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

I.T.T.A.No.187 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Despite service of notice, neither has any counsel entered appearance on behalf of the respondent-assessee nor is the respondent-assessee present before the Court.

This appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') is preferred against the order passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad (for short, 'the Tribunal') on 04.05.2012 for the assessment year 2008-09. The appeal before the Tribunal was preferred by the Revenue against the order passed by the Commissioner of Income Tax (Appeals)-IV, Hyderabad.

Facts, to the limited extent necessary, are that the Assistant Director of Income Tax passed an assessment order on 28.12.2010, for the assessment year 2008-09, subjecting the assessee to tax on an income of Rs.66,31,198/-, holding that, during the previous year relevant to the assessment year 2008-09, the aggregate receipts of the educational institutions exceeded Rupees One Crore and, therefore, the provision of Section 10 (23C) of the Act was squarely applicable. The assessing authority relied upon the judgment of the Supreme Court in **American Hotel and Lodging Association v. Central Board of Direct Taxes and others**[1] in this regard.

Aggrieved thereby, the respondent-assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals), who, by his order dated 30.06.2011, allowed the appeal holding that, even if the assessee did not receive the notification under Section 10 (23C) (vi) of the Act for the year under consideration, it could have claimed exemption under Section 11 of the Act in view of the existing registration under Section

12AA of the Act, subject to the fulfilment of the conditions laid down under Sections 11 to 13 of the Act. In the grounds of appeal before the Tribunal, as is evident from the order of the Tribunal itself, the Revenue raised the following grounds:

> "(ii) The CIT (A) ought to have appreciated the fact that obtaining approval of the prescribed authority is mandatory as per the plain meaning of the provisions of 10 (23C) (vi) of the I.T. Act and it does not call for any interpretation.
>
> (iii) The CIT (A) failed to appreciate that Sec.10 (23C) as such is not a replacement of Sec.10 (22) and 22A as stated in the appellate order but only sub clauses (iii) (ad) and (iii ac) are replacements of the erstwhile Sec.10 (22) and 10 (22A) respectively
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> (iv) The CIT (A) ought to have considered the fact that sub clause (iv) and (via) are entirely new provisions meant to provide the monitoring mechanism that was lacking in the earlier provisions.
>
> (v) The CIT (A) ought to have appreciated the fact that it was Sec.10 (22) that provided for exemption of the educational income of the Trusts, Societies etc. and not Sec.11."

Curiously, the Tribunal did not even examine the question whether or not Section 10 (23C) (vi) of the Act is mandatory, and whether educational institutions, whose gross receipts are in excess of Rupees One Crore, can be extended the benefit of Section 11 of the Act, even in the absence of a notification in their favour under Section 10 (23C) (vi) of the Act. Failure on the part of the Tribunal to examine the contention, specifically raised before them, would give rise to a substantial question of law necessitating interference in an appeal under Section 260A of the Act. The order passed by the Tribunal is set aside, and the matter is remanded to the Tribunal for its consideration afresh including on the question as to whether in cases, where the gross receipts of the assessee exceed Rupees One Crore in any given assessment year, the assessee can be extended the benefit of Section 11 of the Act, even in the absence of a notification in their favour under Section 10 (23C) (vi) of the Act.

The appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 29.03.2016
v v

[1] (2008) 301 ITR 86