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

ITAT/153/2023
IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 5,KOLKATA
VS
J P FINANCIAL SERVICES PVT. LTD.

BEFORE:-
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 2nd AUGUST, 2023.

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for appellant

The Court :- This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated November 13, 2019 in ITA No. 07/Kol/2019 as well as the order in M.A. No. 4/Kol/2021 dated May 27, 2022 for the assessment year 2015-16.

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

A. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in allowing the deductions claimed under Section 35(1)(ii) of the Act by the assessee company for donation to the M/s. Herbicure Healthcare Bio-Herbal Research Foundation is perverse considering that there were ample evidence on the contrary and placed on record where it is clearly evident that such transactions were carried out by the assessee firm were I the nature of bogus donations made with the sole intention to evade taxes ?

B. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in giving relief to the assessee by allowing the claim of bogus donations under Section 35(1)(ii) by stating that the CBDT had recognized such bogus entry providing concerns namely M/s. Herbicure Healthcare Bio-Herbal Research Foundation under section 35(1)(ii) whereas on the contrary such approval and recognition had been withdrawn by the CBDT vide Gazettee Notification S.O. 2882(E) dated 6th September, 2016 and O.M. vide F. No. 203/09/2015/ITA.II dated 21st September, 2016 considering the nature of unscrupulous activities carried on by these donee concerns ?

We have heard Mr. Om Narayan Rai, learned standing counsel along with Mr. Soumen Bhattacharjee, learned Advocate for the appellant/revenue.

The short issue which falls for consideration in this appeal is whether the Tribunal was right in allowing the deductions claimed by the assessee under Section 35(1)(ii) of the Act for the donation to a organization who initially enjoyed a registration under Section 35(1) of the Act, which was subsequently withdrawn with retrospective effect.

The learned Tribunal followed the decision of a co-ordinate Bench of the Tribunal dated 27.07.2018 in the case of *Narbheram Vishram in I.T.A. Nos. 42&43/Kol/2018*. Apart from certain factual similarities the Tribunal in the said decision has also taken note of the decisions of the Hon'ble Supreme Court holding that there is no provision for withdrawal of recognition under Section 35(1)(ii) of the Act. The view taken by the learned Tribunal in the impugned order is supported by the decision of the Hon'ble Division Bench of this Court in the case of *Commissioner of Income Tax Versus General Magnets Ltd. ; (2002) 256 ITR 471* wherein the Court after taking note of various decisions namely *CIT v. Ethelbari Tea Co.(1931) Ltd., [2002] 256 ITR 470 (Cal), B.P. Agarwalla and Sons Ltd. v. CIT [1994] 208 ITR 863 (Cal), K.M. Scientific Research Centre v. Lakshman Prasad [1998] 229 ITR 23, Seksaria Biswan Sugar Factory Ltd.v. IAC [1990] 184 ITR 123, CIT v. Bhartia Cutler Hammer Co.[1998] 232 ITR 785, Chotatingrai Tea Estate Pvt. Ltd. v. CIT [1999] 236 ITR 644,* held that for the mistake committed by the department the assessee should not suffer. The withdrawal of approval to the society for retrospective effect is itself bad and no assessee should suffer for the mistake of the department. The department has power of withdrawal but in such cases withdrawal can be only with prospective effect. Further it was held that if the donation to the approved society is genuine, in that case withdrawal with retrospective effect does not affect the right of the assessee for deduction of the amount which has accrued to the assessee on the basis of the payment to an approved society under Section 35CCA of the Act.

In the light of the above, the order passed by the learned Tribunal does not call for any interference.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

The stay application being GA/2/2023 is also dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

SN/GH.