HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

INCOME TAX TRIBUNAL APPEAL No.142 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 against the order passed by the Income Tax Appellate Tribunal, Hyderabad Bench (for short, 'the Tribunal') in I.T.A. No.741/Hyd/2009 dated 08.04.2011 for the assessment year 2005-06.

The assessee is an educational institution. On the ground that it did not obtain a notification under Section 10(23-C)(vi) of the Act, the assessing authority refused to extend them the benefit of Section 11 of the Act. In Appeal, the Commissioner of Income-Tax (Appeals) held in favour of the assessee, and opined that, as long as the appellant had the benefit of registration under Section 12-A of the Act, they could not be denied the benefit of exemption under Section 11 of the Act. Aggrieved thereby, the Revenue carried the matter in Appeal to the Tribunal.

In the order under Appeal, the Tribunal agreed with the assessee that an educational institution is entitled for exemption either under Section 10(23-C) or under Section 11 of the Act. It, however, held that such an exemption would be available only if donation is not collected from the students. The assessing authority was directed by the Tribunal to verify the aspect of donation, capitation fee *etc.,* if any, collected by the assessee; and, if it were found that besides fulfilling other prerequisites for exemption under Section 11, the assessee had not charged any money, by whatever name it is called *i.e.,* donation, building fund, auditorium fee *etc.,* over and above the prescribed fee for the admission of students, they would be entitled for exemption under Section 11, even though the notification under Section 10(23-C)(vi) of the Act had not been received by them. The assessee has preferred an Appeal, aggrieved by the order of the Tribunal, to the limited extent that the assessing officer was directed to verify the aspect of donation, capitation fee *etc.,* if any, collected by the assessee.

Sri K. Vasant Kumar, learned counsel for the appellant, would draw attention of this Court to Circular No.14 of 2015, dated 17.08.2015 in support of his submission that the Tribunal lacks jurisdiction to issue any such directions to the assessing authority more so, when it is agreed with the order of the Commissioner of Income-Tax (Appeals) that the assessee is entitled for the benefit of exemption under Section 11 provided it is registered under Section 12-A of the Act.

We see no reason, however, to examine this question as Sri K. Vasant Kumar, learned counsel for the appellant, would fairly state that, in compliance with the order of the Tribunal, the assessing authority had examined the matter afresh, and had passed an order in favour of the assessee which has attained finality. As the question raised in this Appeal, in view of the subsequent events, has become academic it would suffice to make it clear that this question, regarding the power of the Tribunal to issue directions to the assessing authority, is left open to be examined in an appropriate case.

Subject to the above observations, the Appeals fails and is, accordingly, dismissed.

In consequence, miscellaneous petitions, if any, pending in this Appeal shall stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 03-12-2015.

Dsh

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INCOME TAX TRIBUNAL APPEAL No.142 OF 2015

(Judgment of the Division Bench delivered by

Hon'ble Sri Justice Ramesh Ranganathan)

Date. 03-12-2015

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