OD-26

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

IA No.GA 1 of 2017 (Old No.GA 3735 of 2017)
In
ITAT 397 of 2017

COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA
Vs.
TOPSEL TRUST

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. Abhratosh Majumdar, Adv.
Mr. Avra Majumdar, 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 June, 2017 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the 'Tribunal') in ITA No.2221/Kol/2016 and ITA No.2222/Kol/2016.

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

i) *Whether on the facts and in the circumstances of the case and as well as in law the Tribunal is right in observing that verification of genuineness of activity is not the pre-condition for granting registration u/s. 12AA of the Income Tact Act, 1961 ?*

ii) *Whether on the facts and in the circumstances of the case and as well as in law the Tribunal is right in observing that cancellation of registration u/s. 12AA(3) of the Income Tax Act, 1961 in case of an institution found to be not carrying out activity according to its objectives is more correct application of the Income Tax Act, 1961 than verification of genuineness of activities before granting registration u/s. 12AA of the Income Tax Act, 1961 ?* ?

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

The short issue which falls for consideration is whether the Tribunal was right in holding that the cancellation of registration granted to the appellant trust under Section 12AA(3) of the Act on the ground that assesee trust is not carrying out activities according to its object. The revenue cannot dispute the fact that this issue has been answered in several decisions of this Court as well as the other High Courts and the Hon'ble Supreme Court. In this regard it will be beneficial to refer to the decision of the Division Bench in the case of Principal Commissioner of Income Tax (Exemption) Vs. Shri Nathji Goverdhan Nathji Charitable Trust reported in [2020] 120 Taxmann.com 256 (Calcutta). The Division Bench after taking note of several decisions held that verification of genuineness of activity is not condition precedent for granting registration under Section 12AA of the Act. Further, we note that the Tribunal had taken note of several decisions on the point to hold that rejection of the application for grant of registration at the threshold was not sustainable. We find there is no ground to interfere with the order passed by the Tribunal, impugned in this appeal.

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.)

S.Das/pa