Form No.(J2)

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

Present :

The Hon'ble JUSTICE T. S. SIVAGNANAM

And

The Hon’ble JUSTICE HIRANMAY BHATTACHARYYA

ITAT/21/2018
IA NO.GA/1/2018 (Old No.GA/457/2018)

COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA

VS

VIDYA BHARATI SOCIETY FOR EDUCATIONAL & SCIENTIFIC ADVANCEMENT

Appearance:
Mr. Tilak Mitra, Adv.
…for the appellant.

Mr. J.P. Khaitan, Sr. Adv.,
Mr. Pratyush Jhunjhunwala, Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
for the respondent.

Heard on : 19.01.2022

Judgment on : 19.01.2022

T.S. SIVAGNANAMM J. : This appeal of the revenue filed under Section 260A of the Income Tax Act (the ‘Act’ in brevity) is directed against the composite order dated 6th September, 2017 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in ITA No.1456/Kol/2016.

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

(i) *Whether in the facts and in the circumstances of the case, the Learned Tribunal is justified in law and on facts by holding that the assessee trust was not engaged any money laundering activity?*

(ii) *Whether in the facts and circumstances of the case, the Learned Tribunal is justified in law and on facts in setting aside the order for cancellation of registration under Section 12AA(3) of the Income Tax Act, 1961?*

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel appearing for the respondent/assessee.

The short question which falls for consideration is whether the Commissioner of Income Tax (Exemption) [CIT(E)] was justified in cancelling the registration granted to the assessee trust under Section 12A of the Act dated 6th September, 2017 by its order dated 6th May, 2016. The CIT(E) concluded that that the activities of the trust are not genuine and they are not being carried out in accordance with the declared objects as contained in the deed of trust. The assessee trust is running three schools and the first of such schools was established in the year 1965 and the three schools are stated to have on their roll more than 3,400 students and the schools are recognised by the West Bengal Higher Secondary Board of Education, Government of West Bengal. The allegation based on which the proceedings were initiated for cancellation was that the name of the assessee trust appeared in the list of bogus donor as culled out from the statement recorded from one Sri Rabindranath Lahiri, managing trustee of Batanagar Education and Research Trust. Based on such allegation, show cause notice dated 3rd December, 2015 was issued to the assessee proposing cancellation of registration by invoking the provisions under Section 12AA(3) of the Act. The CIT(E) placed heavy reliance on the statement recorded by Sri Rabindranath Lahiri on 5th January, 2016 and that despite opportunity being granted to the assessee trust to cross-examine the said Mr. Lahiri, such opportunity was not availed by the assessee and, therefore, drew adverse inference and cancelled the registration. The assessee preferred appeal before the Tribunal contending that the order of cancellation of registration granted under Section 12A was in gross violation of the principles of natural justice without disclosing the materials relied upon and without affording reasonable/adequate opportunity to controvert or deal with the same including by way of cross-examination. It was further contended that the cancellation of registration with retrospective effect from 1st April, 2011 was bad in law. Further, it was contended that no adverse inference could have been drawn against the assessee trust solely for the reason that the assessee had not cross-examined said Mr. Lahiri as a need to cross-examine him did not arise as the said Mr. Lahiri has not made any adverse comment against the assessee trust or its managing trustee or the other trustees. Further, the assessee submitted that they have not given any corpus donation to Batanagar Education and Research Trust and there was no material available on record to show that the donation was given by the assessee trust to the said trust and such amounts were returned back to the assessee and without any material, the CIT(E) has made a bald allegation against the assessee and has also made an observation to the effect that the assessee trust is engaged in money laundering. Further, it was argued that the CIT(E) examined the president of the society Mr. Mukul Agarwal. However, no question whatsoever was ever put to him about the transaction with Batanagar Education and Research Trust. Therefore, it was submitted that the cancellation of the registration that too with retrospective effect is illegal. Reliance was placed on the decision in the case of CIT Vs Apeejay Education Society, reported in (2015) 59 taxmann.com 102 (Punjab & Haryana) and the decision in the case of CIT Vs. Islamic Academy of Education, reported in (2015) 54 taxmann.com

255 (Karnataka). Reliance was placed on the decision of the Tribunal in the case of Jha Educational Trust Vs. CIT(E) in ITA No.931-933/Kol/2016 dated 17th March, 2017. The revenue has sought to sustain the order passed by the CIT(E) by referring the finding recorded therein. The Tribunal after examining the entire evidence which was available on record has held that there is no whisper about the assessee's society or its officer bearers by the said Mr. Lahiri when statement was recorded from him and, therefore, held that merely because the assessee did not cross-examine said Mr. Lahiri, no adverse inference could have been drawn. Furthermore, the Tribunal on facts found that the CIT(E) had not brought any material on record linking several persons either with the assessee's society or with the office bearers of the assessee's society. It has also noted that no questions were posed to the president of the assessee's society with regard to the alleged transactions with Batanagar Education and Research Trust. After having rendered such findings on fact, the Tribunal found that there was no case made out for invoking the power under Section 12AA(3) of the Act. Further, the Tribunal also took note of the decision in the case of Jha Educational Trust (supra) where also the transaction with Batanagar Education and Research Trust was the subject matter. In the said case, the Tribunal had extensively gone through the factual materials and held that the activities

of the said trust cannot be said to be not genuine. Ultimately, the appeal filed by the said assessee was allowed.

After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, we find that the entire issue involved in this appeal is factual. As rightly pointed out by the Tribunal the CIT(E) has not brought on record any statement made by the said Mr. Lahiri which is adverse to the interest of the assessee trust. That apart, there was no document or material available with the CIT(E) to hold that the assessee had given donation to the Batanagar Education and Research Trust during the relevant year in question, namely, assessment year 2015-2016. Thus, in the absence of any material, the Tribunal rightly concluded that the allegations against the trust based on which registration was cancelled were all bald allegations with nothing specific against the assessee. It is further pointed out by the learned senior counsel appearing for the respondent/assessee that the revenue had filed an appeal as against the decision in the case of Jha Educational Trust in ITAT/228/2018 which was dismissed by this Court by judgment dated 28th January, 2019. Thus, for all the above reasons, we hold that there is no question of law much less the substantial question of law arising for consideration in this appeal.

Accordingly, the appeal (ITAT/21/2018) fails and is hereby dismissed.

With the dismissal of the appeal, the stay application (GA/1/2018) stands closed.

(T. S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

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