OD-20

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITAT/53/2024
IA NO: GA/2/2024

COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA
Vs
M/S. SALT LAKE SHIKSHA SADAN

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 3rd May, 2024.

Appearance:
Mr. Smita Das De, Adv.
...for the appellant

Mr. Sourav Bagaria, Adv.
Mr. Sourav Chunder, Adv.
Ms. Mandobi Chowdhury, Adv.
...for the respondent

The Court: This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) against an order dated 12th June, 2023 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in I.T.A. No.209/Kol/2021 for the Assessment Year 2016-17.

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

(a) *Whether on the facts and in the circumstances of the case the Tribunal was justified in law to hold the receipts received from the students on account of Admission Fee, Academic Improvement Fund and*

Development Fund as Corpus Donation under Section 11(1)(d) of the said Act ignoring the fact that the said receipts are collected compulsorily from students along with tuition fees without any specific direction to qualify to be a corpus donation.

(d) *Whether on the facts and in the circumstances of the case the Tribunal was justified in law to treat the amount collected from the students in the nature of corpus donation as capital receipts despite the fact that the receipts are revenue in nature since there is no iota of evidence to show that the students are paying the fees voluntarily and not dictated from the institute?*

We have heard Ms. Smita Das De, learned counsel for the appellant and Mr. Sourav Bagaria, learned counsel appearing for the respondent.

The instant case arose out of the proceeding initiated under Section 263 of the Act by the Principal Commissioner of Income Tax (PCIT). The assessee which is a society engaged in educational activities is a charitable institution and holds a registration under Section 12A of the Act. They have claimed deduction under Section 11 which was accepted by the Assessing Officer. However, the PCIT was of the view that the funds which were collected cannot be shown to be for development fund for the institution.

Aggrieved by such order passed by the PCIT, the assessee filed appeal before the Tribunal. The Tribunal apart from noting the decisions which were relied on by the parties, took note of the documents which were placed before the Tribunal in the form of a paper book and found that the funds collected by the assessee have been used for development purpose i.e., for purchase and development of land and the extension and renovation of the existing school at Salt Lake. Further, the Tribunal noted that the State Government has granted 100% remission of stamp duty and registration charges in respect of a transaction where the assessee purchased the land. Furthermore, on facts, the Tribunal found that the receipts by the assessee have been routed through corpus fund of the assessee and have been used for the development purpose i.e., for the purchase of land and extension of school building.

Thus, considering the facts of the case, the learned Tribunal concluded that the funds otherwise have been deployed for development purpose are otherwise a debatable issue on which jurisdiction under Section 263 of the Act could not have been invoked. Thus, we find no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Consequently, the application stands closed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

bp/R.Bhar