OD-45

IA No. GA/1/2018
(OLD No. GA/1249/2018)
In ITAT/176/2018
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX(EXEMPTION), KOLKATA
VERSUS
SARLABEN BHANSALI CHARITIES TRUST

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE ANANDA KUMAR MUKHERJEE

Date : 7th January, 2022

Appearance :-

Mr. Debasish Chowdhury, Adv.
... For Appellant
Mr. Ananda Sen, Adv.
... For Respondent

The Court : This appeal by the revenue under Section 260A of the Income Tax Act, 1961(the Act for brevity) is directed against the order dated 30th November, 2017 passed by the Income Tax Appellate Tribunal, Kolkata "B" Bench, Kolkata (Tribunal) in ITA Nos. 663 & 76/Kol/2016 for the assessment year 2010-11. The revenue has raised the following substantial questions of law for consideration:

(a) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal, “B” Bench, Kolkata has erred in law in holding that the action under Section 263 of the Income Tax Act, 1961 cannot be taken subsequent to cancellation of registration for the year when the cancellation order was not available to the Assessing Officer while passing the order under Section 147/143(3) of the Income Tax Act, 1961?

(b) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal, “B” Bench, Kolkata has erred in law in holding that the cancellation of registration cannot be made with effect from April 01, 2009 without considering the fact that in this case registration was granted under Section 12AA of the Income Tax Act, 1961 and not under Section 12A of the Income Tax Act, 1961?

We have heard Mr. Debasish Chowdhury, learned Standing Counsel appearing for the appellant/revenue and Mr. Ananda Sen, learned Counsel appearing for the respondent/assessee. The Tribunal had allowed the assessee’s case following the decision in the case of Commissioner of Income Tax(exemption) Vs. Mukesh Bhansali Charities Trust in ITA allowed the assessee’s appeal following the decision of the Tribunal in the case of Mukesh Bhansali Charities Trust Vs. Commissioner of Income Tax(exemption), ITA No.

1250/Kol./2016 dated 9th June, 2017 wherein the Tribunal upheld circular No. 1 of 2011, dated 6th April, 2011 issued by the CBDT and held that Section 12AA(3) is applicable only from the assessment year 2011-12. The revenue had filed appeal before this Court in the case of Mukesh Bhansali Charities Trust Vs. Commissioner of Income Tax(exemption) in ITAT No. 333 of 2017 and by judgment dated 11th March, 2019 the appeal filed by the revenue was dismissed. Thus, we find that the substantial questions of law raised in this appeal are covered against the revenue.

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

With the dismissal of the appeal, the stay application(IA No. GA/1/2018, Old No.GA/1249/2018) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(ANANDA KUMAR MUKHERJEE, J.)

SN/mg
AR(CR)