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ITAT/244/2018
IA No.GA/1/2018 (Old No.GA/2146/2018)
IA No.GA/2/2018 (Old No.GA/2147/2018)

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

COMMISSIONER OF INCOME TAX
(EXEMPTION), KOLKATA

-Versus-

KHAITAN FOUNDATION

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th April, 2022.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel appearing for the appellant/revenue.

There is a delay of 36 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay and we find that the reasons assigned therein are satisfactory. However, we note that the respondent/assessee has not been served as of now. In any event, we are inclined to take up the main appeal for consideration and we have heard the submissions of the learned standing counsel for the appellant.

For such reasons, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application for condonation of delay (IA No.GA/1/2018 (old No.GA/2146/2018) is allowed.

Re: ITAT/244/2018:

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 19th January, 2018 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the 'Tribunal' in short) ITA No.09/Kol/2017 for the assessment year 2014-15.

The revenue has raised for 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, "A" Bench, Kolkata has erred in law in annulling the cancellation of the registration of the trust under Section 12AA(3) of the Income Tax Act, 1961 without considering the fact that the Assessee was found to have been indulged in illegal activity of money laundering which is not genuine and not being carried out in accordance with the object of the trust ?*

b) Whether the impugned order is bad, arbitrary, illegal perverse and the same is nothing but a total non-application of mind of the Income Tax Appellate Tribunal, Kolkata and as such the same is liable to be set aside and/or quashed ?

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue.

The short question involved in this appeal is whether the Commissioner of Income Tax (Exemption), Kolkata was justified in cancelling the registration granted to the respondent/assessee under Section 12AA of the Act. The basis of cancellation of registration was a statement recorded from one Anand Agarwal, Managing Trustee of Gobind Ram, Goel Charitable Trust. Apart from the said statement there was no other material adverse to the interest of the respondent/assessee placed for consideration before the Commissioner of Income Tax (Exemption). The statement so recorded from Shri Anand Agarwal was subsequently retracted. The Tribunal, while testing the correctness of the order passed by the Commissioner, took note of the settled legal principle that a statement made by a third party during the course of survey operation is not binding on the assessee and in this regard rightly placed reliance on the decision of the Hon'ble Supreme Court in S Khadder Khan & Sons reported in 352 ITR 480. Furthermore, the Tribunal examined the facts of the case and found that no other adverse finding has been recorded by the Commissioner with regard to the activities of the trust to be not in accordance with the object of the trust. Nor there is any adverse finding recorded by the Commissioner as regards the genuinity of the activities of the trust. These are all the relevant factors which need to be taken into consideration for the purpose of granting registration under Section 12AA of the Act. In absence of any adverse material against the assessee on this aspect, the Tribunal was fully justified in setting aside the order passed by the Commissioner of Income Tax (Exemption).

Thus, we find no grounds to interfere with the order passed by the Tribunal. Accordingly, the appeal (ITAT/244/2018) fails and is dismissed. Consequently, the substantial questions of law are answered against the revenue.

In the result, the connected application for stay IA No.GA/2/2018 (Old No.GA/2147/2018) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/As.