

**RESERVED**

**Case :-** INCOME TAX Appeal No. - 37 of 2017

**Appellant :-** Commissioner Of Income Tax Exemption U.P State Cons.& Infra.

**Respondent :-** M/S Reham Foundation Kandhari Lane Lal Bagh Lucknow

Counsel for Appellant:- Mr. Manish Mishra

**Counsel for Respondent :-** Mr. Sidharth Dhaon

**Hon'ble Munishwar Nath Bhandari,J.**

**Hon'ble Mrs. Sangeeta Chandra, J.**

**Hon'ble Manish Mathur,J.**

**(Per Manish Mathur,J.)**

**1.** This Full Bench has been constituted in terms of the reference order dated 18.01.2019 passed by Division Bench in the case of ***Commissioner of Income Tax Exemption U.P. State Construction and Infrastructure vs. M/s. Reham Foundation Kandhari Lane, Behind Islamia College, Lal Bagh, Lucknow*** vide order dated 18.01.2019. The questions referred are as follows:-

*"(i) Whether Income Tax Appellate Tribunal while hearing Appeal in a matter where registration under Section 12AA has been denied by Commissioner Income Tax can itself pass an order directing Commissioner to grant registration or should leave the matter to be considered by Commissioner Income Tax to consider matter afresh giving rise to further litigation in the matter;*

*"(ii) Whether co-extensive Appellate jurisdiction conferred upon Income Tax Appellate Tribunal being a last court of fact can be read to confer upon it similar powers as been exercised by authorities below whose orders are considered in Appeals by Tribunal."*

**2.** It was on an Appeal preferred by the Revenue under Section 260 (A) of Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*). The Appeal was preferred to challenge the order of the Income Tax Appellate Tribunal, which directed registration of the Trust under

Section 12AA (1)(b) of the Act of 1961 within a period of sixty days, failing which it would be deemed to have been registered. The challenge to said direction was made by the Revenue in reference to the judgment of the Division Bench in Income Tax Appeal No. 112 of 2013: Commissioner of Income Tax, Meerut vs. M/S. A.R. Trust Meerut decided on 04.09.2017 wherein it was held that the Income Tax Appellate Tribunal itself cannot direct for registration of a Trust, without recording satisfaction, as contemplated under Section 12AA of the Act of 1961.

**3.** Learned counsel for the Revenue submits that power for registration of a Trust or an Institution under Section 12AA of the Act of 1961 has been given to the Commissioner. Those powers cannot be exercised by the Tribunal. If at all on the scrutiny of the case in Appeal, a case is made out for registration of a Trust, it needs to be remanded back to the Commissioner. The direction for registration of the Trust under Section 12AA of the Act of 1961 cannot be given by the Tribunal itself. It is for the reason that registration of the Trust under Section 12AA of the Act of 1961 is subject to the satisfaction of the Commissioner about the genuineness of activities of the Trust. In absence of recording of satisfaction of the Commissioner about the object and activities of a Trust, a direction for registration would be illegal. It is for that reason alone, the Division Bench of this Court in the case of M/s. A.R. Trust Meerut (supra) caused interference in the order of the Tribunal, where direction was given for registration of the Trust within a period of sixty days.

**4.** In the subsequent judgment in the case of M/s. Yamuna Expressway Industrial Development Authority (supra), a divergent view was taken by the Court. If a direction for registration of a Trust is given without recording satisfaction, it would be opposed to Section 12AA of the Act of 1961. The prayer is accordingly to answer the Reference against the assessee and in favour of the

Revenue. It is after holding that the Appellate Tribunal is not competent to direct for registration of a Trust under Section 12AA of the Act of 1961, rather it should remand the case to the Commissioner for the aforesaid.

**5.** The argument raised by learned counsel for the Revenue has been opposed by learned counsel appearing for the assessee. It is submitted that after the rejection of an application for registration of a Trust under Section 12AA of the Act of 1961, if refusal is without considering any material, then on Appeal, after considering the issue and recording satisfaction, the Tribunal can direct for registration of the Trust. It is not only for the reason that such power exists with the Tribunal pursuant to Section 254 of the Act of 1961 but even to take the order of the Tribunal to its logical conclusions.

**6.** It is stated that if application for registration is rejected by the Commissioner after recording a perverse finding then on an Appeal, it can be corrected after taking a proper view and recording satisfaction, as required under Section 12AA of the Act of 1961, to direct for registration of the Trust. If the required satisfaction is recorded by the Appellate Tribunal, then remand of the matter would be nothing but an empty formality, as the Commissioner cannot take a view different than taken by the Appellate Tribunal. The registration of the Trust needs to be granted if the Appeal is allowed by the Tribunal after recording its satisfaction, as required under Section 12AA of the Act of 1961. In view of above, the Tribunal can itself issue a direction for registration of the Trust. The Tribunal can even remand the case in given circumstance when the Commissioner has rejected the application on hyper technical grounds and interference therein is made. The matter can be remanded back to the Commissioner to record its satisfaction, as required under Section 12AA of the Act of 1961. In view of above, the adjudication of the issue before the Tribunal can be with a direction to register

the Trust under Section 12AA of the Act of 1961 or remand of the case. The prayer is to answer the Reference holding that Tribunal is having powers to direct for registration of a Trust under Section 12AA of the Act of 1961 or to remand the case to the Commissioner to record its satisfaction, as required under the Act. The direction of the Tribunal for registration of the Trust would however to be on recording such satisfaction and not otherwise. The prayer is accordingly to answer the Reference by holding that Appellate Tribunal is having the power to direct for registration of the Trust or alternatively to remand the case to the commissioner.

**7.** In counter, the counsel for the assessee has relied upon the judgment of Division Bench in the case of Income Tax Appeal No. 107 of 2016: Commissioner of Income Tax (Exemption), Lucknow vs. M/s. Yamuna Expressway Industrial Development Authority, decided on 21.04.2017. In the said case, the Division Bench held that powers of the Tribunal are co-extensive to that of the Commissioner under Section 12AA of the Act of 1961. Thus, it can direct for registration of a Trust/Institution. A reference of Section 254 of the Act of 1961 was given to show power of the Tribunal. The Division Bench therein found the Tribunal to be competent to direct for registration of a Trust. Taking into consideration the conflicting view, now we need to decide the questions raised before us and otherwise quoted herein above.

**8.** We have considered the rival submission of the parties and perused the record.

**9.** The issue before the larger Bench is in reference to Section 12AA of the Act of 1961, thus, it would be gainful to refer the provisions aforesaid. It is quoted hereunder for ready reference:-

***"Procedure for registration.***

**12AA.** (1) *The Principal Commissioner or Commissioner, on receipt of an application for*

registration of a Trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-section (1) of Section 12A, shall—

(a) call for such documents or information from the Trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the Trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the Trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the Trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the Trust or institution,

and a copy of such order shall be sent to the applicant:

**Provided** that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Principal Chief Commissioner or Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Principal Commissioner or Commissioner and the Principal Commissioner or Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A.

(3) Where a Trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such Trust or institution are not genuine or are not being carried out in accordance with the objects of the Trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such Trust or institution:

**Provided** that no order under this sub-section shall be passed unless such Trust or institution has been given a reasonable opportunity of being heard.

(4) Without prejudice to the provisions of sub-section (3), where a Trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the Trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of

*such Trust or institution due to operation of sub-section (1) of section 13; then the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such Trust or institution:*

***Provided*** that the registration shall not be cancelled under this sub-section, if the Trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner."

**10.** A perusal of Section 12AA of the Income Tax Act shows that the Principal Commissioner or the Commissioner, on receipt of an application for registration of a Trust or an institution, may call for such document or information as he thinks necessary to satisfy himself about the genuineness of the activities of the Trust or the Institution, as it deems necessary. After calling for such an information and satisfying himself about the object and genuineness of the activities of the Trust, he shall pass an order for registering the Trust or the Institution or in the alternate, refuse such registration. In view of the aforesaid provision, the registration of the Trust is subject to satisfaction of the Commissioner, not only over the genuineness of the activities of the Trust, but also about the objects of the Trust or the Institution. In view of above, the registration of the Trust requires satisfaction of the Commissioner. In case the Commissioner is satisfied with the genuineness of the activities and even the objects, he can register the Trust under Section 12AA of the Act of 1961 and in case the Commissioner is not satisfied or refuses registration, then the Appeal lies to the Tribunal to challenge such order under Section 254 of the Act, 1961.

**11.** In such case, the Appellate Tribunal needs to adjudicate the issue raised before it because it is the last court of facts. The exemption under Sections 11 & 12 of the Act of 1961 can be sought only after registration of the Trust, thus satisfaction of the Commissioner before registration has been given importance. In view of above, the argument of the learned counsel for the Revenue is that unless such a satisfaction, as envisaged under Section

12AA of the Act of 1961 is recorded by the Commissioner, a direction for its registration should not be given by the Tribunal. As against the aforesaid, the argument of learned counsel for the assessee is that if Tribunal is satisfied about the genuineness of the activities and the object then it can direct for registration.

**12.** Hon'ble the Supreme Court in case of **Shiv Shakti Cooperative Housing Society versus Swaraj Developers and others** reported in (2003) 6 SCC 659 has considered the scope of an Appeal although in terms of Sections 96 and 100 of the Code of Civil Procedure, 1908 but the basic premise culled out from the pronouncement of Hon'ble the Supreme Court is that an Appeal is essentially continuation of original proceedings which is provided for only by statute and is not a necessary part of procedure in an action. The relevant paragraphs of the judgment is as follows:-

**16.** *An Appeal is essentially continuation of the original proceedings and the provisions applied at the time of institution of the suit are to be operative even in respect of the Appeals. That is because there is a vested right in the litigant to avail the remedy of an Appeal. As was observed in K. Kapen Chako v. Provident Investment Co. (P) Ltd. [(1977) 1 SCC 593 : AIR 1976 SC 2610] only in cases where vested rights are involved, a legislation has to be interpreted to mean as one affecting such right to be prospectively operative. The right of Appeal is only by statute. It is (sic not a) necessary part of the procedure in an action, but "the right of entering a superior court and invoking its aid and interposition to redress the error of the court below. It seems absurd to denominate this paramount right part of the practice of the inferior Tribunal". (Per Lord Westbury, See: Attorney General v. Sillem [33 LJ Ex 209 : 10 LT 434 : 10 HLC 704, 724 : 11 ER 1200] , ER p. 1209.) The Appeal, strictly so called, is "one in which the question is, whether the order of the court from which the Appeal is brought was right on the materials which that court had before it" (Per Lord Devuill Ponnammal v. Arumogam [1905 AC 383, 390] . The right of Appeal, where it exists, is a matter of substance and not of procedure (Colonial Sugar Refining Co. v. Irving [1905 AC 369 : (1904-07) All ER Rep Ext 1620 : 92 LT 738 (PC)] )."*

**17.** *Right of Appeal is statutory. Right of Appeal inhered in no one. When conferred by statute it becomes a vested right. In this regard there is essential distinction between right of Appeal and right of suit. Where there is inherent right in every person to file a suit and for its maintainability it requires no authority of law, Appeal requires so. As was observed in State of Kerala v. K.M. Charia Abdulla and Co. [AIR 1965 SC 1585] the distinction between right of Appeal and revision is based on differences implicit in the two expressions. An Appeal is continuation of the proceedings; in effect the entire proceedings are before the Appellate Authority and it has the power to review the evidence subject to statutory limitations prescribed. But in the case of revision, whatever powers the revisional authority may or may not have, it has no power to review the evidence, unless the statute expressly confers on it that power. It was noted by the four Judge Bench in Hari Shankar v. Rao Girdhari Lal Chowdhury [AIR 1963 SC 698] that the distinction between an Appeal and a revision is a real one. A right of Appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of Appeal limits the rehearing in some way, as has been done in second Appeals*

*arising under the Code. The power of hearing revision is generally given to a superior court so that it may satisfy itself that a particular case has been decided according to law. Reference was made to Section 115 of the Code to hold that the High Court's powers under the said provision are limited to certain particular categories of cases. The right there is confined to jurisdiction and jurisdiction alone."*

**13.** With regard to interpretation of statute, it is settled law that statute is an edict of the legislature and where the words of statute are clear without any ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of altering the statutory provisions by breathing into the provisions, words which have not been expressly incorporated by the legislature.

**14.** It is only in case where the words of statute are ambiguous or a reading of which clearly indicates that it is a case of 'casus omissus' that the court can interpret the provisions incorporated in statute. Hon'ble the Supreme court referring to various pronouncements in the case of **Bharat Aluminium Company versus Kaiser Aluminium Technical Services Inc.** reported in (2012) 9 SCC 552 has held that the court must proceed on the footing that the legislature intended what it has said. Even where there is a 'casus omissus' it is for the others than the courts to remedy the defect. The relevant paragraph in the case of Bharat Aluminium Company (supra) is as follows:-

*"65. Mr Sorabjee has also rightly pointed out the observations made by Lord Diplock in Duport Steels Ltd. [(1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] In the aforesaid judgment, the House of Lords disapproved the approach adopted by the Court of Appeal in discerning the intention of the legislature; it is observed that: (WLR p. 157 C-D)*

*"... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."*

*(emphasis supplied)*

In the same judgment, it is further observed: (WLR p. 157 F)

*"... But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts...."*

*(emphasis supplied)"*



**15.** With regard to taxing statute, it has been held that the courts have to apply strict rule of interpretation. When the competent legislature mandates taxing certain person/certain objects in certain circumstances, it can not be expanded/interpreted to include those, which were not intended by the legislature. The aforesaid has been held by Hon'ble the Supreme Court in the case of **Commissioner of Customs (Import) Mumbai versus Dilip Kumar and Company and others** reported in (2018) 9 SCC 1. The relevant paragraphs in the aforesaid judgment of Dilip Kumar and Company and others(supra) is as follows:-

*"21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature."*

*"24. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution [ "**265. Taxes not to be imposed save by authority of law.**—No tax shall be levied or collected except by authority of law."] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature."*

*"25. At the outset, we must clarify the position of "plain meaning rule or clear and unambiguous rule" with respect to tax law. "The plain meaning rule" suggests that when the language in the statute is plain and unambiguous, the court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] , though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilise strict interpretation in the event of ambiguity is self-contradictory."*

**16.** The principles with regard to 'casus omissus' and its implementation have also been dealt with by Hon'ble the Supreme Court in the case of Shiv Shakti Cooperative Housing Society (supra) in which the relevant paragraphs are as follows:-

*"19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and*

*phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse [(1997) 6 SCC 312 : AIR 1998 SC 74] .) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner [(1846) 6 Moo PCC 1 : 4 MIA 179] courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel [(1998) 3 SCC 234 : 1998 SCC (Cri) 737 : JT (1998) 2 SC 253] .) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See Stock v. Frank Jones (Tipton) Ltd. [(1978) 1 All ER 948 : (1978) 1 WLR 231 (HL)] ] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in Vickers Sons and Maxim Ltd. v. Evans [1910 AC 444 : 1910 WN 161 (HL)] , quoted in Jumma Masjid v. Kodimaniandra Deviah [AIR 1962 SC 847] .)"*

**"23.** *Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in Artemiou v. Procopiou [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. Per Lord Reid in Luke v. IRC [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 (All ER p. 664 I) he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges."*

**17.** A conspectus of the aforesaid judgments make it amply clear that statutory interpretation particularly with regard to taxing statutes has to be strict and only in accordance with the unambiguous words used in the statute. The intention of the legislature in incorporating or leaving out certain words is necessarily required to be seen.

**18.** The words 'as it thinks fit' used in relation to the powers of the Appellate Tribunal exercisable under Section 254(1) of the Act, 1961 is of the widest amplitude. The said expression confers a very wide jurisdiction enabling

the Appellate authority to take an entirely different view on the same set of facts.

**19.** The terminology 'as it thinks fit' in relation to the powers of the Appellate authority have been considered by Hon'ble the Supreme Court in the case of **Babu Lal Nagar versus Shree Synthetics Limited and others** reported in 1984 (supp) SCC 128. The relevant paragraph of the judgment is as follows:

*"16. Section 66(1) of the Act provides that the Industrial Court omitting the portion not relevant for the present purpose, may call for and examine the record of such case and pass order in reference thereto as it thinks fit. If the Industrial Court has the jurisdiction to pass any order in reference to a case called for by it as it thinks fit, obviously it can come to a conclusion on the same set of facts different from the one to which the Labour Court had arrived. It was however urged that this jurisdiction of wide amplitude has been cut down by the proviso which provides that the Industrial Court shall not vary or reverse any order of the Labour Court under Section 66(1) unless — (i) it is satisfied that the Labour Court has — (a) exercised jurisdiction not vested in it by law; or (b) failed to exercise a jurisdiction so vested; or (c) acted in exercise of its jurisdiction illegally or with material irregularity. It was urged that these clauses so circumscribe and cut down the jurisdiction of the Industrial Court under Section 66 as to be on par with Section 115 of the Code of Civil Procedure. The main part of Section 61 (sic 66) clearly spells out the jurisdiction of the Industrial Court to pass any order in reference to the case brought before it as it thinks fit. The expression "as it thinks fit" confers a very wide jurisdiction enabling it to take an entirely different view on the same set of facts. The expression "as it thinks fit" has the same connotation, unless context otherwise indicates, "as he deems fit" and the latter expression was interpreted by this Court in Raja Ram Mahadev Paranjypte v. Aba Maruti Mali [AIR 1962 SC 753 : 1962 Supp (1) SCR 739] to mean to make an order in terms of the statute, an order which would give effect to a right which the Act has elsewhere conferred. Is this jurisdiction so circumscribed as to bring it on par with Section 115 of the Code of Civil Procedure? Proviso does cut down the ambit of the main provision but it cannot be interpreted to denude the main provision of any efficacy and reduce it to a paper provision. Both must be so interpreted as to permit interference which if not undertaken there would be miscarriage of justice. Sub-clause (c) of the first proviso to Section 66(1) will permit the Industrial Court to interfere with the order made by the Labour Court, if the Labour Court has acted with material irregularity in disposal of the dispute before it. If the finding recorded by the Labour Court is such to which no reasonable man can arrive, obviously, the Industrial Court in exercise of its revisional jurisdiction would be entitled to interfere with the same even if patent jurisdictional error is not pointed out."*

**20.** Upon a perusal of the powers of the Appellate authority as indicated in section 254(1) of the Act, 1961, it can be seen that the widest jurisdiction has been conferred upon the Appellate authority in the wisdom of the legislature. The said power has not been proscribed in any manner whatsoever.

**21.** Hon'ble the Supreme Court in the case of **Clariant International Limited and another versus Securities and Exchange Board of India** reported in (2004) 8 SCC 524 has held that once the jurisdiction of the Appellate authority is not fettered by statute, it exercises all the jurisdiction. It has also been held that the limits to jurisdiction of the Appellate authority would have been stated explicitly in the statute had that been the intention of legislature.

The relevant paragraphs of the judgment in the case of Clariant International Limited (supra) are as follows;-

*"73. Had the intention of Parliament been to limit the jurisdiction of the Tribunal, it could say so explicitly as it has been done in terms of Section 15-Z of the Act whereby the jurisdiction of this Court to hear the Appeal is limited to the question of law."*

*"74. The jurisdiction of the Appellate Authority under the Act is not in any way fettered by the statute and, thus, it exercises all the jurisdiction as that of the Board. It can exercise its discretionary jurisdiction in the same manner as the Board."*

**22.** In view of the aforesaid judgments of Hon'ble the Supreme Court, it is clearly evident that the provisions of the Act 1961 have to be interpreted strictly in accordance with what it explicitly states. Once the legislature in its wisdom has not fettered the jurisdiction of the Appellate Tribunal, it would not be appropriate for the courts to put fetters upon such jurisdiction since doing so would amount to doing violence to the specific provisions of statute.

**23.** A perusal of Section 254 of the Act of 1961 shows that the Appellate Tribunal is given power to pass such orders, as it thinks fit. The powers given under Section 254 of the Act of 1961 is to be read along with other provisions of the Act. Section 12AA of the Act of 1961 requires satisfaction about the genuineness of the activities and the objects of a Trust before its registration by the Commissioner. The arguments of learned counsel for Revenue in reference to the requirement of satisfaction on the genuineness of activities of a Trust is to be exercised by the Commissioner and that the Tribunal should not direct registration of Trust unless satisfaction, as envisaged

under Section 12 (AA) of the Act, 1961 is recorded, is only partly correct.

**24.** Upon consideration of the judgments referred to herein above, we are of the considered opinion that in case where the Commissioner has refused to accept the application for registration of Trust after recording its finding on the basis of material on record before him holding that the activities and object of the Trust are not genuine and the Appellate Tribunal on the basis of the same material on record comes to the conclusion that the order of the Commissioner is perverse since it has been passed ignoring, misconstruing or misinterpreting such evidence, then it can direct registration of the Trust without remanding the matter to the Commissioner.

**25.** Remand of the case to the Commissioner in the said circumstance after recording of satisfaction by the Appellate Tribunal about the genuineness of objects and activities of the Trust, on the basis of material on record, would be an empty formality because the Commissioner in such a case can not go against the specific finding recorded by the Appellate Tribunal.

**26.** In view of the unfettered power of the Appellate Tribunal in terms of section 254 (1) of the Act, 1961 the Tribunal can very well record its satisfaction on the genuineness of the activities and object of the Trust and can very well direct registration of the Trust without remand of case to the Commissioner in case such satisfaction is recorded on the basis of documents and material already available on record at the stage of examination by Commissioner.

**27.** However it would be a different matter where the Appellate Tribunal records such satisfaction on the basis of material or documentary evidence which was not available before the Commissioner while exercising his powers

under Section 12 (AA) of the Act, 1961, which is our opinion would require remand.

**28.** Remand to the Commissioner can also be affected in a case where the Commissioner rejects the application on a technical ground without recording its opinion on facts or genuineness of the activities and object of the Trust but the Tribunal finds ground for rejection on such technical ground thereby reopening the issue of recording satisfaction in terms of Section 12 (AA) of the Act, 1961.

**29.** In view of the aforesaid discussion, it is clear that the power and jurisdiction of the Appellate Tribunal under Section 254(1) of the Act, 1961 is unfettered thereby enabling the Appellate Tribunal to direct registration of the Trust at its level itself but the same is not open as a matter of course and such power is to be exercised only in circumstances indicated herein above.

**30.** The said onus on the Appellate Tribunal to remand the matter in cases indicated herein above is also in view of the strict interpretation of the powers of the Commissioner under Section 12 (AA) of the Act, 1961 because if the Appellate Tribunal is given such wide powers to direct registration of Trust in all or any circumstances, it would render the provisions of Section 12(AA) otiose, which again can not be the intention of legislature.

**31.** In view of the above the answer to questions referred are answered as under:-

(i) The income tax Appellate Tribunal while hearing an Appeal under Section 254(1) in a matter where registration under Section 12(AA) has been denied by Commissioner income tax can itself pass an order directing commissioner to grant registration in case the income tax Appellate Tribunal disagrees with the satisfaction of the Commissioner on the basis of material already on record before the Commissioner.

However the said power is not to be exercised as a matter of course and that remand to the Commissioner income tax is to be made where the income tax Appellate Tribunal records a divergent view on the basis of material which has been filed before the Appellate Tribunal for the first time.

Remand for determination of question regarding grant of registration to a Trust would also be necessitated in cases where the registration application has been rejected by the Commissioner income tax on technical grounds without recording his satisfaction as contemplated under Section 12 (AA) of the Act, 1961 and such decision is overturned by the income tax Appellate Tribunal.

(ii) The power of the Appellate Tribunal are co-extensive with the power of the Commissioner under Section 12 (AA) of the Act, 1961 subject to what has been indicated herein above. However order for registration can be issued only after recording satisfaction with regard to genuineness of activities of the Trust as provided under Section 12 (AA) of the Act, 1961.

**32.** In view of the aforesaid the reference is answered.

**33.** The Registry is directed to place Appeals before the appropriate court dealing with the matter.

**Order Date :-** 26.09.2019  
prabhat