Form No.[J2]

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

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITA/270/2009

IA NO: GA/1/2009, (Old No.GA/2658/2009)

COMMISSIONER OF INCOME TAX [CENTRAL]-III, KOLKATA
VERSUS
GURU NANAK EDUCATIONAL TRUST

For the appellant: Mr. Radha Mohan Roy, Adv.,

For the responden t: Mr. J. P. Khaitan, Sr. Adv.,
Mr. S. Kejriwal, Adv.,
Ms. Swapna Das, Adv.,

Heard on : January 17, 2022.

Judgement on : January 17, 2022.

T.S. SIVAGNANAM, J. : This application has been filed to condone the delay of 42 days in filing the instant appeal.

Heard Mr. Radha Mohan Roy, learned senior standing counsel appearing for the appellant and Mr. Khaitan, learned senior counsel appearing for the respondent/assessee.

We are satisfied with the reasons assigned in the affidavit filed in support of the petition. Accordingly, the application for condonation of delay, IA NO: GA/1/2009, (Old No.GA/2658/2009), is allowed and the same is disposed of accordingly.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 [the Act, in brevity] is directed against the order dated 20.03.2009 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata [the Tribunal] in ITA no.96/Kol/2009 for the assessment year 2006-07. The revenue has raised the following substantial questions of law for our consideration.

a. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in holding that no proper opportunity was afforded to the assessee as required under section 12AA[3] of the Act ?
b. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in holding that the issue of Capitation Fees was not raised by the Commissioner of Income Tax in his notice dated 30th December, 2008 while initiating the cancellation proceedings?

We have heard Mr. Radha Mohan Roy, learned senior standing counsel appearing for the appellant and Mr. Khaitan, learned senior counsel appearing for the respondent/assessee.

The short issue which falls for consideration in this appeal is whether the Commissioner of Income Tax, Central-III, Kolkata could have cancelled the registration granted to the appellant trust under

Section 12AA of the Act on 31.10.2005 on grounds which were not contained in the show cause notice dated 30.12.2008. The only allegation in the show cause notice was that the Commissioner on perusal of the accounts of the trust filed with the return for the assessment year 2006-07 found that the assessee trust has accepted donation amounting to Rs.25,000/- which has been shown as box collection. The Commissioner was of the opinion that this donation is an anonymous donation within the meaning of Section 115BBC of the Act. Therefore, the assessee trust was called upon to show cause as to why the registration could not be cancelled on the ground that the activities of the trust are not being carried on in accordance with the objects of the trust. The assessee submitted their explanation dated 31.12.2008 contending that in the financial year 2005-06 relevant to the assessment year 2006-07 the assessee trust received an amount of Rs.25,000/- as box collection and credited the same in the account as donation. It was further contended that the provisions of Section 115BBC of the Act are applicable only with effect from the assessment year 2007-08. Therefore, the assessee stated that all the activities of the trust are in accordance with the objects of the trust as mentioned in the deed of trust dated 05.08.1999. The Commissioner while proceeding to pass the order dated 31.12.2008 and cancelling the registration took into account certain issues which were not subject matter of the allegations in the show cause notice. The question was whether the Commissioner could have done so.

In our considered view, the Tribunal rightly took note of the facts and pointed out that the Commissioner exceeded his jurisdiction by making certain observations, which were not subject matter of allegations in the show cause notice. Thus, in our considered view, the Tribunal after noting the facts has granted relief to the assessee. Thus, we find no question of law much less substantial questions of law arising for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

pkd/S.Pal
AR(CR)