THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ITTA.No.635 of 2015

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

Heard Sri J.V.Prasad, learned Senior Standing Counsel for Income Tax, and Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-assessee and, with their consent, the writ petition is disposed of at the stage of admission. The Revenue has preferred this appeal, under Section 260-A of the Income Tax Act, 1961 (for short "the Act"), aggrieved by the order passed by the Income Tax Appellate Tribunal, in ITA.No.1893/Hyd/2011 dated 15.06.2012, for the assessment year 2008-09.

By the order under appeal the Tribunal, relying on the observations of the Bombay Bench of the Tribunal in ***Linklaters LLP vs. Income Tax Officer***[1]**,** remanded the matter to the assessing authority to verify the aspect of donation, capitation fee etc. if any collected by the assessee, and if it was found that, besides fulfilling other prerequisites for exemption under Section 11 of the Act, the assessee has 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 admission of students, the assessee would be entitled for exemption under Section 11 of the Act, even though the notification under Section 10(23C)(vi) of the Act has not been received by it.

Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-assessee, has placed before this Court a copy of the CBDT Circular dated 17.08.2015 whereby it is clarified that Section 10(23C)(vi) of the Act does not prescribe any stipulation which makes registration under Section 12AA a mandatory pre or post condition; the provisions of Sections 11 and 10(23C) of the Act are two parallel regimes, and operate independently in their respective realms, although some of the compliance criteria may be common to both; and, hence, obtaining prior registration before granting approval under Section 10(23C) of the Act cannot be insisted upon.

The CBDT Circular dated 17.08.2015 is clarificatory in nature and, as it is evident that Section 10(23C) on the one hand Sections 11 and 12AA on the other operate in two distinct and separate fields though the criteria prescribed thereunder may ovelap to a certain extent, we see no reason to interfere with the order under appeal as no substantial question of law arises for consideration necessitating the appeal, filed under Section 260-A of the Act, being entertained.

The appeal fails and is, accordingly, dismissed. Needless to state that the assessing authority shall re-examine the matter in the light of the directions of the Tribunal in the order under appeal, and shall also verify whether the petitioner has fulfilled the statutory requirements under the Act before passing orders afresh. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

13th July 2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

ITTA.No.635 of 2015

-

-

-

Date: 13.07.2016

JSU

---

[1] Judgment in ITA.No.4896/Mum/03