

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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I.T.T.A.No.168 of 2015

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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 by the revenue against the order of the Income Tax Appellate Tribunal, Hyderabad "A" Bench, in I.T.A.No.147/Hyd/2012 dated 28.02.2012. The respondent-assessee preferred the appeal before the Tribunal against the orders of the Director of Income Tax (Exemptions)[“D.I.T.(E)” for short] dated 30.11.2011 passed under Section 12AA(1)(b)(ii) of the Act.

In the order under appeal, the Tribunal held that the assessee had applied for registration as a charitable institution under Section 12AA of the Act on 03.03.1997; the D.I.T.(E) had granted registration only with effect from 01.04.2004; on the said order of the D.I.T.(E) being challenged, the I.T.A.T. had directed the department to grant registration to the assessee with effect from 01.04.1997; from the order passed by the D.I.T.(E) they failed to find any specific instances on the basis of which it could be said that the assessee was not genuine, and its activities were not in accordance with the object of the trust or institution; the reasoning of the D.I.T.(E), for cancelling the registration, was vague and without any basis; they found force in the submission urged on behalf of the assessee that the revenue, having failed in its attempt to deny exemption under Section 11 of the Act right from the assessment year 2003-04 onwards, has now struck at the very root by cancelling registration under Section 12AA of the Act; after going through the order of the D.I.T.(E), they found that the reasons furnished in the order are the same on which the assessee was denied exemption under Section 11 of the Act for the assessment years 2006-07 and 2007-08 wherein the C.I.T. (A) had held that the assessee was entitled for exemption under Section 11 of the Act; the revenue's appeal was dismissed by the order of the I.T.A.T wherein it was held that the

assessee was entitled for exemption under Section 11 of the Act; and when there is no material change in the object of the assessee, and there is no specific allegation regarding the genuineness of the institution or the fact that the assessee's activities are contrary to the aim and objects, the order cancelling registration, granted under Section 12AA of the Act, could not be sustained. The Tribunal annulled the order passed by the D.I.T.(E) cancelling registration under Section 12AA of the Act.

Sri J.V.Prasad, Learned Senior Standing Counsel for the Income Tax Department, would submit that it is only if the assessee is carrying on charitable activities, would they be entitled for exemption under Section 12AA of the Act; educational institutions are mostly carrying on business on commercial lines solely with the intention to make profits; it is with a view to prevent abuse of the provisions of the Act by these institutions, was Section 2(15) substituted by the Finance Act, 2008 with effect from 01.04.2009, and provisos were inserted thereto; and the Tribunal has erred in interfering with the order of the D.I.T.(E) cancelling the registration granted earlier in favour of the respondent-assessee.

On the other hand Sri K.Vasantkumar, Learned Counsel for the respondent-assessee, would place reliance on a copy of the memorandum of association of the respondent-assessee in support of his submission that the respondent-assessee is an educational institution established by the Reserve Bank of India; members of the Governing Council, of the said institution, are mostly officers of the Reserve Bank of India and other Central Government institutions; its chairman is the Chairman of the Reserve Bank of India; the objects of the respondent-society is to promote the study of, and disseminate know-how on, Information Technology, to conduct research in the area of Information Technology with respect to the banking and financial sectors etc; and the Tribunal was justified in its conclusion that registration of the respondent-Society was cancelled only as a counter-blast to the earlier order of the Tribunal granting them registration retrospectively from the year 1997 onwards.

The order of the D.I.T.(E) dated 30.11.2011, cancelling the registration granted earlier in favour of the respondent-assessee, records that the respondent is carrying on research and development in academic courses and

technology for the common man; in order to compete with service providers like Master Card, VISA etc., the assessee had developed competitive services in those areas; the explanation offered by them was mainly focused on the description of the activity, and the benefit for the banking institutions in their daily business, but not with regard to the charitable purpose as envisaged in Section 2(15) of the Act; the respondent-assessee has been sponsoring a diploma course in Osmania University in Banking sections related to education and mainly providing service, with cost, to various banks under the control of the Reserve Bank of India; it had also collaboration with (a) University of Hyderabad under which the respondent-assessee is running a full-fledged post-graduate course-M.Tech. (Information Technology) with specialisation in banking technology and information security and (b) University of Hyderabad under which research fellows have been pursuing research exclusively in the areas of banking technology; and the Society had received grants from various organisations, but had not utilized the entire grants for the purpose for which it was received. The D.I.T.(E) then goes on to extract the definition of charitable purpose, and comes to the conclusion that the Society was indulging in commercial activities necessitating cancellation of its registration.

Charitable purpose, under Section 2(15) of the Act, is defined to include education. The order of the D.I.T.(E) records that the Society has been sponsoring diploma course in banking sections with the Osmania University and full-fledged post-graduate course-M.Tech. (Information Technology) with specialisation in banking technology and information security with costs with the University of Hyderabad. Sponsoring educational courses would fall within the ambit of “education” as defined under Section 2(15) of the Act. Merely because education is provided at cost does not result in the Society ceasing to carry on its activities for a charitable purpose. There is no material on record, nor has any finding been recorded by the D.I.T (E) referring to particular instances, to hold that the respondent-assessee was carrying on its educational activities with a profit motive or on commercial lines. The Tribunal has rightly held that the reasons assigned by the D.I.T.(E), in cancelling registration of the respondent-assessee, was vague and without reference to any particular instance.

The Tribunal is the final Court of fact, and save a perverse finding or a

finding based on no evidence, findings of fact recorded by the Tribunal would not give rise to a substantial question of law necessitating interference under Section 260A of the Act. The order of the Tribunal does not suffer from any such infirmity. We are satisfied that no substantial question of law arises for consideration in this appeal. It is unnecessary for us, therefore, to examine the scope of either the amended Section 2(15) of the Income Tax Act or its provisos.

The Appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:04.11.2015.

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