IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 505 OF 2015

CIT (Exemptions) … Appellant

Versus

The Cancer Aid & Research Foundation … Respondent

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Mr. Ashok Kotangle a/w Mr. Arun P. Nagarjun and Mr. Pradip Badgude i/b Mrs. Padma Divakar, for the Appellant.
Mr. Nilesh Joshi i/b Mr. A. K. Jasani, for the Respondent.

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CORAM : S. V. GANGAPURWALA AND A. M. BADAR, JJ.

DATE : 25th JULY, 2017

P. C. :

1. The DIT (Exemptions) has cancelled the registration of the respondent Trust. The Tribunal has allowed the Appeal filed by the assessee. Aggrieved thereby, the present Appeal.

2. Mr. Kotangle, learned Counsel for the appellant strenuously contends that, on three grounds the DIT (Exemptions) has cancelled the registration of the Trust. The land was sold by the trust owned by it for commercial purpose. Even on the website the trust had notified the land for sale as a property. According to the

learned Counsel, the said act is not in consonance with the object of the trust. The Tribunal has lost sight of the said fact. The learned Counsel further submits that, the conditions of Section 12AA(3) is satisfied. According to the learned Counsel, even a luxury car of BMW make was purchased by the trust in the name of a trustee, itself shows that the trust was defeating its object. There was no reason to purchase such a luxury car and more so in the name of a Trustee. According to the learned Counsel, the Tribunal has also failed to consider that the payment of scholarship of the students is routed through PAAK foundation, wherein, the trustees of the said trust of the respondent are common. All these aspects are sufficient to invoke Section 12AA for cancellation of registration and the DIT (E) had properly acted as per the said provision.

3. Mr. Joshi, learned Counsel for the respondent supports the order and submits that disallowance made by the Assessing Officer in respect of purchase of car, has been set aside by the Commissioner (Appeals) and the Appeal filed by the Revenue before the Tribunal is also dismissed for the assessment year 2009-2010. The deduction in respect of purchase of car has been

allowed. Learned Counsel further submits that the plot was acquired by the respondent for the purpose of construction of cancer hospital. Substantial construction was carried out, because of lack of funds further progress in construction could not be made and so as to have funds for advancement of the object of trust the property was sought to be sold. However, the same has not materialised and the said land is not yet sold. According to the learned Counsel, as far as payment of scholarship is concerned, the scholarship is paid to the students directly through the educational institutions. Earlier, it was decided to give the scholarship directly to the students. The Tribunal has appreciated the said aspects.

4. We have considered the submissions.

5. There may not be any dispute with the proportion that if the trust does not fulfill its object or engages in any activity against the object of the trust, then the DIT (E) has power to cancel the registration of the trust under Section 12AA of the Act. The fact that the appellant had put land on sale is not disputed. However, an explanation has been given that assessee had undertaken

construction of the hospital and constructed substantial part of the cancer hospital. However, could not complete construction because of the financial stringency, and to achieve the further object of the trust decided to sale the same. The sale has not materialised and the said property is not sold. It cannot be said that the Tribunal has erred in its conclusion.

6. With regard to purchase of BMW car, it was stated that though the said car was purchased in the name of a Trustee, it was used for the purpose of trust only and the deduction of the same which was disallowed, has been allowed by the Commissioner and confirmed by the Tribunal. It shows that the trust has purchased the said car for its own use. As far as payment of scholarship is concerned, it has come on record that the amount of scholarship has been paid to the students directly through their educational institutions and not through PAAK foundation, though, initially it was decided to route the said payment through PAAK foundation, but the same has not been done and the amount which was deposited for scholarship with PAAK foundation has been taken back by the respondent. The Tribunal after appreciation of evidence has arrived at plausible conclusion.

7. In view of above, no substantial question of law arises in the present Appeal. The Appeal is dismissed. No costs.

(A. M. BADAR, J.) **(S. V. GANGAPURWALA, J.)**