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

IA No.GA/1/2017 (Old No. GA/2832/2017)
In
ITAT 304 of 2017

COMMISSIONER OF INCOME TAX (EXEMPTION) KOLKATA
Vs
CONTAI ROTARY COMMUNITY WELFARE TRUST

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

For the appellant: Mr. P.K. Bhowmik, Adv.

For the respondent: Mr. Subash Agarwal, Adv.

Heard on: 2nd December, 2021.

Judgment on: 2nd December, 2021.

T. S. SIVAGNANAM, J. : This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the 'Act', in brevity) questioning the correctness of the order dated 22nd March, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.340 and 341 (Kol) of 2016.

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

A) Whether on the facts and circumstances of the case as well as interpretation of law, the Learned Tribunal was justified in law in holding that activities like sale/purchase of medicine, running of pathological clinic, x-ray clinic, polyclinic etc. are comes within the purview of medical relief within the meaning of charitable purpose as defined in Sub-section 15 of Section 2 of the Income Tax Act, 1961?

B) Whether on the facts and circumstances of the case, the Learned Tribunal has arrived at a finding based on no evidence or its inconsistent with the evidence on record or it has acted on material partly relevant and partly irrelevant or it draws upon its own imagination and import facts and not apparent from the record or it bears its conclusion on mere conjectures or surmises or no person judicially acting or properly instructed as to the relevant law could have come to the determination reached by the tribunal?

Heard Mr. P.K. Bhowmik, learned senior standing counsel for the appellant/Revenue and Mr. Subash Agarwal, learned counsel for the respondent/assessee.

The respondent/assessee is a Trust which came into existence under a Deed of Trust dated 19.03.2003 and the Trust filed an application in Form 10A on 01.06.2015. On receipt of the application, the Commissioner of Income Tax (Exemption), Kolkata [CIT(E)] issued notice under Section 12AA (I)(a) dated 12.08.2015 calling upon the respondent/assessee for a hearing. After the case was heard, the CIT(E) by order dated 15.12.2015 rejected the application for grant of registration under Section 12AA of the Act on the ground that the activities of the Trust are purely commercial and the Trust is primarily engaged in sale/purchase of medicine, pathological tests, x-ray etc., which are in the nature of a business. The assessee challenged the correctness of the said order before the Tribunal. The assessee contended that Trust has been established for general charitable objective as specified in Section 2(15) of the Act, which provides medical services to the public at large without discrimination of caste, creed and religion. The polyclinic which the assessee Trust has established and being administered undertakes pathological tests, x-ray and render other medical services. The assessee further contended that in the process of carrying on the charitable activity a marginal/negligible profit is generated which is required to sustain the activities of the Trust. Therefore, the assessee contended that they are not engaged in any business activity and medical relief is one of the charitable activities as defined under Section 2(15) of the Act. The said contention was examined by the Tribunal and it was found that the respondent/assessee would qualify for grant of registration under Section 12AA of the Act and their activity is undoubtedly a charitable activity.

Mr. Subash Agarwal, learned counsel for the respondent/assessee relied upon the decision of the High Court of Allahabad in *Oxford Academy For Career Development –versus- Chief Commissioner of Income Tax reported in (2009) 315 ITR 382 (Allahabad)* wherein the Court relied on the decision of the Hon'ble Supreme Court in the case of *American Hotel and Lodging Association Educational Institute –versus- CBDT, (2008) 301 ITR 86* wherein it was held that the prescribed authority while examining an application for grant of registration is only required to examine the nature, activities and genuineness of the institution and mere existence of profit/surplus did not disqualify the institution. Reliance was also placed on the decision of the High Court of

Delhi in the case of *St. Lawrence Educational Society (Regd.) –versus- Commissioner of Income Tax reported in (2011) 197 Taxman 504 (Delhi)* wherein the decision in the case of *American Hotel and Lodging Association Educational Institute* was referred as well as the decision in the case of *Aditanars Educational Institution –versus- Addl. CIT (1997) 224 ITR 310* and held that the institution seeking exemption under the provisions of the Act should not generate a quantitative surplus was a condition which was legally untenable.

In the light of the above discussion, we hold that the order passed by the Tribunal does not call for any interference. In the result, the appeal is dismissed and the substantial questions are answered against the Revenue.

The stay application being IA No. GA 1 of 2017 (Old No. GA 2832 of 2017) also stands dismissed.

(T. S. SIVAGNANAM, J.)

I Agree,

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd