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

ITAT/242/2024
IA NO: GA/1/2024

COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA

VS.
BRAJESWARI RADHARAMAN INTERGENERATIONS
HUMANITARIAN TRUST BRIGHT

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7TH FEBRUARY 2025

Appearance :

*Mrs.Smita Das De, Adv.
...for Appellant*

*Mr.J.P. Khaitan, Adv.
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
...for respondent*

The Court : This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 21st March 2024 passed by the Income Tax Appellant Tribunal, "B" Bench, Kolkata in ITA No.1313/Kol/2023, for the assessment year 2020-21.

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

“(i) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to allow depreciation of Rs.52,70,543/- which was disallowed and added back to the total income despite the fact that under Section 11(6) of the said Act provides that it should not be allowed in computing income subject to application against those assets which have been treated as application in earlier years.

(ii) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in not appreciating the findings of the Assessing Officer to the facts that the unexplained cash credit of Rs.8,40,00,000/- is disallowed and added back to the total income under Section 68 of the Act as Narula Education Trust had donated to the assessee in spite of having no income during the year in question.”

We have heard Mrs. Smita Das De, the learned Advocate appearing for the appellant and Mr. J.P. Khaitan, learned Senior Advocate for the respondent /assessee.

The respondent/assessee is a trust established for educational and charitable purpose as its primary object. The trust filed its return of income on 10.1.2021 declaring the total income as Nil. Subsequently, notices under Sections 143(2) and 142(1) were issued to the assessee along with detailed questionnaire. The assessee responded to the notices and furnished details and documents. The assessee's assessment was completed by 29.9.2022 under Section 143(3) read with Section 144B of the Act, among other things holding

that there is a variation in respect of addition on account of unexplained cash credit under Section 68 to the tune of Rs.8,40,00,000/- and variation in respect of addition on account of depreciation under Section 32 to the tune of Rs.52,70,543/- The assessee filed the appeal before the National Faceless Appeal Centre (NFAC). The appeal was dismissed by order dated 5.10.2023, which was challenged before the Tribunal. The Tribunal by the impugned order has allowed the appeal and aggrieved by the same, the revenue preferred the present appeal.

Two issues arise for consideration. Firstly, whether the assessee had claimed depreciation of Rs.52,70,543/- twice. The Assessing Officer came to the conclusion that the assessee cannot be allowed to claim depreciation twice in the light of the amended Section 11(6) of the Act and accordingly, made the addition. Before the Tribunal, the assessee contended that while computation of total income and depreciation of Rs.1,03,75,142/- was not claimed, instead of the same was deducted from the total expenditure side and it was not conforming part of expenditure applied towards charitable purposes. The learned Tribunal verified this factual position, examined the computation of income and the books of accounts and found that the Assessing Officer erred in making disallowance of Rs.52,70,543/- as the assessee has not made any claim towards depreciation in computation of total income. The revenue has not been able to establish before us that this factual finding is incorrect or otherwise. Therefore, we find no ground to interfere with the finding rendered by the Tribunal in this regard.

The next matter concerns an addition made on account of unexplained cash credit to the tune of Rs.8,40,00,000/-. As could be seen from the impugned

order, the assessee had responded to the questionnaire and produced all documents and those documents were also placed before the learned Tribunal in the form of a paper book.

On going through the findings recorded by the learned Tribunal, we find that the assessee has not only proved the source of fund of the donation but also proved the source of source. The Narula Educational Trust which enjoys registration under Section 12A of the Act since 1999, is the donor or trust and they run two educational institutions, one being an engineering Institute of Technology and other being an Institute of Dental Sciences & Research and the gross receipts of Narula Educational Trust for the period ending on 31st March 2020 was Rs.55.93 crores. That apart, the Tribunal also noted that the assessee during the course of assessment proceedings responded to the show cause notices issued by the Assessing Officer and produced all documents showing that payments were made by Narula Educational Trust to the assessee. At this juncture, it is to be noted that the Assessing Officer was of the view that the genuineness of the transactions has not been established. However, the First Appellate Authority, while affirming the order of assessment, held that the identity and creditworthiness of the donor trust was established but the genuineness of the transactions was not established. Thus, both the authorities were not clear as to on which ground the assessee should be faulted. Nonetheless, the learned Tribunal has done the factual exercise and has been satisfied that the assessee has been able to prove not only the genuineness but also the identity and creditworthiness of the donor Trust.

Thus, we find no question of law, much less substantial questions of law, arising for consideration in this appeal.

The appeal fails and is dismissed.

The stay application stands dismissed.

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

(HIRANMAY BHATTACHARYYA, J.)