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

ITAT/199/2013
IA NO: GA/1/2013 (OLD NO. GA/3525/2013)

COMMISSIONER OF INCOME TAX, CENTRAL – III, KOLKATA
Vs
M/S. GURU NANAK EDUCATIONAL TRUST

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 6th June, 2022.

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

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

The Court : This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 21/6/2013 passed by the Income Tax Appellate Tribunal "C" Bench in I.T.A. No. 1134/Kol/2012 for the assessment year 2009-2010.

The revenue has suggested the following substantial questions of law for consideration :

I. Whether on the facts and in the circumstances of the cases the Learned Tribunal has erred in law in dismissing the departmental appeal by directing to allow exemption under Section 11 of the IT Act to the assessee trust, without considering the amendment in Section 12AA of the IT Act, by the Finance Act of 2010, for cancellation of the registration of a trust or institution where the activities of the trust/institution are not genuine or are not being carried out in accordance with the object thereof ?

II. Whether on the facts and circumstances of the cases the Learned Tribunal has erred in law in dismissing the departmental Appeal by directing to grant exemption under Section 11 of the IT Act to the assessee when the status of the assessee that was held as "AOP" for the reason as discussed in the assessment order was not challenged by the assessee ?

III. Whether on the facts and circumstances of the cases the Learned Tribunal has erred in law in dismissing the Departmental Appeal by directing to allow exemption under Section 11 to the assessee Trust, without considering the judgement given by the Hon'ble Bombay High Court in the case of Sinhagad Technical Education Society-Vs.- CIT,Central?

We have heard Ms. Smita Das De, learned standing counsel for appellant/revenue and Mr. J.P. Khaitan, learned Senior Counsel duly assisted by Ms. Swapna Das and Mr. Siddharth Das, Advocates for the respondent.

The revenue was in appeal as against the order passed by the Commissioner of Income Tax (Appeals), Central - III, Kolkata (CITA) dated 29.5.2012 whereby the appeal filed by the assessee was allowed and the assessing officer was directed to assess the income of the assessee as a trust and not as an association of persons (AOP). The Tribunal while considering the correctness of the said order noted that the only reason why the assessing officer assessed the income of the assessee as an "AOP" was on the ground that registration granted to the assessee under Section 12AA of the Act was cancelled by the Commissioner of Income Tax. The Tribunal further noted the order of cancellation of registration dated 31.12.2008 was set aside by the Tribunal by an order dated 20.03.2009 and, therefore, direction was issued to the assessing officer to assess the assessee as a trust and not as "AOP".

Learned Senior Counsel appearing for the respondent/assessee submitted that as against the order passed by the Tribunal dated 20.03.2009, the revenue had preferred an appeal before this Court in ITA/270/2009 and that by judgment dated 17.01.2022 the appeal has been dismissed.

In the light of the above, we find that there is no error in the order passed by the Tribunal directing the assessee to be assessed as a trust and not as "AOP". Therefore, the appeal filed by the revenue is dismissed and the question of law is answered against the revenue.

Accordingly, the stay application stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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