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ITAT/119/2015
IA No.GA/1/2015 (Old No.GA/2696/2015)

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

COMMISSIONER OF INCOME TAX,
CENTRAL-1, KOLKATA

-Versus-

NARULA EDUCATION TRUST

Appearance:
Mr. Smarajit Roychowdhury, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Siddharth Das, Adv.
Ms. Swapna Das, Adv.
...for the respondent.

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

Date : 22nd August, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 29th January, 2015 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.151/Kol/2012 for the assessment year 2008-09.

The revenue has suggested the following substantial questions of law:

" i) *Whether the Learned Tribunal erred in law in not remanding the matter to the Assessing Officer to ascertain whether the assessee had received any capitation fees in the garb of donation in the relevant assessment year and thereafter directing the Assessing Officer to carry out de-nevo assessment based on such findings?*

ii) *Whether the Learned Tribunal in the facts and circumstances of this case erred in law in not calling for the records of the relevant assessment year to ascertain the nature of receipts of the Assessee and accordingly failed to act as the last act finding body under the statute"*

We have heard Mr. Smarajit Roychowdhury, learned standing counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior advocate assisted by Ms. Swapna Das and Mr. Siddharth Das, learned advocates for the respondent/assessee.

The short issue which falls for consideration is whether the order passed by the tribunal setting aside the order passed by the Commissioner of Income Tax (Appeals) was just and proper in the facts and circumstances of the case. The assessee is a trust which was granted registration under Section 12AA of the Act on 5th December, 2000. This registration was cancelled by invoking the provisions under Section 12AA(3) of the Act from the assessment year 2004-05. The said order was put to challenge and the order of cancellation was set aside and the same stood confirmed upto this Court. Thus, the tribunal took note of the said development and also noted that the CIT(A) denied exemption under Section 11 of the Act on the sole ground that the registration granted to the respondent/assessee had been cancelled but the same having been restored, the tribunal held that there is no reason for denying exemption. The revenue by way of a supplementary affidavit now seeks to condone that the assessment should be permitted to be re-done de novo by the assessing officer on the ground that at the first instance the denial of exemption was solely on the ground that the registration granted to the assessee was cancelled. The question would be as to whether the same is permissible. The CIT(A) on an assumption that the respondent/assessee had received capitation fee under the garb of receiving donation from and on behalf of students for giving admission came to the conclusion that the activities of the trust are not in accordance with the deed of trust and the provisions of the Income Tax Act and its activities are not genuine and not being carried on in accordance with the objects of the trust and, accordingly, the registration was cancelled. This order was put to challenge before the tribunal in ITA No.1478/Kol/2010 which was allowed by the tribunal by order dated 24th February, 2012. Against such order, the revenue preferred appeal before this Court in ITAT No.141/2012 which was dismissed by judgment dated 8th July, 2012. Further, it is seen that the department had denied exemption to the assessee for the assessment years 2004-05, 2006-07 and 2007-08 solely on the ground that the registration granted to them under Section 12A was cancelled. Subsequently, in view of the restoration of the registration, by order dated 30th April, 2012 the tribunal quashed the assessment order for the aforementioned three years. The revenue preferred appeal before this Court in ITAT/53/2013 and the said appeal was dismissed as not pressed by order dated 8th May, 2013. Similarly, for the assessment years 2009-10 and 2010-11, exemption udner Section 11 was denied for the sole reason that the registration granted under Section 12A of the ACt was cancelled. Against such assessment order, the assessee preferred appeal before the CIT(A) who directed the assessing officer to grant exemption under Section 11A of the Act. The revenue preferred appeal before this Court for the assessment year 2010-11 in ITAT/335/2017 which was also dismissed by order dated 6th July, 2018.

In the light of the above, the plea raised by the revenue that the assessment should be directed to be re-done de novo is impermissible. Furthermore, it was never the case of the department that the denial of exemption was on the ground that capitation fee was received by the assessee. In fact, in the appeal the filed before the CIT(A), Central – 3, Kolkata the assessee had raised a specific plea that there is nothing on record that there was any capitation fee received by the assessee for running its activity as an educational institution.

Furthermore, we also note that the assessment was under Section 143(3) of the Act and before completing the assessment and passing the order dated 22nd December, 2010, the assessing officer issued notices under Sections 143(2) and 143(1) of the Act and after due enquiry, the assessment was completed. There is absolutely no whisper in the said order that the respondent/assessee had received capitation fee.

Thus, for the above reasons, we are of the view that the plea raised by the revenue that the assessing officer should be permitted to re-do the assessment for de novo consideration is impermissible. For the above reasons, the appeal (ITAT/119/2015) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/1/2015) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.