IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.531 of 2008

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1. The Commissioner of Income Tax Central, Patna.
2. Deputy Commissioner of Income Tax, Central Circle-4, Patna.

...Assessing Officer/Appellant/s

Versus

M/s Takshila Education Society Branch Office Kashi Place, Patna, B-549, New Friends Colony, New Delhi.

... Assessee/Respondent/s

Appearance :

For the Appellant/s : Smt. Archana Sinha, Adv.
Mr. Alok Kumar, Adv.
Mr. Sanjeev Kumar, Adv.

For the Respondent/s : Mr. Ajay Kumar Rastogi, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 14-02-2019

Leave is granted to Ms. Archana Sinha, learned counsel appearing for the appellant-department to correct the provisions as occurring in paragraph (v) of the substantial questions of law to read section ‘10(23C)(vi)’ in place of ‘10(23)(vi)’ during course of the day.

This appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) is directed against the order dated 18.03.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (hereinafter referred to as ‘the Tribunal’) in ITA No.570/Pat/06 filed by the appellant-department for the assessment years 2001-02, whereby the appeal has been dismissed, thus confirming the order passed by the Commissioner of Income Tax (Appeals), Patna dated 27.10.2006.

We have heard Ms. Archana Sinha, learned counsel appearing for the Income Tax Department and Mr. Ajay Kumar Rastogi, learned counsel appearing for the respondent-assessee and we have perused the records.

The assessee is an educational society and apparently enjoying the exemption granted by the statutory authority under section 10(23C)(vi) as well as the exemption under section 11 of 'the Act' for which it is duly registered under section 12AA of 'the Act'.

In so far as the present appeal is concerned, it is the exemption granted to the society under section 10(23C) (vi) of 'the Act' which is the subject matter of dispute and to cut short the matter it is because the Commissioner, Income Tax (Appeals) has accepted the position to differ with the opinion of the Assessing Authority and which opinion of the Commissioner, Income Tax (Appeals) has been endorsed by 'the Tribunal' by the order impugned that feeling aggrieved Department is before us.

We have heard learned counsel for the parties and we have perused the records. Ms. Archana Sinha, learned counsel appearing for the appellant-department has chosen to raise the issue present at paragraph (v) of the substantial question of law to submit that the assessee is not entitled to exemption under section 10(23C)(vi) of 'the Act', because it does not exist solely for educational purposes. The arguments are contested by Mr. Ajay Kumar Rastogi, learned counsel appearing for the respondent-assessee in reference to the order of the Central Board of Direct Taxes enclosed at Annexure R/1 series to submit that the appellants cannot be permitted to raise this issue in view of the exemption granted by the Central Board of Direct Taxes through the order dated 02.03.2002 which was valid for the period 1999-2000, 2000-2001 and 2001-2002 including the assessment year in question which is a subject matter of the present appeal i.e. assessment year 2001-2002. It is thus submitted that the order of 'the Tribunal' is in tune with the legal position settled under the exemption granted by the Central Board of Direct Taxes confirming the eligibility of the respondent-society to avail the exemption provided under section 10(23C)(vi) of 'the Act'.

We have heard learned counsel for the parties and we have perused the records and in our opinion apart from the fact that the issue raised by the department has not only been negated by the Commissioner of Income Tax (Appeals) but has also been confirmed by the Tribunal as well, in view of the exemption granted by the Central Board of Direct Taxes on 02.03.2002 which remains uncontested, we do not see any reason for the department to prefer this appeal which issue stands answered by the exemption order of the Central Board of Direct Taxes dated 02.03.2002.

For the discussions above, we find no merit in the substantial question of law so raised by the Department.

The Appeal is dismissed accordingly.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Anjula/Skpathak

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.03.2019
Transmission Date	NA