O-131

ITAT/91/2018

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

COMMISSIONER OF INCOME TAX,
(EMEMPTION)

-Versus-

MITRA PARISHAD

Appearance:
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...for the appellant.

Mr. Bhaskar Sengupta, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 12th September, 2022.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 6th September, 2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.2434/Kol/2016.

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

(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 with Herbicure Health Care Bio Herbal Research Foundation ignoring that such activities have been established in other similar case?

(ii) Whether on the facts and circumstances of the case and in law, the Learned Tribunal is right in quashing the order on the basis of perceived procedural lapses ignoring truthfulness of fact?

(iii) 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 impugned order nor finding that the activities of the trust are not genuine or that activities are not being 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. Vipul Kundalia, learned senior counsel assisted by Mr. Anurag Roy, learned advocate for the appellant/revenue and Mr. Bhaskar Sengupta, learned advocate for the respondent/assessee.

The short issued involved in this appeal is whether the Commissioner of Income Tax (Exemption) [CIT(E)] was justified in cancelling the registration granted in favour of the respondent society that too with retrospective effect. The learned tribunal has allowed the appeal filed by the respondent taking note of the fact that the opportunity to cross-examine the persons who were in charge of the company which had extended a donation of Rs.50 lacs to the assessee was fatal. That apart, on facts the tribunal found that the amount of Rs.50 lacs was being utilised for purchase of property and, therefore, even though the receipt of donation has to be treated as unexplained receipt of the assessee as per Section 68, the addition cannot be made because the assessee itself has applied the entire receipt for the objects of the assessee society. Further, the learned tribunal after taking note of the various decisions of the High Court, on facts, found that the assessee has shown the donation as corpus fund and had applied the same by advance money to the land and building which was shown in the balance-sheet as at 31.3.2011 which was placed before the learned tribunal in the form of a paper book. The learned tribunal also found that the application of the said fund was admittedly for a charitable purpose in tune with the objects of the assessee society. Furthermore, the tribunal noted that the revenue did not dispute the fact that the donations received by the respondent were not applied for charitable purposes. Thus, on the grounds mentioned in the order the tribunal came to the conclusion that the activities of the assessee society cannot be terminated to be ingenuine or it cannot be held that the their activities are not in accordance with the objects of the assessee trust.

Mr. Kundalia, learned counsel for the appellant/revenue placed reliance on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax (Exemptions) Kolkata Vs. Batanagar Education and Research Trust, reported in (2021) 9 SCC 439. On going through the said decision we find that the same is factually distinguishable as in the said case the Hon'ble Supreme Court brought out the answers which were culled out from the managing trustee of the said trust. A questionnaire had been given by the department. In the case on hand the tribunal has noted that in spite of specific request made by the assessee for cross-examination of two persons, namely, Sri Swapan Ranjan Dasgupta and Sri Kishen Bhawshingka which was rejected on the ground that the assessee society has indulged in ingenuine activities. In fact, substantial part of the order passed by the learned tribunal has been devoted on the correctness of denial to afford an opportunity to cross-examine those two persons.

Thus, we find that the tribunal has considered the factual position and granted relief to the assessee. Thus, the appeal [ITAT/91/2018] is dismissed and the substantial questions are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

As//S.Das