HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

-

INCOME TAX TRIBUNAL APPEAL No.308 OF 2015

-

JUDGMENT: (*Per* Hon'ble Sri Justice Ramesh Ranganathan)

This Appeal, under Section 260-A of the Income Tax Act, 1961 (for short "the Act"), is preferred against the order passed by the Income Tax Appellate Tribunal, Hyderabad in I.T.A. No.596/Hyd/2013 dated 14.08.2013. The Appeal, in I.T.A. No.596 of 2013, was preferred by the respondent-assessee against the order passed by the DIT(E), Hyderabad dated 22.02.2013 rejecting the assessse's application seeking approval under Section 80G(5)(vi) of the Act.

In the order under Appeal, the Tribunal noted that the assessee was a trust registered under Section 12A of the Act; they had applied to the DIT(E) seeking approval under Section 80G(5)(vi) of the Act; thereafter, the DIT(E) had rejected the assessee's application holding that the assessee was procuring goods from manufacturers and selling them to students which was a commercial activity and, hence, they were not entitled to approval; the order of the DIT(E) was challenged before ITAT in Appeal No.565 of 2012, and the Tribunal, by its order dated 10.08.2012, remanded the matter to the DIT(E) for its consideration afresh; thereafter, the DIT(E) rejected the application of the respondent-assessee on two grounds: 1) that the assessee was regularly paying service tax on its turnover relating to commercial training courses imparted through the computer training institute run by them; 2) they had also admitted that services were being rendered as commercial training and coaching centres; the buildings, being constructed by them, were for the personal use of trustees, including the founder of the trust; and aggrieved thereby, the respondent-assessee carried the matter in Appeal to the Tribunal.

The Tribunal observed that the assessee was engaged in imparting education of training in computers; there was no sale of any material by them procuring them from manufacturers; the assessee was registered as a charitable trust under Section 12A of the Act, and the registration continued till date; the main object of the assessee was charitable in nature; for the purpose of achieving the main charitable object, the trust was not precluded from carrying on any business activity, and earning profit therefrom, which was ancillary and incidental to the main object of the trust; and the profit earned was also utilized by them for achieving the main object of the trust. The Tribunal made a comparison with educational institutions whose main object was charitable in nature, but they may also run subsidized canteens for the benefit of children and staff and sell books and uniforms to the students. The Tribunal held that such activity could not be considered to be a commercial activity.

With regards acquisition of flats, the Tribunal accepted the contention of the assessee that the flats, which were still under construction, were intended to be used for the purpose of a girl hostel for outside girl students. The Tribunal saw no reason to disbelieve the submission of the assessee in this regard. It further held that there could not be any doubt with regard to the charitable object of the trust as it had been granted registration under Section 12A of the Act, which had not been withdrawn/cancelled till date; all these issues could be examined at the stage of assessment proceedings while considering the assessees claim of exemption under Section 11 of the Act; and these aspects were not required to be examined at the stage of granting approval under Section 80G(5) of the Act.

It has not been disputed before us that, for the purpose of achieving the main charitable object, the trust is not precluded from carrying on any business activity, and earning profit therefrom which are ancillary and incidental to the main object of the trust. The mere fact that the assessee had sold study material to the students, which were internally generated by them, did not amount to a commercial activity more so, as it is not in dispute that the assessee was engaged in imparting education/training in computers. The Tribunal also saw no reason to disbelieve the submission of the assessee that the flats, which were under construction, were for the purpose of a girl hostel for outside girl students.

The Tribunal is the final Court of facts and, save a perverse finding or a finding based on no evidence, no substantial question of law would arise necessitating interference under Section 260-A of the Act. It is not even contended before us that the findings recorded by the Tribunal suffers from any such infirmity. We see no reason, therefore, to entertain this Appeal.

The Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

____

RAMESH RANGANATHAN, J

____

M. SATYANARAYANA MURTHY, J

Date: 05-11-2015.

Dsh

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

142

06112015

INCOME TAX TRIBUNAL APPEAL No.308 OF 2015

(Judgment of the Division Bench delivered by

Hon’ble Sri Justice Ramesh Ranganathan)

Date. 05-11-2015

DSH