

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL (IT) NO.1061 OF 2017
WITH
INCOME TAX APPEAL (IT) NO.1062 OF 2017
WITH
INCOME TAX APPEAL (IT) NO.2017 OF 2017
WITH
INCOME TAX APPEAL (IT) NO.283 OF 2018
WITH
INCOME TAX APPEAL (IT) NO.384 OF 2018
WITH
INCOME TAX APPEAL (IT) NO.526 OF 2018
WITH
INCOME TAX APPEAL (IT) NO.762 OF 2018

The Pr. Commissioner of Income Tax - (central), Pune ... Appellant
Vs.
Shikshan Prasarak Mandali ... Respondent

Mr. Sham V. Walve for Appellant.
Mr. Mandar Vaidya for Respondent.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

DATE : JANUARY 20, 2020

P.C. :

Heard learned counsel for the parties.

2. This appeal has been preferred by the Revenue under Section 260-A of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) assailing the order dated 19.10.2016 passed by the Income Tax Appellate Tribunal, Pune Bench 'A', Pune (briefly 'the Tribunal' hereinafter) in Income Tax Appeal Nos.1127 to 1133/PN/2011 filed by the assessee (respondent) Shikshan Prasarak Mandali pertaining to assessment years

2003-04 to 2009-10.

3. The core issue involved in the appeal is whether the amount collected by the assessee as donation from the students was within the permissible limit of 15% or whether the same was done with the profit motive to suggest that the assessee is running the related educational institute on commercial line. The following questions have been formulated by the Revenue while assailing the finding of the Tribunal:

“1. Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that the Assessing Officer had incorrectly given retrospective effect to the order passed u/s. 12AA(3) of the Income Tax Act, 1961 by the Commissioner of Income Tax, Pune (Commissioner) when in fact the impugned assessment orders were passed subsequent to the order of the Commissioner u/s.12AA(3) of the Act? The assessee was not having exemption u/s.12A at the time of passing of assessment order.

2. Whether on the facts and circumstances of the case and in law, the Tribunal was right in deleting the addition made on account of acceptance of capitation fees by the assessee and is perverse as it had not taken into account the evidence collected by the Department during the search operation in totality?

3. Whether the Tribunal has erred in holding that the assessee through its various institutes was assessable to pay tax by way of voluntary donations which are not specific donations for the corpus of the assessee which was the mandatory requirement for the donation to be treated as ‘corpus donation’?

4. Whether the Tribunal has erred in law in failing to appreciate that any fees charged over and above the prescribed fee amounts to selling of education and element of charity no longer remains in the activities of the assessee?

5. Whether the Tribunal has erred in holding that the assessee trust satisfies the conditions laid down u/s.10(23C)(iiiab) inspite of specific findings given in the assessment order that it had engaged in collecting fees over and above the guidelines set by the University?

6. Whether the Tribunal has erred in holding that the assessee Trust satisfies the conditions of Section 10(23C)(iiiab) inspite of specific findings given in the assessment order that it had engaged in collecting fees over and above the guidelines set by the University and is illegal in terms of the Maharashtra Educational Institution (Prohibition of Capitation Fees) Act,

1987?

7. Whether the Tribunal has erred in not appreciating that the provisions of Section 11(5) read with Section 13(1)(d) have been brought into to prevent misuse of funds of the Trust in view of numerous incentive granted to a trust and if the trust invests or deposits otherwise than in any one or more of the forms or modes specified in sub-sect.5 of Sec.11 then it amounts to clear violation of the said provisions and thus would lose the exemption u/s.11 and 12?”

4. In the course of hearing, an order dated 11.09.2017 passed by the Division Bench of this Court in Income Tax Appeal No.59 of 2015 pertaining to the same assessee for the assessment years 2010-11 and 2011-12 and involving the same issue has been placed before us. This Court, on going through the order of the Tribunal and the reasons and justifications given, did not find any good reason to interfere with the same. Relevant portion of the order dated 11.09.2017 is extracted hereunder:-

“9. The Tribunal found that the assessee - trust is more than 100 years old. It runs more than 60 educational institutions imparting education to more than 70000 students in various fields. It was granted registration earlier under Section 12A. The Commissioner of Income Tax, however, relied on certain amounts styled as 'donations collected from students'. He held that this was against the assurance to admit them to these educational courses. Collection of such donations or moneys, therefore, attracts the provisions under the Capitation Fee Act. The Tribunal found that there is no merit in this finding of the Commissioner. The assessee pointed out that as against 70 management quota seats in the educational institutions, the assessee collected donation from nine students. The sum of the donation is within the prescribed limit and the Government of Maharashtra has not at all prohibited the receipt of the same. In paragraphs 8.3 and 8.4 of the order of the Tribunal, the details of such students and donations collected from them have been referred. Then, the other objection of the Commissioner was that the assessee is accumulating huge surplus year after year. However, the Tribunal found that this surplus is within the permissible limit of 15% and how that is worked out is apparent from paragraph 8.5 of the Tribunal's order. Thus, the Tribunal found that the accumulation of surplus is within the permissible limit. It cannot be said that the assessee is running educational institution on commercial lines.”

5. On thorough consideration of the matter, we are of the considered opinion that the above decision would be squarely applicable to the facts of the present case. Tribunal had assigned cogent and satisfactory reasons while deleting the addition made by the Assessing Officer. There is no error or infirmity in the impugned order of the Tribunal. No substantial question of law arises in these appeals.

6. Consequently, all the appeals are dismissed. However, there shall be no order as to costs.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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