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

IA NO.GA/2/2017
(OLD NO. GA/3645/2017)
In
ITAT/366/2017

COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA
VS.
M/S SETH JAGANNATH BAJORIA CHARITABLE TRUST

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: January 3, 2022.

[Via video conference]

Appearance :
Mr. Debashis Chowdhury, Adv.
... for the appellant/revenue

Mr. Akhilesh Gupta, Adv.
... for the respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 17th March, 2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA No. 19/Kol/2016 for the assessment year 2006-07.

The Revenue has raised the following substantial questions of law raised for our consideration;

1. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in allowing registration under Section 12AA of the Income Tax Act in the absence of dissolution clause and the original copy of the Trust Deed since the absence of such clause in the Trust Deed takes away the charitable nature of the trust.
2. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in relying on the decision of the ITAT, Mumbai passed in the case of Tara Educational and Charitable Trust in ITA no. 1247/Mum/2013 which does not apply in the facts of the instant case.

We have heard Mr. Debashis Chowdhury, learned standing Counsel appearing for the appellant/revenue and Mr. Akhilesh Gupta, learned Counsel for the respondent/assessee.

The respondent/assessee is a Trust having been constituted by a Deed of Trust dated 12th July, 1944. It filed an application in Form No. 10A for registration on 14th July, 2015. The said application was rejected by the Commissioner of Income Tax (Exemptions), Kolkata CIT(E), by order dated 4th November, 2015 under Section 12AA of the Act on the sole ground that the Deed of Trust did not contain a dissolution clause.

On perusal of the order dated 4th November, 2015, we find that CIT(E) did not doubt the genuineness of the activities of the respondent/Trust. The assessee Trust carried the matter on appeal before the Tribunal, specifically by producing a certified copy of the Deed of Trust. Further stating that the Trust is a public charitable trust, the immovable property has been set apart for a temple at Haridwar for the general public and no trustee or the Trust are there related or entitled for any profits from the assets and usufructs of the Trust and the Trustee has passed a resolution stating therein that in the event of dissolution of Trust, all available funds including the immovable and movable assets of the Trust to be handed to any other Trust having similar objects and operating within the Union of India. Further, if no such Trust is found, the property shall be vested to the Government. This resolution was annexed as Annexure No. IV to the grounds. The Tribunal after considering the factual position and on examining the records placed before it allowed the appeal filed by the assessee. We find that there is no error in the order passed by the Tribunal. As already pointed out the CIT(E) did not doubt the genuineness of the activities of the Trust but merely stated that dissolution clause was not found and/or available in the Deed of Trust. The order passed by the CIT(E) dated 4th November, 2015 is a non-speaking order. Had the CIT(E) examined the entire records including the resolution passed by the Trust which came into being as early in the year 1944 then in all probability the application would not have been rejected. In any event, the Tribunal rightly applied the legal position and allowed the assessee's appeal and we find that there is no ground to interfere with the order passed by the Tribunal.

Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH