IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice ABHINAND KUMAR SHAVILI

I.T.T.A. Nos.2 AND 205 of 2017

Between:

I.T.T.A. No.205 of 2017:

The Director of Income Tax (Exemptions),
Hyderabad.

...Appellant

Vs.

Andhra Pradesh Pollution Control Board,
Paryavarana Bhavan, A-3,
Industrial Estate, Sanathnagar,
Hyderabad.

...Respondent

I.T.T.A. No.2 of 2017:

The Director of Income Tax (Exemptions),
Hyderabad.

...Appellant

Vs.

Andhra Pradesh Pollution Control Board,
Paryavarana Bhavan, A-3,
Industrial Estate, Sanathnagar,
Hyderabad.

...Respondent

For Appellant : Sri J.V. Prasad

For Respondent : Sri Y. Ratnakar

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

I.T.T.A. Nos.2 AND 205 of 2017

COMMON JUDGMENT: *(per V. Ramasubramanian, J)*

Both these appeals are by the Revenue under Section 260A of the Income Tax Act, 1961, (for short 'the Act') questioning the correctness of two different orders of the Income Tax Appellate Tribunal, in and by one of which the Tribunal directed the grant of registration to the Assessee under Section 12A of the Act and by the other of which the Tribunal remanded to the Assessing Officer, an order of assessment.

2. Heard Mr. J.V. Prasad, learned Senior Standing Counsel for the Revenue. Mr. Y. Ratnakar, learned counsel takes notice for the respondent.

3. The respondent/Assessee is the A.P. Pollution Control Board, established in terms of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. The Assessee filed an application in Form No.10A of the Act on 31.03.2008 for registration under Section 12A of the Act. The application was rejected by the Director of Income Tax (Exemptions) by an order dated 26.09.2008, on the short ground that the functions of the assessee are regulatory in nature and that there were no charitable purposes. It was also noted that the assessee has not got its books of accounts for three successive financial years audited, as required by Section 12A (1) (b) of the Act.

4. The assessee filed an appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal by an order dated 30.09.2009 set aside

the order of rejection and remanded the matter back to the Director of Income Tax (Exemptions) for a fresh consideration.

5. Pursuant to the said order, the Director of Income Tax took up the matter afresh for consideration and passed an order dated 31.12.2012 rejecting the application once again. This order of the Director dated 31.12.2012 was set aside by the Income Tax Appellate Tribunal by an order dated 30.09.2013. Challenging the said order, the Revenue has come up with ITTA No.205 of 2017.

6. In the meantime, the Assessing Officer passed an order of assessment dated 30.11.2009 under Section 143 (3) read with Section 147 of the Act. The said order was confirmed by the CIT (Appeals), by an order dated 30.12.2010.

7. As against the said order, the assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, by an order dated 03.01.2014, allowed the appeal and remanded the matter back to the Assessing Officer in the light of the order passed in the other appeal directing the grant of registration under Section 12A of the Act. Aggrieved by the said order, the Revenue has come up with ITTA No.2 of 2017.

8. Insofar as ITTA No.205 of 2017 is concerned, the Revenue has raised the following substantial questions of law:

> 1) Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the assessee is entitled for registration u/s.12AA of the Income Tax Act, 1961, even though the assessee admittedly has not specified objects of its own which may be deemed to be objects of charitable nature?
>
> 2) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that once the assessee has been granted approval u/s.10(23C) (iv) of the Income Tax Act, 1961, the assessee cannot be denied registration under Section 12AA of the Act, even when the assessee does not satisfy the condition for grant of such registration?

> 3) Whether on the facts and in the circumstances of the case and having regard to the provisions of section 12A(1) read with clause (aa) and clause (b) of Section 12A of the Income Tax Act 1961, when the assessee has not fulfilled the conditions as per the said provisions, the Tribunal is correct in law in holding that the assessee is eligible for registration u/s.12A of the Act on the basis of the application in Form No.10A filed on 31.03.2008?

9. Insofar as ITTA No.2 of 2017 is concerned, the Revenue has raised the following two substantial questions of law:

> 1) Whether on the facts and in the circumstances of the case, the order of the Tribunal is not perverse?
>
> 2) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in directing the assessing officer to verify the claim of exemption u/s.11 of the Act inspite of the specific findings of assessing officer as well as the CIT(A) that the assessee is not entitled for exemption u/s.11 of the Act.

10. ITTA No.205 of 2017: Insofar as the first question of law arising in this appeal is concerned, the contention of the Revenue is that the assessee had not specified objects of its own which may be deemed to be objects of charitable nature. But this contention looses sight of the very definition of the expression "charitable purpose" under Section 2(15) of the Act. By an amendment inserted by Finance (No.2) Act, 2009, dated 01.04.2009, the words "preservation of environment" were inserted into Section 2(15) of the Act, to come within the purview of the expression "charitable purpose."

11. A careful perusal of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air ((Prevention and Control of Pollution) Act,1981 would show that the State Governments were compelled by statutes to establish Pollution Control Boards, for the prevention and control of air and water pollution. Therefore, the objects of the State Pollution Control Boards are too obvious to be deciphered. Hence, the first question of law arising in ITTA No.205 of 2017 has to be answered in favour of the respondent/assessee.

12. The second question of law revolves around the approval granted under Section 10(23C)(iv) of the Act. But Section 10 of the Act itself deals only with incomes not included in total income. That comes at the second stage. We are to day at the threshold, where the question whether the respondent is entitled to registration under Section 12A of the Act is in issue. It is only after crossing the first gate, namely, the registration under Section 12A of the Act,that the question under Section 10 of the Act would arise for consideration.

13. As we have pointed out while answering the first question, the respondent was denied registration on the ground that it did not have objects of its own. The question of deciding the issue of registration with reference to the approval under Section 10(23C) of the Act does not arise.

14. Insofar as the third question of law is concerned, the question as to whether the assessee fulfilled the conditions as per the provisions or not, does not arise for consideration, since the Director of Income Tax (Exemptions) did not deal with this aspect, while passing the order dated 31.12.2012 after an order of remand passed by the ITAT. Therefore, the third question of law does not arise for consideration.

15. In the light of the above, ITTA No.205 of 2017 is dismissed, answering the first question of law in favour of the respondent/assessee and holding that the other two questions do not arise for consideration.

16. <u>ITTA No.2 of 2017</u>: The first question of law raised in this appeal is as to whether the order of the Tribunal is perverse.

17. The Tribunal pointed out that the assessee raised (11) grounds, out of which ground No.8 related to the denial of approval under Section 10 (23C) of the Act. Ground Nos.2 to 7 related to the

issue of immunity under Article 289 of the Constitution of India. Ground Nos.1, 10 and 11 were found to be general in nature.

18. The Tribunal found that as per its order dated 30.09.2013 in the appeal arising out of refusal to grant registration, the Department was directed to grant registration. In the light of the said order, the Tribunal felt that the assessing officer should have a fresh look at the order of assessment. We do not think that there is any perversity in the said order. Hence, the first question of law is answered against the appellant.

19. The second question of law revolves around the claim for exemption under Section 11 of the Act. The contention of the Revenue is that the assessing officer as well as CIT (Appeals) have already recorded specific findings rejecting the claim for exemption under Section 11 of the Act and that therefore, there was no question of directing the assessing officer to re-verify the claim.

20. But the above contention looses sight of the fact that at the time when the assessing officer and CIT (Appeals) held so, the application of the respondent for registration itself stood rejected. Now that the situation is changed, those findings may also have to be looked at afresh. Hence, the second question of law is also answered against the appellant.

21. Consequently, both the appeals are dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 11, 2017
KTL