

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

IA NO: GA/2/2017
(Old No:GA/1184/2017)
I.T.A.T. No. 132 of 2017

Commissioner of Income Tax (Exemption), Kolkata.
Versus
Lotus Charitable Trust.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 21st January, 2022.

Mr. P.K. Bhowmick with
Mr. Asok Bhowmick, Adv.
... for the Appellant.

Mr. P. Jhunjhunwala, Adv.
... for the Respondent.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against an order dated 8th June, 2016 passed by the Income Tax Appellate Tribunal, Kolkata, 'A' Bench in ITA 398/Kol/2012 for the assessment year 2009-2010. The appellant/revenue has raised the following substantial questions of law for consideration –

- 1) Whether registration under Section 12AA(3) of Income Tax Act, 1961 can be restored in a case of Trust found to be engaged in activities beyond and not incidental to its objectives ?
- 2) Whether charitable purpose as per provisions of Section 2(15) of Income Tax Act, 1961 can be extended to an institution running activities of purely commercial nature and beyond and not incidental to the objectives of the Trust?

We have heard Mr. P.K. Bhowmick assisted by Mr. Asoke Bhowmick, learned Counsel for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Counsel for the respondent/assessee.

The assessee is a Trust which was granted registration under Section 12AA of the Act with effect from 25th September, 1980. Approval under Section 80G of the Act was also granted to the assessee from time to time and the last of such approval, at the relevant time, was on 20th May, 2011 which was in perpetuity. The main objects of the assessee/trust was to assist, finance, support, found, establish and maintain any trust, society or institution meant for the relief of the poor, advancement of education, medical relief or advancement of any other object of general public utility. There were other objects of the trust which have been noted by the

Tribunal in paragraph 3 of the impugned order. A proposal was received from the Joint Director of Income Tax (OSD), Exemption III, Kolkata dated 19th December, 2011 proposing to cancel the registration granted in favour of the assessee on the ground that it was engaged in running of a health club which is not in accordance with the object as mentioned in the Deed of Trust.

The assessee contended that it was providing medical relief by imparting Pranic Healing and also providing services for mental and physical fitness through a facility called 'Solace' which is incidental to the main objects of the trust. Further, the trust treats patients without any distinction of caste and creed and the Pranic Healing is an universally recognised alternative method of treatment. Furthermore, it is submitted that the membership to the facility, 'Solace', is not restricted and it represents a cross-section of the public. Therefore, the facilities can never be called as a 'Spa' or a 'club'.

The Director of Income Tax (Exemption), Kolkata [DIT(E)] considered the submissions made by the assessee, but rejected the same by an order dated 16th January, 2012 largely on the ground that only well-to-do sections of the society can become members of the said facility and the said facility is nothing but a health club and it cannot be categorised as medical relief activity within the definition of Section 2(15) of the Act. The

DITE also held that the activities of the assessee in promoting Pranic Healing and the general fitness cannot be regarded as an object of general public utility. After having held so, the DIT(E) held that the assessee is squarely hit by the amended provisions of Section 2(15) of the Act and since the gross receipts exceeds Rs.10 lac, the activity of the trust has to be treated as in the nature of trade and commerce. With this reasoning, the registration was cancelled.

The assessee carried the matter by way of appeal to the Tribunal. The assessee pointed out and raised factual and legal issues before the Tribunal.

By the impugned order, the Tribunal has allowed and restored the registration, the correctness of which is questioned before us by raising substantial questions of law, as suggested by revenue, referred to above. The undisputed facts are that the assessee which is a trust, runs a diabetic centre in the name and style of 'Sunny Park Diabetic Endocrine Centre' which is a medical facility and the another facility has been established for Pranic Healing which is called 'Solace'. The Commissioner noted that the activities of the assessee/trust are divided into two segments namely, Medical Relief Centre and the Health Centre. The former is known as 'Sunny Park Diabetic Endocrine Centre' and the latter as 'Solace'. After giving a brief narration about what is Pranic Healing, the

Tribunal went into the factual aspect of the matter and found that the membership to the facility, 'Solace', is as per the choice of the individual and it has got various categories of people who are members. The other activities of the trust were also examined, wherein medical relief has been provided and on facts, the Tribunal was satisfied that the activities of the members cannot be split into two and the facility, 'Solace', cannot be regarded as 'spa' or 'club'. More importantly, the Tribunal noted from the assessment year 2002-2003 and 2008-2009, the revenue never disputed the charitable nature of the activities of the trust and the returns were filed by the assessee were processed. That apart, the Tribunal pointed out that DIT(E) itself has stated that the activities would fall within the fourth limb of Section 2(15) of the Act. Thus, the issue was whether in the given facts, the registration could have been cancelled. In this regard the Tribunal rightly noted the decision of Tamil Nadu Cricket Association vs DIT(E) reported in (2014) 360 ITR 633 (Mad) and also a decision of Mumbai Tribunal. Thus, the legal position has been rightly noted by the Tribunal and the relief was granted to the assessee.

Thus, we find there is no error in the approach of the Tribunal nor the ultimate conclusion arrived at by the Tribunal warranting interference. For the above reasons, the appeal fails and is dismissed and the substantial

questions are answered against the revenue. Connected applications are also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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