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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income tax)
ORIGINAL SIDE

IA No.GA 2 of 2018 (Old No.GA 433 of 2018)
In
ITAT 28 of 2018

COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA
Vs.
THE NEOTIA UNIVERSITY

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th December, 2021.

*Appearance:*
*Mr. P.K. Bhowmik, Adv.*
*...for the appellant.*

*Mr. S. Kejriwal, Adv.*
*Mr. G. S. Gupta, Adv.*
*...for the respondent.*

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 23rd August, 2017 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the 'Tribunal') in ITA No.32 and 33/Kol/2017.

The revenue has raised the following substantial questions of law for consideration:

i) *Whether on the facts and circumstances of the case, even on dissolution or winding up by not having any restriction on application of assets for charitable purpose, the object pursued by the assessee cannot be said to be a charitable in nature ?*

ii) *Whether on the facts and circumstances of the case, the learned Tribunal is justified in law in holding distribution of income/fund* *at the discretion of State Government in the event of dissolution is permissible though forbidden under other section 115TD of the Income Tax Act ?*

iii) *Whether on the facts and circumstances of the case, the learned Tribunal is justified in law in holding that even though there is no requirement of dissolution clause, registration under section 12AA of the Act can be granted even when the dissolution is against the provision of the Income Tax Act ?*

We have heard Mr. P. K. Bhowmik, learned Standing Counsel appearing for the appellant/revenue and Mr. S. Kejriwal, learned Counsel appearing for the respondent/assessee.

The respondent is an university which came into existence by a law enacted by the West Bengal Assembly under the Neotia University Act, 2014 published in the Government Gazette dated 4th February, 2015. The respondent university filed an application in Form No.10A for registration under Section 12A of the Act and for approval under Section 80G of the Act. The appellant by order dated 31st October, 2016 rejected the application on the ground that the dissolution clause is in contravention to Section 115TD(1)(c) of the Act. The respondent being aggrieved by such order filed appeal before the Tribunal. The Tribunal at the first instance noted the legal position as to what is the procedure to be followed by the appellant when an application is made for grant of registration under Section 12A of the Act. Secondly, the Tribunal took note of the fact that in terms of Section 45 of the Act, appropriate procedure has been contemplated in the case when the trust is wound up. After taking note of various decisions of the High Courts, the appeal filed by the assessee was allowed.

Aggrieved by the same, the revenue is before us by way of this appeal. We find that the appellant being the Commissioner of Income Tax (Exemption) Kolkata has committed gross error in rejecting the application and, consequently, cancelling the approval granted under Section 80G of the Act. The order dated 31st October, 2016 passed by the CIT(E) is an outcome of wrong understanding of the legal decision apart from missing out of important issues with regard to the facts. The Commissioner has glossed over the provisions of the Neotia University Act, 2014 more particularly Section 45 therein. That apart, the fundamental legal principle which is to be borne in mind when an application is made for registration under Section 12A of the Act is that the Commissioner is not expected to examine the application of the trust. All that is required to be seen is whether the activities of the trust are genuine. In the instant case, the respondent trust having been created by an Act of the West Bengal Assembly, there can be no doubt as regards the genuinity of the trust. Thus, we find that the order passed by the Commissioner suffers from utter perversity. We also take note of the decisions rendered by this Court in the case of CIT(Exemption) Vs. West Bengal Municipal Development Fund Trust in ITAT 29 of 2018 dated 30.11.2021. In the said case also the Commissioner had rejected the application on the ground that the dissolution clause is defective. The said contention was rejected and the appeal filed by the revenue was dismissed. The operative portion of the judgement reads as follows :

*"The short question involved in the instant case is whether the Commissioner of Income Tax (Exemption), Kolkata, CIT (E) was right in refusing the registration to the respondent/trust under Section 12AA of the Act solely on the ground of the absence of dissolution clause in the Deed of Trust dated 25.02.2008. The tribunal took into consideration that facts of the case and found there is absolutely no ground for refusing the registration to the respondent/assessee. The Tribunal appreciated clause no.8.9 of the Deed of Trust dated 25.02.2008 which provided that in the event of winding up fo the respondent/trust any property remains after the satisfaction of all its debts and liabilities, the surplus fund, asset and other properties of the trust shall be transferred to another trust having similar object or shall vest in the State Government. The Tribunal on interpretation of the said clause held that clause 8.9 provides for the contingency of the dissolution and there are two alternatives and the first of it, namely, that the property shall be transferred to the another trust having similar object will have preference over the second alternative wherein ti has been provided that the property shall vest in the State Government. The Tribunal rightly referred to the decision of the Hon'ble Supreme Court in Queen's Educational Society – vs- CIT [(2012) 372 ITR 699 (SC)].*

*The learned Counsel for the respondent/assessee submitted that the respondent/trust has been formed by the Government for the purpose of creating a corpus for providing facilities to the public who are in the West Bengal Municipal area. Further, reliance has been placed on the decision of High Court of Rajasthan in Commissioner of Income Tax[Exemptions], Jaipur – vs- Sri Narsinghji Ka Mandir [2020] 119 Taxmann.com 476 wherein ti was held that the absence of dissolution clause or condition as rightly contended by the assessee therein is uncertain in future events and that cannot be a ground to refuse registration under section 12AA of the Act. We find that the Tribunal was right in allowing the assessee's appeal and directed the appellant to grant registration under section 12AA of the Act. We are informed by the learned Counsel for the respondent/assessee that after the order passed by the Tribunal the registration has been granted in favour of the* *respondent/assessee vide an order dated 26th September, 2017 and the registration continues to remain valid as on date.*

*In the above, the appeal is dismissed and the substantial question of law is answered against the Revenue".*

In the light of the above, we find that there is no error in the order passed by the Tribunal.

Accordingly, the appeal fails and the same is dismissed. Substantial questions of law are answered against the revenue.

The connected application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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