the

Assessing Officer which travelled to the Appellate Commissioner as also the Tribunal by way of individual appeals for different assessment years. The Tribunal allowed the appeal of the assessee pertaining to rejection of registration under Section 12A of the Act of 1961. The Tribunal while passing the impugned order, took into consideration the proviso to Section 12A(2) of the Act of 1961 which came into force w.e.f. 01.06.2007 onwards and was in force when the application for registration was filed by the assessee. Since this provision was in force when the application for rejection was being considered, the Tribunal took the view that in terms of the proviso to Section 12A(2) registration to the assessee could be granted for the earlier assessment year also. Accordingly, all the appeals before the Tribunal, both filed by the Revenue as also by the assessee stood disposed of.

10. It is this batch of appeals and the order passed therein by the Tribunal which is under challenge by the Revenue in these batch of 21 appeals.

11. The Revenue is primarily aggrieved of the registration granted to the assessee under Section 12AA of the Act of 1961 for the period

between 2002-2007 when in fact no application for registration was filed by the assessee. The Revenue had also questioned the action of the Tribunal insofar the Tribunal allowing the batch of appeals preferred by the assessee holding the assessee entitled for registration for the period between 2009-2010 onwards.

12. From the contentions put forth by the assessee, it appears that the whole dispute arises in the light of omission of Section 10(20A) of the Act of 1961 w.e.f. 01.04.2003. Prior to the omission / deletion of this Section from the Act of 1961, the assessee and similarly placed local bodies were entitled for an automatic exemption on account of these local bodies providing services which are charitable in nature and are for general public utility. Subsequent to the deletion of the aforesaid Section, provision of this Section 12AA was required to be availed by such bodies where it was incumbent upon the assessee to seek for registration under Section 12AA so as to get exemption under Section 11 and 12.

13. The assessee in the instant case has filed its application for exemption under Section 12AA only on 02.03.2007. Though the application was objected by the Department on the ground of delay, but the Hon'ble Supreme Court had condoned the delay and directed the authorities to consider the application on merits.

14. These appeals stood admitted on the following substantial questions of law, viz.,

> *"a) Whether on the facts and in the circumstances of the case, the Tribunal is correct in granting registration under Section 12-AA with effect from 01.04.2002 relying on first proviso of Section 12A(2) of the Income Tax Act, 1961, when this section was applicable only to applications made on or after 01.06.2007 and assessee had applied on 02.03.20077*
>
> *b) Whether on the facts and in the circumstances of the case, does the Commissioner of Income Tax has to overlook or ignore the actual activities even though it is available on records explaining consistent commercial activity?*
>
> *c) Whether on the facts and in the circumstances of the case, the Tribunal is correct in non-appreciating the fact that proviso to Section 12 (A) (1) (a) of the Act was squarely applicable to this case?*

d) Whether on the facts and in the circumstances of the case, the Tribunal was justified in not appreciating that CIT (E) is duty bound to look into the nature and quantum of commercial receipt available on records while deciding the assessee's application for grant of registration under Section 12AA of the Act?

e) Whether on the facts and in the circumstances of the case, the Tribunal is correct in granting registration under Section 12 AA for A.Y. 2009-10 onwards in spite of the fact that assessee is consistently earning income from commercial activities as under in contravention of provisions of Section 2 (15) of the Income Tax Act, 1961?"

15. To answer the aforesaid questions of law, what would be relevant to be taken note of is certain provisions of the Act of 1961, all of which have to be read in together to reach to a proper and logical conclusion.

16. Section 2(15) of the Act of 1961 defines Charitable purpose. The said provision underwent an amendment *vide* Finance Act, 2015 with effect from 01.04.2016. Since the dispute in this batch of appeals were of the period prior to the aforesaid amendment, we need to refer to the un-amended provisions of Section 2(15) dealing with definition

of charitable purpose, which for ready reference is re-produced hereunder, viz.,

> ***"charitable purpose"*** *includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:*
>
> ***Provided*** *that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:*
>
> ***Provided further*** *that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year;"*

17. From the aforesaid reading of the definition of charitable purpose, it is evidently clear that apart from carrying on activities that is reflected through the definition, it is also necessary for the assessee

to ensure that it does not fall within the conditions stipulated in the two provisos attached to the said definition of charitable purpose.

18. After reading the definition of charitable purpose, we need to appreciate the nature of work carried out by the assessee. Admittedly, the assessee is an establishment carrying on development activities on behalf of the Government without any profit motive, nor there are any shareholders among whom the profits could be distributed. Admittedly, the objective of the assessee was to promote and develop the areas under its jurisdiction and such other activities to be undertaken which are incidental in nature and which are required for betterment of life standards of the people within its jurisdiction.

19. Likewise, prior to 01.04.2003, Section 10(20A) of the Act of 1961 carved out certain exemptions so far as incomes which would stand excluded from total income of an establishment. The said provision of Section 10(20A) as it then was part of the Act of 1961 reads as under:

"any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both."

The aforesaid provision of law stood omitted w.e.f. 01.04.2003, which means that subsequent to 01.04.2003, there was no such exemptions which were available at the hands of the assessee. This in other words also means that in the light of Section 10(20A) getting omitted, the exemption which was available or was being availed by the assessee was no longer available for the assessee and as a consequence the income generated by the assessee while satisfying the need of housing accommodation or in the course of planning, developing improvement of city and town areas was supposed to be added as an income of the HMDA for income tax purpose.

20. Section 11 of Act of 1961 dealt with the income from property held for charitable and religious purposes. Section 12 further dealt with incomes of trust or institutions receiving contributions. Section

12A dealt with the conditions for applicability of Section 11 and Section 12 referred to earlier. One of the conditions stipulated under Section 12A, upon which the provisions of Sections 11 and 12, shall not apply in relation to the income of any trust or institution was the requirement of assessee to make an application in the prescribed form and manner to the Principle Commissioner or Commissioner seeking for registration of the trust or institution under Section 12A.

21. Section 12AA of the Act of 1961 deals with the procedure required to be fulfilled by the applicants seeking registration of a trust or institution under Section 12A. The said provision also refers to the procedure prescribed for the purpose of cancellation of registration. if the trust or the institution does not seem to be a genuine one or is not discharging the duties for which the trust or the institution was in fact established. Admittedly, the assessee is Hyderabad Metropolitan Development Authority. The said assessee was earlier known by the name Hyderabad Urban Development Authority. The assessee was established with the object and purpose of providing better, planned, coordinated and an improved living conditions to the people of City

of Hyderabad and its sub-urban areas. The assessee enjoyed the exemption available to it under Section 10(20A). However, the said provision of Section 10(20A) stood omitted w.e.f. 01.04.2023. From 01.04.2003 onwards, the assessee did not have any sought of an exemption. Further, the assessee neither applied for a registration nor availed the benefits enshrined under Sections 11 and 12 of the Act of 1961. The assessee for the first time applied for the registration of the same on 15.03.2007 in Form 10A under Section 12A of the Act of 1961. The assessee sought for the registration from 2003-04 onwards i.e., from the period from which Section 10(20A) stood omitted from the Act of 1961.

22. From the aforesaid factual matrix and also the statutory provision so far as granting exemption and granting of registration is concerned, a few dates which needs to be borne in mind is the fact that the assessee establishment came into existence in the year 1975. The assessee establishment was created under the Act of 1975. Initially, the establishment was under the Hyderabad Metropolitan Development Authority Act, which was subsequently renamed as

HMDA. When the said establishment came into existence from the year 1975 onwards, it was granted exemption under Section 10(20A) of the Act of 1961. However, the said provision of Section 10(20A) stood omitted w.e.f. 01.04.2003 i.e. the assessment year 2003-04 and after omission of Section 10(20A), the assessee establishment no longer was enjoying the exemption which it was till 01.04.2003 availing under Section 10(20A). Surprisingly and admittedly, the assessee establishment also did not try to get any registration Section 12A or seek exemption under Section 12AA. An attempt to seek registration under Section 12A and exemption under Section 12AA was for the first time made on 15.03.2007.

23. The CIT (Exemptions) initially rejected the application of the assessee filed under Section 12A on 20.09.2007 so far as registration is concerned. This matter travelled to the Tribunal with a delay of 1084 days. The order of the CIT (Exemptions) rejecting the application for registration was subjected to challenge before the Tribunal with a considerable delay of 1084 days, the Tribunal also rejected the application *vide* order dated 24.10.2013. Upon the matter being

remanded back to the CIT (Exemptions) for a fresh consideration, the CIT (Exemptions) partly allowed the prayer of the assessee to the extent of granting registration for two assessment years i.e. from 2007-08 to 2008-09. At the same time, the CIT (Exemptions) rejected the benefit of registration from 2009-10 onwards on the solitary ground that the income of the assessee since exceeds more than Rs.25,00,000/- in terms of second proviso to Section 10(15) of the Act of 1961, the assessee automatically gets excluded from the purview of a charitable institution.

24. Admittedly, there is no dispute so far as the assessee establishment having an income of more than Rs.25,00,000/-. For this reason alone, the assessee establishment would go out of the purview of a charitable institution in terms of the definition of a charitable institution under Section 2(15) of the Act of 1961 as it then stood. Another impediment which comes in the way of the assessee establishment is the fact that from the time of the omission of Section 10(20A) w.e.f. 01.04.2003, the assessee establishment neither had any

exemption, nor has any registration, and for which they had for the first time applied only on 15.03.2007.

25. The next question to be considered is, in the absence of any application being made by the assessee establishment, and in the absence of any provision under the Act of 1961 with which the registration under Section 12A and exemption under Section 12AA, was the CIT (Exemptions) justified in allowing the two applications under Section 12A and Section 12AA giving retrospective effect.

26. As has been discussed in the preceding paragraphs, undoubtedly the assessee in the instant case is HMDA which was earlier known as Hyderabad Urban Development Authority. The said establishment came into existence w.e.f. 1975 under the then provisions of the Act of 1961. Considering the nature of duties discharged by HMDA, in terms of Section 10(20A) of the Act of 1961, it became eligible for exemption. The said provision of law was in force up till 01.04.2003. There is also no dispute so far as the assessee discharging the duties related to providing services to the general public at large satisfying

the need for housing, accommodation, planning, development and improvement and cities, towns, and villages. Section 11 as also Section 12 of the Act of 1961 still grants exemption to certain establishments which fall under the purview of these two Sections. The only rider attached is the requirement of a proper registration of the said establishment.

27. The CIT (Exemptions) took note of the fact that Section 12A of the Act of 1961 was brought into force w.e.f. 20.08.1974. This provision dealt with the conditions required for availing the benefits flowing from Sections 11 and 12. Sub-Section (2) of Section 12A was inserted w.e.f. 01.06.2007. Sub-Section (2) and the proviso as it then stood reads as under:

> *"(2) Where an application has been made on or after the 1st day of June, 2007 the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.*
>
> ***Provided*** *that the provisions of sections 11 and 12 shall apply to a trust or institution where the application is made under-*
>
> *(a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;*

(b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment year for which it was provisionally registered."

From the aforesaid statutory provision as it then stood, what is clearly evident is that, clause (a) of the proviso to Sub-Section (2) empowered the authorities to grant registration to the trust from the assessment year in which such trust was earlier granted registration. In the instant case also, the assessee had the benefit of exemption under Section 10(20A) of the Act of 1961 since its inception. However, as the said provision i.e. Section 10(20A) stood omitted w.e.f. 01.04.2003 the assessee did not have any exemption and it is only in the year 2007 that it had applied for an appropriate registration under Section 12AA. By the time the said application under Section 12AA was taken up for consideration, Sub-Section (2) of Section 12A(2) already came into force, and in terms of the provisions of Section 12A(2), registration could be granted from an earlier period and it is this which was granted by the authority concerned and which was further extended by the Tribunal for the period beyond 2009-2010 also.

28. What is necessary to be understood at this juncture is the admitted factual matrix of the case coupled with the fact that the assessee in the instant case is a Government instrumentality. The said civic body has been established with the sole aim, object and purpose of providing as much of facilities to the general public at large.

29. The authorities of the Income Tax Department have considered the request for registration with a retrospective effect. Because of the fact that firstly it was an instrumentality of the State, secondly it being a civic body, thirdly it is providing services for the public convenience at large; and moreover after the remand proceedings when the matter stood remanded to the authority concerned, the authority concerned was considering the application for registration under Section 12A(2) of the Act of 1961, which already came into force. Thus, the provision of law became applicable to the matters which were already sub-judice based upon which the registration was granted. The Tribunal has also given the backing of judicial precedents of other places also under similar circumstances where such registration was granted. Therefore, the said consideration of the Tribunal so far as

granting registration from an earlier date cannot be found fault with as there is ample justification and judicial precedents relied upon by the Tribunal for the same.

30. Given the aforesaid factual matrix of the case and upon reading the entire order of the Tribunal giving reasons for reaching to the conclusion that has been arrived at based upon judicial precedents and statutory powers which have been conferred upon the authorities granting registration, we do not find any error either on law or on facts committed by the Tribunal while reaching to the said conclusion.

31. The instant batch of appeals preferred by the Revenue, thus being devoid of merit, deserves to be and are accordingly dismissed.

32. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P.SAM KOSHY, J

SUDDALA CHALAPATHI RAO, J

Date: 06.02.2026
Note: L.R. Copy to be marked.
(B/o)GSD