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

ITAT/93/2024
IA NO: GA/2/2024

COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA
VS.
CAMELLIA EDUCARE TRUST

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 15th May, 2024

*Appearance* :
*Mr. Amit Sharma, Adv.*
*Mr. Aryak Dutt, Adv.*
*...for Appellant*

*Mr. J.P. Khaitan, Sr. Adv.*
*Mr. Saumya Kejriwal, Adv.*
*Ms. Ananya Rath, Adv.*
*Mr. Navin Mittal, Adv.*
*...for respondent*

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 30th May, 2023 passed by the Income Tax Appellant Tribunal, "B" Bench, Kolkata (Tribunal) in ITA No. 646/Kol/2022 and C.O. No.7/Kol/2023 for the assessment year 2020-21.

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

i) Whether on the facts and in circumstances of the case, the Learned Income Tax Appellate Tribunal is justified in dismissing the appeal of the Revenue and allowing the Cross Objection of the Assessee despite the fact that the respondent assessee failed to furnish audit report in Form 10B before due date as prescribed under Section 139(4) of the Income Tax Act, 1961 and notified by the CBDT and further failed to file any application for condonation of delay under Section 119(2)(b) of the Income Tax Act, 1961 ?

ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in ignoring the fact that non-issuance of intimation under Section 143(1) of the Income Tax Act, 1961 does not make the assessee entitled to claim exemption under Section 11 of the said Act when the assessee failed to furnish audit report in Form 10B before due date as prescribed under Section 139(4) of the Income Tax Act, 1961 and notified by the CBDT ?

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior counsel for the respondent.

The short issue which falls for consideration is whether the Tribunal was right in holding that the return filed by the assessee was to be treated as within time. The factual matrix has been elaborately set out by the learned Tribunal, which need not be repeated for a decision in this appeal. All that is required to note is that the Central Board of Direct Taxes issued Circular F. No.173/193/2019-ITA-I, dated 23.4.2019. This pertains to Section 12A of the Act relating to charitable or religious trust – registration of – clarification with regard to time allowed for filing of return of income subsequent to insertion of Clause (ba) in Sub-section (1) of Section 12A. The Circular refers to various representations received on the subject while processing the income tax returns for the assessment year 2018-19 in respect of belated income tax returns filed under Section 139(4) of the Act. Ultimately, the Board directed that for a trust registered under Section 12AA of the Act to avail the benefit of exemption under Section 11 shall, inter alia, file its return of income within the time allowed under Section 139 of the Act. Accordingly, orders under Section 143(1)(a) in those cases in which demand has been raised on this issue was directed to be rectified. Apart from that, another Circular was issued by the Board being Circular No. 8 of 2021, dated 30.4.2021 and in clause (d) of the said Circular, filing of belated return under sub-section (4) and revised return under sub-section (5) of Section 139 of the Act for the assessment year 2020-21, which was required to be filed before 31st March, 2021 may be filed on or before 31st May, 2021.

The learned Tribunal rightly applied the Circulars and granted relief to the assessee and thus we find no questions of law, much less substantial question of law, arising for consideration in this appeal.

Therefore, the appeal fails and stands dismissed.

The stay application IA No: GA/2/2024 is also dismissed.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)