O-85

ITA/38/2021

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

COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA

-VERSUS-

ALIPORE VIVEKANANDA SENIOR CITIZENS SOCIETY

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 2nd July, 2024.

Appearance:
Mr. Soumen Bhattacharjee, Adv.
... for the appellant.

Mr. S. M. Surana, Adv.
..for the respondent.

1. Heard Sri Bhattacharjee, learned junior standing counsel for the appellant/revenue and Sri Surana, learned advocate for the respondent/assessee.

2. This appeal was admitted by this Court by order dated 24.11.2021 on the following substantial question of law:

> *"a) Whether on the facts and in the circumstances of the case and in law, the learned Income Tax Appellate Tribunal, Kolkata is justified in observing that for granting registration under Section 12AA(1) of the Income Tax Act, 1961 activity is not criteria ignoring the provision of Section 12AA(a) which requires that the Commissioner of Income Tax shall satisfy himself about the genuineness of the activities?*

b) Whether on the facts and in the circumstances of the case and in law, the learned Income Tax Appellate Tribunal, Kolkata is correct in not appreciating that genuineness of activity cannot be examined there is no activity or if the activity has not commenced?"

3. Briefly stated facts of the present case are that the respondent is a society which was registered on 29.09.2016 under the Societies Registration Act. It applied for registration under Section 12AA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961') on 04.01.2017. It also applied for grant of approval under Section 80G of the Act, 1961. The Commissioner of (Exemption) rejected the application of the assessee on the ground that the institution is yet to start its charitable activity, in accordance its objects which are charitable in nature. Aggrieved with the order of the Commissioner (Exemption), the respondent filed ITA Nos.1340 & 1341/Kol/2017 before the Income Tax Appellate Tribunal, "C" Bench, Kolkata, which has been allowed by the impugned order dated 17.11.2017. ITAT not only noted the charitable activities of the respondent/assessee, but also held that rejection solely on the ground that the institution is yet to start its activities, cannot be sustained. The CIT(E) and ITAT both have found that the objects of the respondent/assessee institution is charitable.

4. On similar set of facts, this Court has rendered a judgment dated 01.07.2024 in ITA/111/2019 (Commissioner Of Income Tax (Exemption), Kolkata Vs. Harnarayan Rajdulari Devi Taparia Charitable Trust) holding that in matters of new institution, the application for registration under

Section 12AA cannot be rejected solely on the ground that the institution is yet to start its activities.

5. Both the learned counsel for the parties jointly state that the controversy involved in the present appeal is squarely covered by the aforesaid judgment in the case of Harnarayan Rajdulari Devi Taparia Charitable Trust (*supra)* and in view thereof, the appeal deserves to be dismissed and substantial questions of law are to be answered in favour of the assessee and against the revenue.

6. In view of the aforesaid and as jointly stated by learned counsel for the parties, the appeal (ITA/38/2021) is **dismissed** and the substantial questions of law are answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(AJAY KUMAR GUPTA, J.)

As.