IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

1.DB Income Tax Appeal No.83/2014
Commissioner of Income Tax, Kota
versus
M/s Bade Mathureshji Temple Board, Patanpole, Kota

2.DB Income Tax Appeal No.84/2014
Commissioner of Income Tax, Kota
versus
M/s Bade Mathureshji Temple Board, Patanpole, Kota

Date of Order: 21.4.2016

HON'BLE MR. JUSTICE MN BHANDARI
HON'BLE MR JUSTICE VIJAY KUMAR VYAS

Mrs Parinitoo Jain – for appellant

BY THE COURT:

By these appeals, a challenge is made to the common order dated 22.1.2014 passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur for the assessment years 2008-09 and 2009-10.

Learned counsel for appellant submits that benefit of section 10 (23BBA) of the Income Tax Act, 1961 (for short 'the Act of 1961') was not available to the assessee as the Bade Mathureshji Temple Board created under section 92 of the Code of Civil Procedure, 1908 was not registered. In absence of the registration of the Board, exemption provided under section 10 (23BBA) of the Act of 1961 could not have been given. The learned Tribunal, however, applied section 10 (23BBA) of the Act in ignorance of sections 11 and 12 of the Act thus the impugned order passed by the ITAT may be set aside. Since the issue raised by the appellant involves substantial question of law, hence, it may be framed and notices be issued to the assessee.

We have considered the submissions made by the learned counsel and perused the record.

It is a case where a Board for management of the temple was constituted by the District Judge under section 92 of the CPC. The creation of the Board being under the Central Act of 1908 thus section 10(23BBA) of the Act of 1961 applied. The Tribunal accordingly dismissed the appeal preferred by the revenue while maintaining the order of the Commissioner of Income Tax (Appeal). In our opinion, section 10 (23BBA) of the Act applies to a body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for administration of any public religious or charitable trusts or endowments etc.

In the instant case, the Board was constituted by the

District Judge under section 92 CPC for administration of a public religious charitable trust. In view of above, we find that the Board was established under the Central Act, that too, for administration of a public religious charitable trust.

In view of above, section 10(23BBA) of the Act of 1961 has rightly been applied by the Tribunal. Section 11 and 12 apply where a body or authority is not created in the manner given under section 10(23BBA) of the Act but the case in hand is not covered by section 11 and 12 of the Act of 1961.

We find that the learned Tribunal has rightly decided the issue and the present appeal against the said order does not involve any substantial question of law so as to entertain it.

We further find that similar issue was considered by the Orissa High Court in the case of Shri Jagannath Temple Managing Committee versus Commissioner of Income Tax & ors, (2008) 218CTR(Ori)568. The judgment aforesaid has been referred by the Tribunal while dismissing the appeal preferred by the revenue. The ratio propounded therein applies to the case.

In the light of aforesaid, we find no illegality in the order of the learned Tribunal. The appeal does not involve substantial question of law. The appeal is accordingly dismissed.

(VIJAY KUMAR VYAS), J. (MN BHANDARI), J.

bnsharma

All corrections made in judgment/ order have been incorporated in judgment/ order being emailed.

(BN Sharma)
Deputy Registrar