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

IA NO. GA/2/2024
In ITA/147/2019
COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA
Vs
GYAAN VIKAS FOUNDATION

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 30th August, 2024.

Appearance :
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Doyel Dey, Adv.
...for appellant
Mr. S. Agarwal, Adv.
Mr. R. Chatterjee, Adv.
Ms. Suman Sahani, Adv.
...for respondent

The Court :- By consent of the parties the application, GA/3/2024, is treated as on day's list.

This application, GA/3/2024 has been filed to recall the order passed by the Division Bench dismissing the appeal for non-prosecution and also for non filing of paper book. The explanation offered by the department is acceptable and the application is allowed and the appeal is restored for hearing.

This appeal filed by the Income Tax Department under section 260A of the Income Tax Act, 1961 [the Act] is directed against the order dated 12.5.2017 passed by the Income Tax Appellate Tribunal, "C" Bench, in ITA/1454/2015 and ITA/1455 of 2015 the appeal was admitted on 11.11.2019 on the following substantial question of law.

a. Whether the impugned order of the Tribunal held that the trust in question was run for charitable purposes was contrary to law and frivolous ?

We have heard learned counsel on either side.

The learned Tribunal has taken note of the factual position and found that the only reason given by the Commissioner of Income Tax [Exemption] to arrive at a conclusion that the assessee trust is not genuine and does not exist for charitable purposes for the sole reason that it charges fees from students conducting certain vocational training course in garment making and designing. In this regard, the learned Tribunal took note of the decision of the High Court of Delhi in Commissioner of Income Tax vas. India Trade Promotion Organization Vs. DGIT (Exemption), [2023] 152 taxmann.com 490 [Del] wherein it was held that if the dominant activity of a charitable institution was not business, the trade or commerce, merely because a fee or some other consideration was collected or received by the institution, it would not lose its character of having been established for a charitable purpose. Apart from that the learned Tribunal also took note of the decision in the case of Commissioner of Income Tax Vs. Shri Ram Education Foundation, [2001] 116 Taxmann. 832 (Del) wherein the income earned from running a vocational training centre training women in art of stitching and embroidery was considered as an object of general public utility not involving carrying on any activity of profit.

Thus we find that the conclusion arrived at by the Tribunal is valid and justified calling for no interference.

In the result, the appeal is dismissed and the substantial question of law is answered against the appellant revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.