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

ITAT/231/2023
IA NO: GA/1/2023, GA/2/2023
COMMISSIONER OF INCOME TAX EXEMPTIONS KOLKATA
VS
SHRI VENKATESHWARA EDUCATIONAL INSTITUTE

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 8TH January, 2024.

Appearance :
Mr. Aryak Dutt, Adv.
Mr. Amit Sharma, Adv.
..for appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
…for respondent

The Court :- It appears that there is a delay of 42 days in filing the appeal. We are satisfied with the reasons given by the appellant department for not preferring the appeal within the period of limitation.

Hence, the delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act 1961(the Act) is directed against the order dated 17.2.2023 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in I.T.A. No.145/Kol/2022 for the assessment year 2017-18.

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

i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in setting aside the order of the Commissioner of Income Tax (Exemptions), Kolkata and holding that the assessee is eligible for exemption under Section 10(23C)(iiiad) of the Income Tax Act, 1961 in spite of the fact that the assessee does not exist solely for the educational purpose and it has profit motive ?

ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in holding that the assessee is squarely covered by the provisions of Section 10(23C)(iiiad) of the said Act despite the fact that the assessee's activities are not solely for educational purpose and that there is no receipt from any educational institution and its source of income consists of dividend income, interest income and capital gain with a surplus of 53% of total receipts ?

iii) Whether the Learned Tribunal has substantially erred in law in allowing the appeal of the assessee and holding that the assessee is eligible for exemption claimed under Section 10(23C)(iiiad) of the said Act despite the fact that the assessee failed to fulfill the conditions for being eligible for exemption under Section 10(23C)(iiiad) of the said Act ?

We have heard learned Counsel on either side.

The respondent/assessee is a trust registered under Section 12A/12AA of the Act and it claimed exemption under Section 10(23C) (iiiad) by way of dividend, interest income and capital gain on sale of shares of mutual funds. The assessee admittedly is running an educational institution in a very remote and/or backward area and does not charge any fee from the students towards studying in the said school. The learned Advocate after considering the factual aspects found that the covenant in the trust deed clearly show that the assessee is solely formed for the purpose of establishing school and educational institution and this fact has not been disputed by the revenue. Further the Tribunal noted that the assessee has incurred a sum of Rs.41,83,984/- on various expenses connected with the rent and maintenance of the school. Further the Tribunal found that the total receipt by way of dividend, interest and capital gain on sale of shares of mutual fund were accumulated in order to improve the infrastructure of the school and construction of new schools with the aim and object of the assessee trust. The Tribunal also referred to a decision of the Coordinate Bench in the case of *Swasthya Sewa Sansthan vs.CIT(E),* Kolkata in ITA No. 363/Kol/2020 dated 9.2.2022 wherein the facts were more or less identical and relief was granted to the said trust.

Further the learned Tribunal also noted that there is no allegation made by the department that the assessee was involved in any other activity for profit and not for educational purposes. Thus, we find that the Tribunal rightly granted relief to the assessee, taking note of the facts and circumstances of the case and we find that no question of law arises much less substantial questions of law.

There is nothing for consideration in this appeal at this stage.

Accordingly, the appeal stands dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.