IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.359 of 2011

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Ishan International Educational Society, a Society registered under the Societies Act, 1860 having its office at South End, Doctor's Colony, Malahi Pakri, Kankarbag P.O. Lohia Nagar, P.S. Kandarbagh through its Director Arvind Kumar, son of Late Durga Singh, resident of South End, Doctor's Colony, Malahi Pakri, Kankarbag P.O. Lohia Nagar, P.S. Kankarbagh, District-Patna.

... ... Appellant

Versus

1. Chief Commissioner Of Income Tax-I, Patna having its office at Central Revenue Building, Beerchand Patel Marg, Patna.
2. Commissioner of Income Tax-I, Patna having its office at Central Revenue Building, Beerchand Patel Marg, Patna.
3. Addl. Commissioner of Income Tax, Range-1, Patna having its office at Loknayak Jai Prakash Bhavan, Dak Bungalow Road, Patna.

... ... Respondents

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Appearance :

For the Appellant/s	:	Mr. D.V.Pathy, Advocate
For the Respondent/s	:	Mrs. Archana Sinha, Senior Standing Counsel

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

<u>CAV JUDGMENT</u>

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-09-2023

The question of law framed in the above case is as follows:-

"Whether on the facts and in the circumstances of the case, in view of the statutory bar contained in the second proviso to Sub-Section (2) of Section 12A of the Income Tax Act, for taking action under Section 147 of the Act by the Assessing Officer only on the ground of non-registration of the assessee for the said assessment year, the Income Tax Tribunal was justified in confirming the order of reassessment specially considering the fact that the assessee had been granted the benefit of

> exemption for all the preceding and all the subsequent years?"

2. The appellant is an educational institution who claimed that it is covered under Section 10 (23C)(vi) of the Income Tax Act, 1961 (for brevity, 'the Act'). The appellant filed return for the assessment year 2002-03 on 31.10.2003 claiming exemption from the income tax on the basis of a certificate issued on 01.04.2002 under Section 12AA of the Act. A notice was issued by the 3rd respondent under Section 147 of the Act on the premise that the appellant was not registered with the 2nd respondent under Section 12AA of the Act in the previous year relevant to the assessment year. A reassessment was carried out on the above basis which was challenged before the first appellate authority. The first appellate authority by Annexure-5 order found that the appellant is entitled to exemption under Sections 11 and 12 of the Act since the appellant is registered as a charitable trust under Section 12AA of the Act by the CIT-I, Patna on 30.03.2005 itself while notice under Section 148 was issued much later on 01.08.2006. The assessment records were found to contain the copy of the order under Section 12AA

of the Act granting registration to the appellant with effect from 01.04.2002. Expressing surprise at the denial of exemption, the appellate authority observed that the formation of belief by the Assessing Officer to reopen the assessment under Section 147 of the Act was untenable.

3. The Tribunal in an appeal by the Revenue overturned the decision of the first appellate authority as is evident from Annexure-6. Before the Tribunal, it was argued that since the certificate was issued under Section 12AA with effect from 01.04.2002, the assessee is entitled to the exemption in the relevant assessment year. The Tribunal specifically referred to the explanatory note issued by the Central Board of Direct Taxes (CBDT) pursuant to every Finance Act, wherein it is clarified that any amendment or insertion as on 1st of April would be applicable to the concerned assessment year, unless specified otherwise. The Tribunal; according to us correctly, found that a certificate granted by the Commissioner with effect from 01.04.2002 cannot be interpreted like a statutory provision applicable for the assessment year 2002-03; which is incorporated in the Act as on the first day of the

assessment year. The certificate is a document granting authority to the assessee to claim the exemption from a particular date and this would be applicable only from the financial year 2002-03. The assessment year 2002-03 being relatable to the financial year (previous year) 2001-02 the exemption would not be applicable. The assessee did not have the benefit of registration under Section 12AA of the Act in the previous year to the relevant assessment year and hence it could not claim benefit of Section 10(23C) of the Act; especially when the receipt exceeded Rs.1 Crore.

4. The assessee cannot have a claim that merely because for the previous & subsequent assessment years, the assessee was granted exemption; for the subject assessment year relatable to the relevant previous year, the assessee should be granted an exemption, though the assessee had not obtained a certificate under Section 12AA of the Act, for that particular year. The contention seems to stem from sub-section (2) of Section 12A and the second proviso, which prohibits any action under Section 147; which sub-section, however applies only to those assesses who made an application under the provisions of Section 11

and 12, after 01.06.2007. The assessee in this case made an application prior to that date since the order passed giving retrospective effect to the registration of the assessee was dated 30.03.2005; the application being prior to that.

5. We find the order of the Tribunal to be perfectly in accordance with law and the provisions of the Act. We answer the question of law in favour of the Revenue and against the assessee.

6. The appeal stands rejected answering the question of law framed, as above.

(K. Vinod Chandran, CJ)

Partha Sarthy, J. I agree.

Sunil/-

(Partha Sarthy, J)

AFR/NAFR	NAFR
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