

INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION (GWALIOR) M.P. LTD. A

v.

COMMISSIONER OF INCOME TAX, GWALIOR
(Civil Appeal No. 6262 of 2010) B

FEBRUARY 16, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Income Tax Act, 1961 – s.12-A and s.12-AA(3) – Cancellation of registration certificate under the Act by CIT – Power of – Appellant-company filed application u/s.12-A to the Commissioner of Income Tax (CIT) for grant of registration – Registration certificate was granted by the CIT vide order dated 13.04.1999 – However, on 27.11.2000 the CIT issued show cause notice to cancel/withdraw the registration certificate granted – Thereafter, CIT cancelled/withdrew the certificate vide order dated 29.04.2002 – Appellant filed rectification application and contended that the CIT had no power to cancel/recall the certificate – CIT held order of cancellation as legal and proper – Aggrieved, appellant filed appeal before Income Tax Appellate Tribunal (ITAT), which set aside the order of the CIT – However, High Court set aside the order of ITAT and restored the order of the CIT and held that since there is no express power in the Act for cancelling the registration certificate u/s.12-A and hence power to cancel can be traced from s.21 of the General Clauses Act to support such order – Propriety of – Held: Not proper – There was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted u/s.12-A and such power of cancellation could be exercised by the CIT only on and after 01.10.2004 vide s.12AA(3) by Finance (No.2) Act 2004 – Order passed u/s.12-A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so – In instant case, there was no such express power – An order of the CIT passed u/s.12-A does not fall in the category of “orders” mentioned in s.21 of the General Clauses Act – The expression “order” employed in s.21 would show that such “order” must be in the nature of a “notification”, “rules” and

- A *“bye laws” – The order, which can be modified or rescinded by applying s.21 of the General Clauses Act, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass u/s.12-A , is neither legislative nor an executive order but it is a quasi judicial order – It is for this reason, s.21 has no application in instant case – Order of the ITAT restored – General Clauses Act – s.21 – Finance (No-2) Act 2004.*
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Allowing the appeal, the Court

- HELD: 1. The CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12A of the Income Tax Act, 1961 till 01.10.2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section 12A of the Act. Second, the order passed under Section 12A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power. Indeed, the functions exercisable by the CIT under Section 12A are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature. [Paras 21 and 22] [487-C-D]**
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- 2. Third, an order of the CIT passed under Section 12A does not fall in the category of “orders” mentioned in Section 21 of the General Clauses Act. The expression “order” employed in Section 21 would show that such “order” must be in the nature of a “notification”, “rules” and “bye laws” etc. In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12A of the Act, is neither legislative nor an executive order but it is a “quasi judicial order”. It is for this reason, Section 21 has no application in this case. [Paras 23 and 24] [487-E-G]**
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- 3. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after**
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an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi judicial order. A quasi judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. [Para 25] [487-G-H; 488-A-B]

4. It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature. [Para 27] [488-G]

Indian National Congress (I) v. Institute of Social Welfare & Ors. (2002) 5 SCC 685 : [2002] 3 SCR 1040 – relied on.

Director of Income Tax (Exemptions) v. Mool Chand Kairati Ram Trust (2011) 243 CTR (Del) 245; *Welham Boys' School Society v. CBDT*, (2006) 285 ITR 74; *Oxford Academy for Career Development v. Chief Commissioner of Income Tax & Ors.* (2009) 315 ITR 382 (All) – approved.

State of Bihar v. D.N. Ganguly & Ors. AIR 1958 SC 1018 : [1959] SCR 1191; *State of Madhya Pradesh v. Ajay Singh* AIR 1993 SC 825 : [1992] 2 Suppl. SCR 274; *Ghaurul Hasan v. State of Rajasthan* AIR 1967 SC 107 : [1962] 1 SCR 772; *Hari Shanker Jain v. Sonia Gandhi* AIR 2001 SC 3689 : [2001] 3 Suppl. SCR 38 – referred to.

Interpretation of Statutes, Ninth Edition by G.P. Singh page 893 – relied on.

Case Law Reference

[2002] 3 SCR 1040	relied on	Para 23	
[1959] SCR 1191	referred to	Para 26	
[1992] 2 Suppl. SCR 274	referred to	Para 26	H

A	[1962] 1 SCR 772	referred to	Para 26
	[2001] 3 Suppl. SCR 38	referred to	Para 26
	(2011) 243 CTR (Del) 245	approved	Para 28
	(2006) 285 ITR 74	approved	Para 28
B	(2009) 315 ITR 382 (All)	approved	Para 28

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6262 of 2010

C From the Judgment and Order dated 14.03.2007 of the High Court of Madhya Pradesh at Gwalior in MAIT No. 6 of 2005.

Mrs. Rani Chhabra, Adv. for the Appellants.

K. Radhakrishnan, Sr. Adv., Rupesh Kumar, H. R. Rao, Ms. Sadhana Sandhu, Ms. Snidha Mehra (for Mrs. Anil Katiyar), B. V. Balaram Das, Advs. for the Respondent.

D The Judgment of the Court was delivered by

E **ABHAY MANOHAR SAPRE, J.** 1. This appeal is directed against the final judgment and order dated 14.03.2007 passed by the High Court of Madhya Pradesh at Gwalior in Misc. Appeal (Income Tax) No.6 of 2005 whereby the Division Bench of the High Court allowed the appeal filed by the respondent and set aside the order passed by the ITAT and restored the order of the Commissioner of Income Tax.

2. The question involved in the appeal lies in a narrow compass. Few facts, however, need mention to appreciate the same.

F 3. The appellant is a limited company registered under the Companies Act. It is a State Government Undertaking which is established with a view to develop and assist the State in the development of industrial growth centers/areas, to promote, encourage and assist the establishment growth and development of industries in the State of M.P. The appellant is an “assesse” under the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

G 4. On 10.02.1999, the appellant filed an application in the format prescribed under Section 12-A of the Act to the Commissioner of Income Tax (hereinafter referred to as “the CIT”) for grant of registration. According to the appellant, since they were engaged in public utility

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activity which, according to them, was for a charitable purpose under Section 2(15) of the Act, they were entitled to claim registration as provided under Section 12 (A) of the Act. Since the application for registration was delayed in its filing, the appellant also made an application for condonation of delay in filing the application. A

5. By order dated 13.04.1999, the CIT (Gwalior) condoned the delay and granted the registration certificate as prayed for by the appellant. In clause 3 of the registration certificate, it was mentioned that the certificate is granted without prejudice to the examination on merits of the claim of exemption after the return is filed. B

6. On 27.11.2000, the CIT issued a show cause notice to the appellant stating therein as to why the registration certificate granted to the appellant by order dated 10.02.1999 under Section 12A of the Act be not cancelled/withdrawn. The show cause notice also set out the factual grounds for the withdrawal of the registration certificate. The appellant was asked to reply the show cause notice. The appellant accordingly filed their reply and opposed the grounds on which the withdrawal/cancellation of the certificate was proposed. C
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7. By order dated 29.04.2002, the CIT did not find any substance in the stand taken by the appellant in their reply and accordingly cancelled/withdrawn the certificate issued to the appellant. E

8. The appellant felt aggrieved and filed rectification application under Section 154 of the Act before the CIT on 04.07.2002 contending therein that the order of the CIT dated 29.04.2002 cancelling/withdrawing the registration certificate contains an error apparent and, therefore, it is required to be rectified or/and recalled. It was contended that once the CIT grants the registration certificate under Section 12A, he has no power to cancel/recall the certificate granted to the Assessee. F

9. On 20.12.2002, the CIT rejected the application filed by the appellant for rectification holding that there was no error in his order cancelling the registration certificate granted to the appellant. In other words, the CIT held that he had the power to cancel the certificate once granted by him and, therefore, the order for cancelling the registration certificate is legal and proper. G

10. Aggrieved by the said order, the appellant filed an appeal before the Income Tax Appellate Tribunal, Agra Bench. By order dated H

A 26.08.2004, the ITAT allowed the appellant's appeal and set aside the order dated 29.04.2002 passed by the CIT by which he had cancelled/withdrawn the registration certificate.

B 11. The Revenue felt aggrieved by the order of the ITAT and filed appeal in the High Court at Gwalior Bench under Section 260-A of the Act. The High Court, by impugned order, allowed the appeal filed by the Revenue and set aside the order passed by the ITAT and restored the order of the CIT.

C 12. The Division Bench of the High Court placed reliance on Section 21 of the General Clauses Act and held that since there is no express power in the Act for cancelling the registration certificate under Section 12A of the Act and hence power to cancel can be traced from Section 21 of the General Clauses Act to support such order. In other words, in the opinion of the High Court, Section 21 is the source of power to pass cancellation of the certification granted by the CIT when there is no express power available under Section 12A of the Act.

D 13. It is against this order, the assessee felt aggrieved and filed this appeal by way of special leave before this Court.

14. None appeared for the appellant (assessee). Mr. Radhakrishnan, learned Counsel appeared for the respondent (Revenue).

E 15. Having heard the learned counsel for the Revenue and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order, restore the order of the ITAT.

16. The main questions, that arise for consideration in this appeal, are four:

F 17. First, whether the CIT has express power to cancel/withdraw/recall the registration certificate once granted by him under Section 12A of the Act and, if so, under which provision of the Act?

G 18. Second, when the CIT grants registration certificate under Section 12A of the Act to the assessee, whether grant of certificate is his quasi judicial function and, if so, its effect on exercise of his power of cancellation of such grant of registration certificate?

H 19. Third, whether Section 21 of the General Clauses Act can be applied to support the order of cancellation of the registration certificate granted by the CIT under Section 12A of the Act, in case, if it is held

that there is no express power of cancellation of registration certificate available to the CIT under Section 12A of the Act? and A

20. Fourth, what is the effect of the amendment made in Section 12AA introducing sub-clause(3) therein by Finance (No-2) Act 2004 w.e.f. 01.10.2004 conferring express power on the CIT to cancel the registration certificate granted to the assessee under Section 12A of the Act. B

21. In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12A till 01.10.2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section 12A of the Act. Second, the order passed under Section 12A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power. C D

22. Indeed, the functions exercisable by the CIT under Section 12A are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature.

23. Third, an order of the CIT passed under Section 12A does not fall in the category of “orders” mentioned in Section 21 of the General Clauses Act. The expression “order” employed in Section 21 would show that such “order” must be in the nature of a “notification”, “rules” and “bye laws” etc. (see – **Indian National Congress(I) vs. Institute of Social Welfare & Ors.**, 2002 (5) SCC 685). E

24. In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12A of the Act, is neither legislative nor an executive order but it is a “quasi judicial order”. It is for this reason, Section 21 has no application in this case. F

25. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the G H

A notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi judicial order. A quasi judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (**See Interpretation of Statutes, Ninth Edition by G.P. Singh page 893**).

B 26. Relying upon the aforementioned rule of interpretation, this Court has held that the Government has no power to cancel or supersede a reference once made under Section 10(1) of the Industrial Disputes Act, 1947. [**See- State of Bihar vs. D.N. Ganguly & Ors.** (AIR 1958 SC 1018)]. Similarly, on the same principle it is held that the application of Section 21 of the General Clauses Act has no application to amend or rescind or vary a notification issued under Section 3 of the Commissions of Enquiry Act for reconstituting the commission by replacement or substitution of its sole member except applicable for a limited purpose for extending the time for completing the enquiry. (**See-State of Madhya Pradesh vs. Ajay Singh**, AIR 1993 SC 825). It is also held while construing the provisions of Citizenship Act that the certificate of registration of citizenship issued under Section 5(1)C of the Citizenship Act cannot be cancelled by the authority granting the registration by recourse to Section 21 of the General Clauses Act. (**See-Ghaurul Hasan vs. State of Rajasthan**, AIR 1967 SC 107 and **Hari Shanker Jain vs. Sonia Gandhi**, AIR 2001 SC 3689). And lastly, while construing the provisions of the Representation of People Act, it is held that the Election Commission cannot, by recourse to Section 21 of the General Clauses Act, deregister or cancel the registration of a political party under Section 29A of the Act for the decision of the Commission to register a political party under Section 29A(7) of the Act is a quasi judicial in nature. [**See Indian National Congress(I)** (supra)]

G 27. It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature.

H 28. The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi High Court in the

case of **Director of Income Tax (Exemptions) vs. Mool Chand Kairati Ram Trust**, (2011) 243 CTR(Del) 245, Uttaranchal High Court in the case of **Welham Boys' School Society vs. CBDT**, (2006) 285 ITR 74(Uttaranchal) and Allahabad High Court in the case of **Oxford Academy for Career Development vs. Chief Commissioner of Income Tax & Ors.** (2009) 315 ITR 382 (All). A

29. All the three High Courts after examining the issue, in the light of the object of Section 12A of the Act and Section 21 of the General Clauses Act held that the order of the CIT passed under Section 12A is quasi judicial in nature. Second, there was no express provision in the Act vesting the CIT with power of cancellation of registration till 01.10.2004; and lastly, Section 21 of the General Clauses Act has no application to the order passed by the CIT under Section 12A because the order is quasi judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 01.10.2004. B C D

30. We are of the considered view that the view taken by the abovementioned three High Courts in the respective cases is in conformity with law and we accordingly approve the said view taken by these High Courts in three aforementioned decisions.

31. In the light of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and the order of ITAT is restored. E

32. Needless to say, the CIT would be free to exercise his power of cancellation of registration certificate under Section 12AA(3) of the Act in the case at hand in accordance with law. F