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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

IA NO: GA/1/2018
(OLD NO. GA/448/2018)
IN
ITAT/29/2018

CIT (EXEMPTION)
VS.
WEST BENGAL MUNICIPAL DEVELOPMENT FUND TRUST

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 30, 2021.

Appearance :
Mr. Soumen Bhattacharjee, Adv.
... for the appellant

Mr. Sanjay Bhaumik, Adv.
...for the respondent

The Court : This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is against the order dated 18th August, 2017 passed by the Income Tax Appellate Tribunal Kolkata "A" Bench, Kolkata in ITA No. 2265/Kol/2016.

The Revenue has raised the following substantial question of law for consideration:

1. Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal is correct in holding that even though there is no requirement of dissolution clause, registration under

Section 12AA can be granted even when the dissolution clause is against the provisions of the Act?

We have heard Mr. Bhattacharjee, learned standing counsel for the appellant/Revenue and Mr. Bhaumik, learned counsel for the respondent/Assessee.

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 of 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 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 it 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. Shri Narsinghji Ka Mandir [2020] 119 Taxmann.com 476 wherein it 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.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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