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ITA/292/2009

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

DIRECTOR OF INCOME TAX
(EXEMPTION), KOLKATA

-Versus-

SHE FOUNDATION

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th February, 2023

Appearance :
Mr. Prithu Dudheria, Adv.
...for the appellant.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 30th January, 2009 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.2101/Kol/2008 and ITA No.44/Kol/2009.

The appeal was admitted on 11th April, 2012 on the following substantial question of law:

(i) Whether, on the facts and circumstances of the case, the Income-tax Appellate Tribunal is

> *correct in holding that a trust has to be registered under Section 12AA and exemption certificate granted under section 80G(5)(vi) of the Income-tax Act, 1961 on the basis of the recitals in the trust deed though the trust had not carried out any charitable activities ?*

We have heard Mr. Prithu Dudhe, learned standing counsel for the appellant/revenue.

The Director of Income Tax (Exemption) cancelled the certificate of registration granted under Section 12AA of the Act on the ground that the trust has not carried out charitable activity. The correctness of the order was tested before the learned Tribunal which had taken note of the various decisions of the Hon'ble Supreme Court and, in our view, rightly held that while granting registration to the charitable institution or trust, if it is at the commencement stage, the powers of DIT with whom the application is filed by such trust/institution are limited to the aspect of examining whether or not the objects of the trust are charitable nature.

The revenue does not dispute the fact that the objects of the trust are religious and charitable in nature. If such be the factual position, the learned Tribunal rightly allowed the appeal filed by the respondent.

For such reason, we find no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal filed by the revenue (ITA/292/2009) is dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Kumar