Form No.(J2)

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

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITA/63/2018
IA NO.GA/1/2018 (Old No.GA/616/2018)

COMMISSIONER OF INCOME TAX (EXEMPTION) KOLKATA
-Versus-
BALARAM HANUMANDAS CHARITABLE TRUST

For the Appellant: ***Mr. P.K. Bhowmik, Adv.***

For the Respondent: ***Mr. J.P. Khaitan, Sr. Adv.***
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Indranil Banerjee, Adv.
Mr. S. Rudra, Adv.

Heard on : 16.02.2022

Judgment on : 16.02.2022

T. S. SIVAGANANAM, J. : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 15th September, 2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the 'Tribunal' in short) in ITA No.431/Kol/2017 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law:

(i) *Whether on the facts and circumstances of the case and in law, the Learned Tribunal is right in quashing the order for cancellation of registration under Section 12AA(3) of the Income Tax Act, 1961 based on money laundering activities carried out by the assessee trust with Herbicure Healthcare Bio Herbal Research Foundation ignoring that such activities have been established in other similar basis ?*

(ii) *Whether on the facts and circumstances of the case and in law, the Learned Tribunal is perverse in law in holding that there is no allegations in the order of the Commissioner of Income Tax (Exemption), that the activities of the trust are not genuine or that activities are not carried out in accordance with the object of the trust particularly when the Commissioner of Income Tax (Exemption) has already given a finding that the activities of the trust are non-genuine?*

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

On a reading of the substantial question of law (i) we find that the revenue has mentioned the name of Herbicure

Healthcare Bio Herbal Research Foundation. However, on perusal of the order of the Commissioner of Income Tax (Exemption), Kolkata passed during December 2016 the allegation is against School of Human Genetics and Population Health. Therefore, instead of Herbicure Healthcare Bio Herbal Research Foundation, it has to be mentioned as School of Human Genetics and Population Health.

The assessee was registered under Section 12A of the Act by order dated 11th September, 1979. Pursuant to survey operations conducted on School of Human Genetics and Population Health by the investigation department, it was alleged that the said organisation is engaged in money laundering and providing accommodation entries to different individuals and orgnisations. This was done by adopting two modes, namely, one accepting donation and returning the same to the donor through web of financial transaction and retaining the commission and the second one is accepting money by cash or financial transaction and giving donation after retaining the commission. The allegation against the assessee was that they received donations through banking channel and returned the same in cash to the donor. In this regard, certain statements were referred to by placing reliance on those statements and also that the approval granted in favour of the School of Human Genetics and Population Health had been withdrawn under Section 35(1)(2i) of the Act. The CIT(E) concluded that the activities of the assessee are not genuine and are not being carried out in accordance with the objectives of the trust. The assessee preferred appeal before the tribunal and raised various grounds on facts and placed reliance on the decision of the tribunal in the case of Sri Mayapur Dham Pilgrim and Visitors Trust Vs. CIT(Ex) in ITA 1165/Kol/2016 dated 3rd May, 2017. The Tribunal after examining the facts noted that there was a specific request made by the assessee for granting opportunity of cross-examination of the persons whose statements were referred to by the CIT(E). When the registration was cancelled and having found that such opportunity was not granted, the tribunal held that it is in violation of principles of natural justice. Further, the tribunal noted that the decision of the Hon'ble Supreme Court in CIT Vs. S. Khader Khan Son 352 ITR 480 (SC) wherein it was held that Section 133A of the Act does not empower the income tax authorities to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition. Further, the tribunal noted the decision in the case of Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata – II (2015) 62 taxmann.com 3 (SC) for the proposition that when the statements of witnesses are made the basis for a demand, not allowing the assessee to cross-examine the witnesses, is a serious flaw which makes the order a nullity, as it amounts to violation of principles of natural justice. Further, on facts, the tribunal found that there is no evidence on record to show any connection between the assessee and the brokers and in the absence of any evidence it is not possible to come to any conclusion that the assessee indulged in money laundering and the donation as received by them was a bogus donation. The tribunal also noted that the facts of the assessee’s case were identical to that of the case in Sri Mayapur Dham Pilgrim and Visitors Trust. Furthermore, the tribunal noted that the CIT(E) did not dispute the fact that the assessee was running an educational institution in the State of Haryana imparting education to 2993 students and during the year 2013-14 they have received donation of Rs.7,71,02,000/- from 172 parties which were placed in the form of paper book before the tribunal. Further, the tribunal held that CIT(E) has not doubted the genuineness of the other donations except for two parties. Further, with regard to the genuineness of the activities of the assessee, the tribunal noted that the assessee was catering to the need for high quality English medium school for around 100 villages at Bahal and they have ventured into the field technical education for establishing an engineering college apart from running fully free school since 2010 where under privileged students of the society are imparted free education. That apart, the tribunal also noted that the CIT(E) has not doubted the charitable activities done by the assessee trust either to be not genuine or not being carried on in accordance with the objects for which the trust was formed. The facts of the case on hand are more or less identical to that of the facts in Mayapur Dham Pilgrim and Visitors Trust. Challenging the order passed by the tribunal in favour of the said trust, the revenue was on appeal before us in ITAT 312/2017 and by judgment dated 16th February, 2022 the appeal filed by the revenue was dismissed and the order passed by the tribunal was confirmed. Thus, for all the above reasons, we are of the view that the tribunal has rightly granted relief to the respondent/assessee.

In the result, the appeal filed by the revenue stands dismissed and the substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the stay application stands closed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

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