OD-10

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

ITAT/90/2023
IA NO:GA/2/2023
COMMISSIONER OF INCOME TAX, EXEMPTION, KOLKATA
VS.
M/s. ANANDALOK

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th May, 2023

<u>Appearance</u> :
Mr. Prithu Dudhoria, Adv.
…for the appellant

Mr. Somnath Ganguli, Sr. Adv.
Mr. Sukalpa Seal, Adv.
Mr. Bhaskar Sengupta, Adv.
Ms. Priyamvada Singh, Adv.
…for the respondent

The Court : This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated October 21, 2022 passed by the Income Tax Appellate Tribunal, `B' Bench, Kolkata (Tribunal) in I.T.A No.2128/Kol/2018 for the assessment year 2014-15. The revenue has raised the following substantial questions of law for consideration :-

Whether on the facts and in the circumstances of the case as well as in law the Learned Income Tax Appellate Tribunal erred in law allowing the application of income to the tune of Rs.3.84 crores on account of free *distribution of medicine by simply relying on upon the photograph of medical camp, copies of the request letters from various social organizations and the annual flood report, 2013 which provided the broad picture of flood situation of the district without considering the direct and circumstantial evidences collected during the assessment proceedings ?*

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/revenue and Mr. Somnath Ganguli, learned senior counsel for the respondent/assessee.

The learned Tribunal allowed the appeal filed by the assessee challenging the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] who had affirmed the order passed by the Assessing Officer under Section 143(3) of the Act. The Assessing Officer doubted the genuineness of the expenditure incurred by the assessee on free distribution of medicines to patients and other social organizations during the flood situation. On going through the order impugned as well as the order passed by the CIT(A), we find that the entire matter was based upon the statement recorded from one Dr. Chatterjee. Admittedly, the said Dr. Chatterjee had been working in the assessee hospital and had initially resigned and thereafter rejoined the organization after a period of more than a year. The said Dr. Chatterjee through whom the statements were recorded was not made available for cross-examination by the Assessing Officer.

The learned Tribunal after taking note of the facts and the materials placed on record held that there was a flood in the district of Midnapore and the finding recorded by the Assessing Officer and the CIT(A) was contrary to the records. Furthermore, the learned Tribunal found that it is not in dispute that the assessee is engaged in charitable activities of providing free medicines, medical aid and treatment to the needy and poor operating hospital and conducting medical campaigns and these activities of the assessee were never doubted by the Income Tax department in the year under consideration or in the previous or succeeding years. Further, the documents in the nature of photographs produced before the Tribunal were also examined and it was found that the medical camp was conducted by the assessee to cater to the poor and affected people of the concerned area. Furthermore, the learned Tribunal has seen that requests were received by the assessee from various social organizations for giving free medicines so that the same could be distributed to the people affected by the floods. Further, the learned Tribunal noted the purchase of medicines were verified by the Assessing Officer by issuing notice under Section 133(6) of the Act to various suppliers who are confirmed to have supplied medicines to the assessee. Thus, the learned Tribunal came to the conclusion that the Assessing Officer had based his conclusion solely upon a statement recorded from an office bearer of the social organization and disallowed the expenses incurred by the assessee for supplying free medicines to social organizations. That apart, the Tribunal also noted that the assessee was not provided the opportunity to cross-examine despite specific request made by the assessee vide letter dated 7th December, 2016 requesting that they may be permitted to cross-examine the office bearer of the social organization. Thus, without affording such an opportunity the Assessing Officer could not have drawn adverse inference against the assessee. Further, we find that the

Assessing Officer based his findings on a statement recorded from one Dr. Chatterjee. Interestingly, the said Dr. Chatterjee was working as a resident Medical Officer in the assessee hospital from 1997 and according to him, due to certain personal issues between himself and the assessee hospital he left the hospital in March, 2013 and again rejoined in July, 2015. It appears that a statement was recorded from the said Doctor on 1st December, 2016 which could not have been of any relevance. Such supply of medicines by the assessee was stated to have been done during October, 2013. Furthermore, the said Dr. Chatterjee was also not made available for cross-examination by the assessee.

Thus, in the light of the factual conclusion arrived at by the Tribunal, we find no questions, much less substantial questions of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The application for stay being IA NO:GA/2/2023 is also dismissed.

(T.S. SIVAGNANAM, J.)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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