

Chief Justice's Court

Case :- INCOME TAX APPEAL No. - 227 of 2014

Appellant :- Commissioner Of Income Tax Varanasi

Respondent :- Varanasi Welfare Trust, Varanasi

Counsel for Appellant :- Sr. S.C., Bharat Ji Agrawal

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice

Hon'ble Pradeep Kumar Singh Baghel, J.

The appeal by the Revenue under Section 260-A of the Income Tax Act, 1961¹, arises from an order of the Income Tax Appellate Tribunal dated 30 May 2014. The following questions of law have been pressed in support of the appeal:-

(1) Whether a perusal of the order of Commissioner of Income Tax dated 23.12.2013 clearly shows that nothing has been admitted in the order dated 23.12.2013 about charitable nature of the trust, hence the observation made by the Tribunal in para 3.1 of the Tribunal order dated 30.5.2014 is contrary to law and is against the material on record.

(2) Whether the object of the trust having not been admitted by the Commissioner of Income Tax to be charitable in the order dated 23.12.2013, the Tribunal was not justified in relying upon the decision in ITA Nos. 75 & 76/A/2014 in the case of Panchganga Foundation especially when the said order has also been challenged by a separate appeal under Section 260-A of the Act.

The Commissioner of Income Tax, Varanasi, rejected the

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application for registration under Section 12AA of the Act and consequently for the grant of approval under Section 80G(5)(vi) of the Act on the ground that the assessee had not filed material in relation to the activities of the trust since its inception. In the view of the Commissioner, merely expressing an intention to conduct a charitable activity, was not sufficient to grant registration until the commencement of charitable activities is noticed. Hence, the Commissioner held that the object and genuineness of the trust remain unverifiable. The Tribunal, in appeal, has reversed the view of the Commissioner while relying upon its own decision in the case of **Panchganga Foundations Vs. Commissioner of Income Tax**² and on a decision of the Division Bench of this Court in **Hardayal Charitable & Educational Trust Vs. Commissioner of Income Tax-II, Agra**³.

A Division Bench of this Court, in the judgment in *Hardayal Charitable* (supra), has construed the provisions of Section 12AA of the Act, after having due regard to the preponderance of judicial opinion of all the High Courts including of this Court and has held as follows:-

"The preponderance of the judicial opinion of all the High Courts including this Court is that at the time of

2 . Income Tax Appeal No.75/A/2014 and 76/A/2014

3. [2013] 32 taxmann.com 341 (Allahabad)

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registration under Section 12AA of the Income Tax Act, which is necessary for claiming exemption under Section 11 and 12 of the Act, the Commissioner of Income Tax is not required to look into the activities, where such activities have not or are in the process of its initiation. Where a trust, set up to achieve its objects of establishing educational institution, is in the process of establishing such institutions, and receives donations, the registration under Section 12AA cannot be refused, on the ground that the Trust has not yet commenced the charitable or religious activity. Any enquiry of the nature would amount to putting the cart before the horse. At this stage only the genuineness of the objects has to be tested and not the activities, which have not commenced. The enquiry of the Commissioner of Income Tax at such preliminary stage should be restricted to genuineness of the objects and not the activities unless such activities have commenced. The Trust or society cannot claim exemption, unless it is registered under Section 12AA of the Act and thus at that such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused."

This aspect of the view of the Tribunal is hence consistent with a judgment of the Division Bench of this Court and would not require this Court to take any different view.

However, the submission which has been urged on behalf of the Revenue is that the Tribunal was not quite justified in holding that the Commissioner had not disputed the fact that the objects of the

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assessee were of a charitable nature. According to the Revenue, there is no specific finding by the Commissioner on that aspect. The objects of the assessee as contained in the Trust deed dated 1 April 2013 are as follows:-

"4. OBJECTS OF THE TRUST:

- (A) The main objects of the Trust are to provide for the economic upliftment, social development, betterment and add value to the quality of lives of weavers, artisans and their families at Varanasi and/or other places in India and the Trustees shall apply the Trust fund or any part or parts thereof:-
- i. To provide for the financial and/or medical assistance or counseling and render any other kind of aid which may be required for the benefit of the beneficiaries of the Trust.
 - ii. To grant financial assistance and/or loans and/or set up endowments and/or in any other manner assist for any purpose related to human welfare and betterment, alleviation of distress including (but not confined to) relief of any form of economic or social hardship, relief and assistance to the beneficiaries of the Trust.
 - iii. To grant financial assistance for tuition fees and all incidental including living expenses in furtherance of education for the benefit of the beneficiaries.
 - iv. To provide generally for the welfare and benefit of

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the beneficiaries of this Trust in any manner as may be deemed proper by the Trustees from time to time."

These are charitable objects and are supported by other ancillary objects to which a detailed reference is not necessary. In view of the aforesaid position, the view of the Tribunal cannot be regarded as being in error, either on law or on fact. The appeal by the Revenue will hence not give rise to any substantial question of law.

The appeal is, accordingly, dismissed. There shall be no order as to costs.

Order Date :- 12.11.2014
VMA

(Dr. D.Y. Chandrachud, C.J.)

(P.K.S. Baghel, J.)