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

ITAT/39/2019
COMMISSIONER OF INCOME TAX, (EXEMPTION) KOLKATA
Versus
VIJAY KUMAR BAJORIA FOUNDATION

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : NOVEMBER 22, 2022.

Appearance:
Ms. Smita Das De, Adv.
...for appellant

The Court :- This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) dated 19th April, 2017 in ITA 2293 and 2294/Kol/2016. The appeal was admitted on 1st April, 2019 to decide the following substantial questions of law :

A) Whether the impugned order of the tribunal dated 19th April, 2017 is perverse in failing to appreciate and record a finding that the trust in question was not involved in any charitable activities and that its registration was liable to be cancelled under Section 12AA of the Income Tax Act, 1961 ?

B) Whether on the facts and in the circumstances of the case, the learned tribunal ought to have upheld the order of the Commissioner of Income Tax (Exemption) canceling the registration of the trust under Section 12AA of the said Act on the ground of absence of charitable activities and also rejecting the exemption claimed by it under Section 80(G)(S)(vi) of the said Act ?

We have heard Ms. Smita Das Dey, learned standing Counsel for appellant/revenue. The Commissioner of Income Tax (Exemption), Kolkata [CIT(E)] rejected the application filed by the assessee for registration under Section 12AA of the Act on the ground that the assessee was not carrying on any charitable activity. The correctness of the said finding was tested by the learned Tribunal and on facts it was found that the Trust had a corpus fund of Rs.20,56,600/- and a sum of Rs.19,00,000/- was lying in the fixed deposit with SBI and out of the accumulated interest a sum of Rs.3 lakhs was given as donation to the T.B. Sanitarium at U.P. That apart the learned Tribunal on facts found that the [CIT(E)] has not found objects of the Trust to be not charitable. The settled legal position is that while granting registration to a charitable institutions/Trust if it is at the commencement state the powers of the [CIT(E)] before whom the application is filed is limited to the aspect of examining whether or not the objects of the trust are charitable in nature. Admittedly, in the instant case the [CIT(E)] has not recorded any finding that the object of the Trust are not charitable in nature. That apart there was no material brought on record by the

[CIT(E)] that the donations were given with some ulterior motive. The [CIT(E)] had relied upon a decision of the High Court of Kerala in the case of *Self Employers' Service Society Versus Commissioner of Income Tax*; 2001, 247 ITR 018 (Kerala). The learned Tribunal on going through the facts of the said case had rightly pointed out that the said decision is clearly distinguishable as in the said case no material was produced by the assessee therein to show that it carried out any charitable activity. The fact situation in the case on hand is entirely different. Thus we are of the view that the learned Tribunal rightly allowed the appeal filed by the assessee.

In the result the tax case appeal is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.