IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 20TH DAY OF NOVEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR.JUSTICE K.NATARAJAN

INCOME TAX APPEAL NO.180 OF 2010

BETWEEN:

D.R.RANKA CHARITABLE TRUST
NO.532, 2ND FLOOR, BRINDAVAN BUILDING,
DUDI MARKET, AVENUE ROAD,
BENGALURU – 560 002,
(REPRESENTED BY ITS TRUSTEE,
SRI PRAKASH RANKA,
AGED ABOUT 55 YEARS,
SON OF SRI D.R.RANKA). ... APPELLANT

(BY SRI K.K.CHAYTHANYA, ADVOCATE)

AND:

THE DIRECTOR OF INCOME TAX
(EXEMPTIONS),
BENGALURU. ... RESPONDENT

(BY SRI K.V.ARAVIND, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260A OF THE INCOME-TAX ACT, 1961 ARISING OUT OF ORDER DATED 18.02.2010 PASSED IN ITA NO.925/BNG/2010, FOR THE ASSESSMENT YEAR 2009-2010, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BENGALURU IN ITA NO.925/BNG/2010, DATED 18.02.2010.

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THIS INCOME TAX APPEAL COMING ON FOR HEARING THIS DAY, RAVI MALIMATH J., DELIVERED THE FOLLOWING:

JUDGMENT

The assessee is a charitable Trust. It was granted registration under Section 12-A of the Income Tax Act,1961 on 21-7-1986. It was also granted recognition under Section 80-G (5)(vi) of the Act Income Tax Act, for the year 2005-2006, 2006-2007, 2007-2008. Returns were being filed regularly. On 1-1-2009 the assessee filed an application in Form 80-G of the Income Tax Act, 1961 seeking renewal of the recognition. The Director of Income Tax,(Exemptions) rejected the application. Aggrieved by the same, the assessee preferred an appeal before the

Tribunal. The Tribunal by its order vide Annexure-A, expressed a doubt whether the assessee is entitled even for the benefit under Section 11-A and therefore the matter was remanded. On remand, the Commissioner passed an order on 31-8-2009 rejecting the application for renewal of recognition under Section 80-G. Aggrieved by the same, the assessee preferred an appeal before the Tribunal. The Tribunal dismissed the appeal. Hence, this appeal. By the order dated 8-11-2010 the appeal was admitted to consider the following four substantial questions of law:-

> "i) Whether on the facts and in the circumstances of the case, the Honourable Tribunal was right in law in holding that the Appellate Trust is not eligible for renewal of approval under Section 80G?
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> ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law failing to hold that the Appellant Trust is

eligible for automatic renewal of approval under section 80G?

iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in perversely holding that the Appellant Trust was not engaged in charitable activity?

iv) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing the lower authority to relook at the registration granted under section 12A and thereby exceeding the jurisdiction of section 254(1)?"

The learned counsels submit that the substantial questions of law require to be re-framed. We have heard learned counsels on the same. On hearing learned counsels, we are of the view that the following substantial question of law arises for consideration:

" Whether on the facts and circumstances of the case, the Tribunal

> was right in law in holding that the Appellate Trust is not eligible for renewal of approval under Section 80G?"

The learned counsel for the assessee contends that the Commissioner committed a gross error in rejecting the application for renewal. That the Commissioner placed reliance on the conditions as laid down under Section 80-G(5)(ii) and came to the conclusion that the income was not being used for charitable purposes. Therefore, the Commissioner held that there is an absence of charitable activity. That the activity of the Trust is not in consonance with the objects of the Trust. That only some percentage of the income is used for a charitable purpose.

2. The learned counsel for the revenue contends that what is being used by the assessee towards the object of the Trust is very miniscule. That most of the income that is used is only as a result of letting-out of the

building, for business purposes. That it is not the object of the Trust at all.

3. The same is countered by the learned counsel for the assessee on the ground that the condition as specified in Section 80-G(5)(ii) postulates that income could be used for charitable purposes. That letting out of the property is not barred by law. That the figures as narrated in the order of the Commissioner is not the complete reflection of facts. He places reliance on the returns filed which would indicate that Rs.16,15,878/- was repaid for the current year towards repayment of the principal amount of the loan borrowed for the financial year 2005-06 and for that Rs.9,19,422/- is paid towards interest. The income used is Rs.26,10,821/-. The deduction made is Rs.7,61,000/-. Therefore, the finding of the Commissioner is not appropriate in view of the material on record. That the factum of repaying the principal has not been considered by the Commissioner.

4. Be that as it may, we are of the considered view that the consideration of these factors when an application for renewal has been made cannot be the considerations before the authority. The only condition that requires to be fulfilled for the purposes of seeking renewal are as specified under Section 80-G(5)(ii) and the clauses narrated therein. That none of the clauses in Section 80-G(5)(ii) would be said to be applicable herein. It only postulates that any income derived from the charitable trust may be used for charitable purpose. Therefore, the rejection of the application is inappropriate. However, we are of the considered view that this consideration can only be made, during the assessment proceedings. The question whether renewal is justified or not, is not necessary to be considered at this stage. The applicability of the income of the assessee whether it is for charitable purposes or not are all questions of fact and necessarily can be gone into by the assessing authority at the time of assessing the income of the assessee.

Therefore, it is needless to state that the assessing authority shall look into all the material placed in order to ensure that the income is used for a charitable purpose in accordance with law.

Under these circumstances, the substantial question of law is answered by holding that the Tribunal was not right in law in holding that the appellant Trust was not eligible for renewal for approval under Section 80-G. Consequently, the order of the Tribunal is set aside. The substantial question of law is accordingly answered.

The appeal is disposed off accordingly.

SD/-
JUDGE

SD/-
JUDGE

rsk/-