

U.P. FOREST CORPORATION AND ANR.

v.

DY. COMMISSIONER OF INCOME TAX, LUCKNOW

NOVEMBER 27, 2007

[ASHOK BHAN AND ALTAMAS KABIR, JJ.]

Income Tax Act, 1961: ss.11(1)(a), 12 and 12A—Assessment of income—Application for registration under s. 12A pending before Tribunal—Claim for exemption under s.11(1) (a) on the ground that assessee is charitable institution—Assessing Authority holding that it is not charitable institution—Challenge against—Held: For claiming benefit under s. 11(1)(a), registration under s. 12A is must—Assessee not registered under s.12A hence not entitled to exemption under s. 11(1)(a)—Tribunal before whom application for registration pending to take up matter on priority basis and decide same expeditiously—Order of High Court remanding the matter in respect of main assessment shall remain in abeyance till matter regarding registration is decided finally by Tribunal.

In the instant appeals, the question for consideration was: Whether the assessee-U.P. Forest Corporation was entitled to benefit of exemption under s. 11(1)(a) of the Income Tax Act, 1961, claiming itself as a charitable institution?

Dismissing the appeals of assessee-Corporation as also of Revenue, the Court

HELD: 1.1. For claiming benefit under s. 11(1)(a) of the Income Tax Act, 1961, registration under s. 12A is a condition precedent. S. 11 provides for exemption of income which is applied for charitable purposes. S. 12 is in the nature of an explanation of s. 11. S. 12A provides that provisions of ss. 11 and 12 shall not apply in relation to income of any trust or institution unless certain conditions are satisfied. Unless

A and until an institution is registered under s. 12A of the Act, it cannot claim benefit of s. 11(1)(a) of the Act. Keeping in view the fact that the appellant-Corporation has not been granted registration under s. 12A of the Act, it is not entitled to claim exemption from payment of tax under ss. 11(1)(a) and 12 of the Act. [Paras 11 and 12] [606-B, C; 607-A, B]

B *Commissioner of Income-tax, Lucknow v. U.P. Forest Corporation, [1998] 3 SCC 530 and Valjibhai Muljibhai Soneji v. State of Bombay (now Gujarat), [1964] 3 SCR 686, referred to.*

C 1.2. However, in order to protect the interest of the assessee as well as the Revenue, the Tribunal before whom the appeals are pending against the order passed by the Commissioner rejecting the application filed under s. 12A of the Act, would take up the matter on priority basis and decide the same as expeditiously as possible without being influenced by any of the findings recorded by the High Court in the impugned order. Till then, the order of the High Court remanding the matter in respect of main assessment shall remain in abeyance. In the event the matter is finally decided in favour of the assessee-Corporation, it would be at liberty to get these appeals revived for a decision on merits. In case these appeals are re-opened at the instance of the assessee, the appeals filed by the Revenue shall also get revived automatically for decision on merits. All questions are left open.

[Para 14, 15 and 16] [607-D, E, F, G]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9432 of 2003.

From the Judgment and final Order dated 26.11.2002 of the High Court of Judicature at Allahabad in Income Tax Appeal No. 3 of 2000.

WITH

G C.A. Nos. 9433, 9435-9437 of 2003 & 5552 of 2007.

Anil Divan, A.K. Ganguli and Sunil Gupta, Jatin Zaveri, Prantap Kalra, R.B. Shukla, Ranvir, Rachana Srivastava and Noorullah for the Appellants.

H Mohan Parasaran, ASG, Dr. R.G. Padia and R.K. Shukla, K.K.

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Senthivelan and Anjani Aiyagari (for B.V. Balaram Das) for the A
Respondent.

The Judgment of the Court was delivered by

ASHOK BHAN, J. 1. Leave granted in S.L.P. (C) No. 7476 of B
2006.

2. The U.P. Forest Corporation (for short, 'the Corporation'), the
appellant no.1 in Civil Appeal Nos. 9432; 9333; 9435 and 9436 of 2003,
was constituted by a Notification issued under Section 3 of the U.P. Forest
Corporation Act, 1974. In the year 1977, the Income-tax authorities C
issued a notice to the Corporation of file its return of income for the
assessment year 1976-77 under the Income-tax Act, 1961 (for short, 'the
Act'). The Corporation challenged the said notice by filing Writ Petition
No. 1568 of 1977 which was disposed of by the High Court by holding D
that the Corporation was a local authority under Section 10(20) of the
Act and was entitled to claim exemption. Since the said order was not
challenged by the Revenue, the same became final and remained in force
till a contrary view was taken by this Court in respect of Assessment Years
1977-78, 1980-81 and 1984-85 in the case of *Commissioner of Income
tax, Lucknow v. U.P. Forest Corporation*, reported in [1998] 3 SCC E
530.

3. For the Assessment Year 1977-78, the Corporation's income was
assessed by making some additions of income and deleting some deductions
claimed in the return of income. On an appeal being filed, the F
Commissioner (Appeals) upheld that the Corporation was exempt from
paying tax on the ground that it was a 'local authority' within the meaning
of Section 10 (20) of the Act. Insofar as the relief sought regarding
additions of income and deletion of deduction in concerned, the
Commissioner declined to decide the said issue. The Income Tax
Appellate Tribunal ('the Tribunal' for short) set aside the said order of G
the Commissioner (Appeals) and held that the Corporation was not a 'local
authority' and remanded the appeals to the Commissioner (Appeals) for
rehearing on merits on the issue of grant of relief relating to
additions/deductions.

A 4. Since the Corporation was also assessed for the Assessment Year
1984-85 as was assessed for the Assessment year 1977-78, the
Corporation preferred Writ Petition No. 4424 of 1987 before the High
Court of Allahabad which was accepted and the High Court, by its order
dated 19th May 1988, declared that the Corporation was a 'local
B authority' and was entitled to exemption under Section 10(20) of the Act.
It also held that it was entitled to exemption under Section 11(1) (a) of
the Act being a charitable institution.

C 5. Aggrieved by the said order, the Department chose to file Special
Leave Petition before this Court wherein leave was granted and ultimately
the appeals were accepted and the order passed by the High Court was
set aside. It was held that the expression 'local authority' was not defined
under the Income Tax Act. Section 3(31) of the General Clauses Act,
1897 defined the said expression which came up for consideration before
D this Court in the case of *Valjibhai Muljibhai Soneji v. State of Bombay*,
(now Gujarat) [1964] 3 SCR 686 wherein it was held that the definitions
given in the General Clauses Act, govern all Central Acts and Regulations
made after the commencement of this Act. Following the said decision,
E this Court held that even though Section 3(3) of the U.P. Forest
Corporation Act regards the Corporation as being the local authority but
for the purpose of the Act, it would not, in law, make the Corporation a
local authority for the purposes of Section 10(20) of the Act. On the
question whether the Corporation was to get itself registered under Section
12A of the Act for invoking the provisions of Section 11(1) (a) of the
F Act of claim exemption being a charitable institution, it was held that since
the question had not been raised before any of the authorities below, the
High Court should have remanded the case back to either the Assessing
Authority or the CEGAT for a decision. This Court, under peculiar facts
and circumstances of the case, directed the Assessing Authority to consider
G the claim of the appellant-Corporation as to whether the appellant was
not liable to be taxed in view of the provisions of Section 11(1) (a) of the
Act as a charitable institution.

H 6. In the meantime, following the decision of the High Court in W.P.
No. 4424 of 1987, the Commissioner (Appeals) allowed the appeals of
the Corporation in respect of Assessment Years 1977-78 and 1980-81

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allowing exemption under Section 10 (20) and Section 11 (1) (a) of the A
Act.

7. The appellant-Corporation, on 11th July 1988, moved an
application before the competent authority for being registered under
Section 12A of the Act which was rejected after a gap of nine years on B
18th March 1997.

8. Against the said rejection, the Corporation filed Writ Petition No.
173 of 1998 before the High Court during the pendency of which the
Corporation filed another application for the purpose on 04th May 1998. C
The High Court allowed the Writ petition and set aside the order of the
competent authority rejecting the application of the Corporation for
registration on the ground that the Commissioner had passed an order in
violation of principles of natural justice inasmuch as the appellant-
Corporation had not been given an opportunity of hearing and directed
the Commissioner to re-decide the Corporation's application dated 11th D
July 1988 for registration after giving an opportunity of hearing to the
Corporation. The Commissioner decided against the Corporation against
which order an appeal filed by the Corporation before the Tribunal at
Lucknow is pending decision.

9. After the matter was remanded by this Court in the case of E
Commissioner of Income-tax, Lucknow v. U.P. Forest Corporation
(supra), the Assessing Authority held that the appellant was not a
charitable institution and assessed the income in respect of Assessment
Years 1977-78, 1980-81 and 1984-85 to tax. Commissioner (Appeal) F
partly allowed the appeals of the appellant-Corporation granting some relief
on issues of addition/deductions. The appellant-Corporation as also the
Revenue filed appeals against the said order before the Tribunal. The
Tribunal allowed the appeals filed by the Revenue and set aside the relief
granted to the Corporation on the issue of additions/deductions on the G
ground that this Court had remanded the matter only to decide one issue.

10. Being aggrieved, the Corporation filed an appeal under Section
260A of the Act before the High Court. By the impugned order dated
26th November 2002, the High Court has remanded the matter to the H

A Tribunal for considering the matter afresh. Aggrieved by the said order, the Corporation is in appeal before us by filing the aforementioned appeals. The Revenue has also filed Civil Appeal No. 9437 of 2003 against the impugned order. The Revenue has also challenged a subsequent order passed by the High Court wherein the above question has not been decided in view of the pendency of the aforementioned appeals.

11. We are of the considered view that for claiming benefit under Section 11(1)(a), registration under Section 12A is a condition precedent. Section 11 provides for exemption of income which is applied for charitable purposes. Section 12 is in the nature of an explanation of Section 11. Section 12A provides that provisions of Sections 11 and 12 shall not apply in relation to income of any trust or institution unless certain conditions are satisfied, one of which is clause (a), the same is reproduced as under:

D “12A. The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

E (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Chief Commissioner or Commissioner before 1st day of July 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later:

F Provided that the Chief Commissioner or Commissioner may, in his discretion, admit an application for the registration of any trust or institution after the expiry of the period aforesaid;

(b)”

G 12. Application for registration under Section 12A has to be made in form 10A prescribed by Rule 17-A of the Income Tax Rules, 1962 before the expiry of one year from the date of the creation of the trust or the establishment of the institution, whichever is later. The same has to be made by the person in receipt of the income of the trust. Chief

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Commissioner or Commissioner under proviso to clause (a) of Section 12A has been vested with the discretion to admit an application for registration after the expiry of the prescribed period. A conjoint reading of Section 11, 12 and 12A makes it clear that registration under Section 12A is a condition precedent for availing benefit under Section 11 and 12 of the Act. Unless and until an institution is registered under Section 12A of the Act, it cannot claim the benefit of Section 11(1)(a) of the Act. Keeping in view the fact that the appellant-Corporation has not been granted registration under Section 12A of the Act, we hold that the appellant is not entitled to claim exemption from payment of tax under Sections 11(1)(a) and 12 of the Act.

13. We, accordingly, dismiss the appeals filed by the Corporation without deciding the merits of the dispute.

14. In view of the dismissal of these appeals, the appeals filed by the Revenue also stand dismissed. However, in order to protect the interest of the assessee as well as the Revenue, we direct the Tribunal, before whom the appeals are pending against the order passed by the Commissioner rejecting the application filed under Section 12A of the Act, to take up the matter on priority basis and decide the same as expeditiously as possible without being influenced by any of the findings recorded by the High Court in the impugned order.

15. We make it clear that in the event the matter is finally decided in favour of the assessee, the assessee, viz., the Corporation would be at liberty to get these appeals revived for a decision on merits. Similarly, in case these appeals are re-opened at the instance of the assessee, the appeals filed by the Revenue shall also get revived automatically for decision on merits. All questions are left open.

16. It is further made clear that the order of the High Court remanding the matter in respect of main assessment shall remain in abeyance till the matter regarding registration is decided finally by the Tribunal.

17. No. costs.

D.G.

Appeals dismissed.

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