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

ITAT/226/2018
IA NO:GA/2/2018
(OLD NO.2064/2018)
IN THE MATTER OF :
C.I.T. (EXEMPTION), KOLKATA
VS
GOVARDHAN FOUNDATION

BEFORE :
THE HON'BLE JUSTICE T.S.SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATED : NOVEMBER 10, 2021.
[*Via Video Conference*]

Appearance :
Mr. P.K. Bhowmick, Advocate
Mr. Madhu Jana, Advocate
…for the appellant
None appears
…for respondent

The Court :- This appeal by the revenue has been filed under Section 260A of the Income Tax Act, 1961, (the Act in brevity) regarding correctness of the order dated 29th November 2017 passed by the Income Tax Appellate Tribunal, Kolkata "A" Bench in I.T.A. No. 767/Kol/2017.

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

a) Whether on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal is not correct in opining that the cancellation of the registration of the assessee by the Commissioner of Income Tax (Exemptions) by exercising jurisdiction under sub-section 3 of Section 12AA of the Income Tax Act, was not maintainable thereby wrongly set aside the order of the Commissioner of Income Tax (Exemptions) ?

b) Whether on the facts and in the circumstances of the case and in law, the order passed by the Learned Income Tax Appellate Tribunal is not justified in setting aside the order of the Commissioner of Income Tax (Exemptions) by ignoring the fact that the assessee trust had made donations outside India without taking prior permission of the CBDT by violating provisions of sections 11(1)(a) and 11(1)(c) of the Income Tax Act ?

c) Whether on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal is not justified in setting aside the order of cancellation of registration of the assessee as passed by the Commissioner of Income Tax (Exemptions) under section 12AA on relying upon the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association Vs. DIT, ignoring the fact that the said decision has not been accepted by the revenue and SLP has been filed before Hon'ble Supreme Court which is pending for adjudication?

We have elaborately heard Mr. Bhowmick, learned Senior Counsel appearing for the appellant/revenue. The assessee is a registered Trust and enjoyed a registration under Section 12A of the Act eversince 1995. The Commissioner of Income Tax (Exemptions), Kolkata had opined that the assessee Trust had made donations to an organisation which is not registered under Section 12A of the Act and is also situated outside India. Further, it was observed that to make donation beyond the border of India, the assessee Trust was required to take prior approval from the Central Board Direct Taxes (CBDT). In this regard, the Commissioner referred to proviso to Section 11(1)(c) of the Act. The assessee filed their written submissions on 25th April, 2016, inter alia, contending that the donations were made to a school in Nepal in terms of the Clause 4(A) of the Trust Deed which does not prohibit the Assessee Trust from making such donations and Trust Deed is a registered Deed under Section 12A of the Act. Further certain factual details were also given to justify the stand that Section 11 of the Act shall not apply to the assessee's Trust. The copies of the Trust Deed, the receipts for the donation paid, balance sheet and income and expenditure account for the relevant years and the Trust Deed of the institution in Nepal were also appended with the submissions dated 24th April, 2016. The Commissioner thereafter issued show-cause notice dated 31st October, 2016 calling upon the assessee to explain as to why the registration granted under Section 12A of the Act should not be cancelled under Section 12AA(3) of the Act. The Commissioner was also of the opinion that the activities of the Assessee Trust were not genuine. The assessee did not submit a reply and, therefore, the Commissioner proceeded to pass the order during February 2017 holding that the activities of the assessee are not genuine and are not being carried out in accordance with the objects of the Trust and registration granted under Section 12A of the Act on 14th December 1995 was cancelled with retrospective effect from 1st April, 2011 i.e. from the financial year 2011-12 relevant to the assessment year 2012-13.

Aggrieved by such an order the assessee preferred appeal before the Tribunal. The Tribunal has allowed the appeal and set aside the order passed by the Commissioner and this is how the revenue is before us by way of this appeal raising the aforementioned substantial questions of law.

After elaborately hearing the learned standing Counsel for the appellant/revenue we find that Commissioner had committed a fundamental error in cancelling the registration granted to the assessee Trust under Section 12A of the Act as far back as during the year 1995 by taking note of the activity of the Trust, which according to the assessee was in consonance with Clause 4(A) of the Deed of Trust. Thus it goes without saying that at the time when the registration was granted at the first instance by the then Commissioner on 14th December, 1995, the clauses and covenants as contained in the Deed of Trust were examined and the activities of the trust were found to be genuine and after recording satisfaction, registration has been granted. Therefore, such an issue could not have given rise to a cause of action for cancellation of the registration. The Tribunal had followed the decision of the High Court of Madras in the case of *Tamil Nadu Cricket Association*, 368 ITR 633 (Madras) to hold that the issues relating to how the funds of the Trust were employed is not germane for considering the question as to whether the activities were genuinely carried out or not. The learned Senior Standing Counsel for revenue submitted that revenue has not accepted the decision in the case of *Tamil Nadu Cricket Association* and a Special Leave Petition has been filed before the Hon'ble Supreme Court. Be that as it may, on facts we are convinced that the reason cited by the Commissioner for cancellation of the registration could not be a ground to do so as it is admittedly an issue which could be dealt with by the Assessing Officer, during the course of assessment. That apart we find that the Tribunal, which is the final fact finding authority, had examined the entire facts including the conditions contained in the Deed of Trust and recorded a findings in favour of the Assessee Trust. While we exercise jurisdiction under Section 260A of the Income Tax Act we are required to consider as to whether any substantial question of law arises for consideration and not to re-appreciate the factual position. Thus we find that there is no error in the approach of the Tribunal nor the conclusion arrived at by the Tribunal. We also find that there is no substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and the same stands dismissed, so also the connected stay application.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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