IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.87 of 2009

Centre for Youth & Social Development, Bhubaneswsar .... ***Appellant***

Mr. Gautam Mukherji, Senior Advocate

-versus-

Assistant Commissioner of Income Tax, Circle-2 (1), Bhubaneswar .... ***Respondent***

Mr. Radheyshyam Chimanka, Senior Standing Counsel along with Mr. A. Kedia, Junior Standing Counsel for Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE A. K. MOHAPATRA

ORDER
14.03.2022

Order No.

05. 1. This appeal by the Assessee is against an order dated 12th June, 2009 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.213/CTK/2007 for the Assessing Year (AY), 2004-05.

2. While admitting this appeal on 24th November, 2009, the following questions were framed for consideration by this Court:

> "I. Whether estimated disallowance of expenditure can be made without rejecting the books of account?
>
> II. Whether expenses in Tribal areas that is Karanjia be treated differently, or can be treated differently, from expenses made for Tribal people living in Bhubaneswar Slums?
>
> III. Whether a Charitable programes can be sustained without hiring programme personnel?

IV. Whether it was open for the appellate authority to reverse the findings of the Assessing Authority to the prejudice of the appellant without a challenge to the Order of Assessing Authority by the Revenue?

V. Whether the appellant is dealing with voluntary contribution which attracts incidence of Tax or merely fulfilling it's legal obligations by applying the grant on the direction of the donor agencies, thereby nearly acting as Trustee?

VI. Whether incidence of income tax would get attracted on the disallowance of expenditure/treatment of non-application of funds for charitable purposes amounting to Rs.22,68,182/-, in the instant case, as sought by the Assessing Officer, when the said amount constitutes much less than fifteen percent of the voluntary contributions received by the Appellant, and where the Appellant having applied not less than eighty-five percent of its voluntary contributions to charitable purposes, in accordance with law, and which has been confirmed in the Assessment proceedings?"

3. The Court has heard the submissions of Mr. Gautam Mukherji, learned Senior Counsel appearing for the Appellant-Assessee and Mr. Radheyshyam Chimanka, learned Senior Standing Counsel for the Respondent-Revenue Department.

4. The background facts are that the Assessee is a Charitable Society undertaking voluntary social services in Orissa. The Assessee is registered under Section 12A of the Income Tax Act, 1961 (Act) and it is entitled to exemption under Section 11 thereof.

5. On 31st October, 2004, for the AY in question, the Assessee filed a Nil return. The return was however picked up for scrutiny by the Assessing Officer (AO). In the assessment order dated

13th November, 2006, the AO determined the total income at Rs.32,32,980/- by treating 50% of the expenses of Rs.64,65,972/- on charitable activities in two projects i.e. in Bhubaneswar Slums to an extent of Rs.45,36,364/- and Karanjia to an extent of Rs.19,29,608/- as disallowable on the ground that it was for administrative/other expenses and not in fulfillment of the object of "rural and tribal development." After the Commissioner of Income Tax (Appeals)-II, Bhubaneswar [CIT(A)] confirmed the said order, the Assessee went before the ITAT with the aforementioned appeal. There was cross appeal by the Department as well. Both the appeals were disposed of by the ITAT by upholding the orders of the AO and CIT (A).

6. It is pointed out in the additional grounds filed in the present appeal that for the subsequent AYs i.e. 2007-08, 2008-09 and 2009-10, the entire expenditure incurred by the Assessee for its charitable activities including rural and tribal development had been allowed in full.

7. Following the principles of consistency as explained by the Supreme Court of India in ***Radhasoami Satsang v. CIT, (1992) 193 ITR 321 (SC),*** the Court sees no reason why for the AY in question i.e. AY 2004-05, 50% of the expenditure should have been disallowed. No satisfactory reasons have been provided either by the AO or by the CIT(A) or the ITAT for doing so.

8. Consequently, Question I is answered in the negative by upholding that the disallowance expenditure could not be made without rejecting the books of account. Question II is answered

in the negative by upholding that the expenses for the tribal people living in Bhubaneswar slums cannot be treated differently from the expenditure on the tribals in Karanjia. The other questions are again answered in favour of the Assessee and against the Department. In sum, by holding that there was no justification in disallowing Rs.22,68,182/- as claimed by the Assessee towards its expenditure of charitable purpose, the impugned orders of the AO, CIT(A) and ITAT corresponding to the above questions are hereby set aside. The Department will now give appeal effect to the present judgment within eight weeks.

9. The appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(A. K. Mohapatra)
Judge

M. Panda