FORM NO.(J2)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (income tax)
ORIGINAL SIDE

Present:
Hon'ble Justice Girish Chandra Gupta
And
Hon'ble Justice Indrajit Chatterjee

ITA NO.207 of 2001

COMMISSIONER OF INCOME TAX, CENTRAL – I, CALCUTTA
Versus
M/S. APEEJAY MEDICAL RESEARCH & WELFARE ASSOCIATION (P) LTD.

Advocate for the Appellant: Mr. S.B. Saraf, Adv.
Advocate for the respondent: Mr. S. K. Kapoor, Sr. Adv.
Mr. J. P. Khaitan, Sr. Adv.

Hearing concluded on: 19.02.2016

Judgement delivered on:18.03.2016.

GIRISH CHANDRA GUPTA J. The appeal is directed against a judgement and order dated 16th November, 2000 passed by the learned Income Tax Appellate Tribunal, 'E' - Bench, Calcutta pertaining to the assessment year 1992-93 by which the learned Tribunal dismissed the appeal preferred by the revenue agreeing with the views of the CIT that the funds were raised by the assessee for the philanthropic purposes.

The facts and circumstances of the case appearing from the order of the assessing officer are as follows:-

"On scrutiny of the Income & Expenditure A/c, it is found that the assessee-company earned interest income to the tune of Rs.33,93,899/- from its only source. Total expenditure has been shown, at Rs,45,13,618/- inclusive of depreciation. It is seen from the details and evidence produced and particulars filed that most of the expenses were actually incurred by M/s, Assam Frontier Tea Co. Ltd., M/s, Singlo India Tea Co. Ltd., and M/s. Empire plantations (I) Ltd. on account of medical and hospital expenses including salary & wages to doctors and staff as in past years. It was claimed that those expenses were realised by the aforesaid

companies from the assessee. There was, however, no such agreements between the above- mentioned tea companies and the assessee to reimburse the expenses incurred them. In the circumstances the expenses which relate to the running of hospital in the tea gardens are disallowed. For the same reasons depreciation claimed on hospital complex is also disallowed."

In an appeal preferred by the revenue the CIT(A) allowed the appeal relying on the judgement of the Income Tax Appellate Tribunal pertaining to the assessment year 1986-87 and 1987-88 as would appear from the views expressed by him as follows:-

"Records however reveal that for both the assessment years 1986-87 and 1987-88 appellant's claim for exemption u/s. 10(22A) stands accepted in appeal filed by the appellant before the Tribunal. Appellant's appeal involving the issue was allowed by me in respect of assessment year 1988-89 in respectful agreement with the decision of the ITAT for the preceding years. Contention on behalf of the appellant stands accepted for assessment years 1989-90 to 1991-92 vide order dated 31.3.95 of my predecessor-in-office. I see no reason to disagree with the appellate findings involving the same issue, arising from identical facts and circumstances. Neither any fresh material or further arguments have been brought on record by the A.O. in negating the claim in so far as assessment year 1992-93 is concerned, I am accordingly, inclined to allow the appeal. As the appellant is to be treated as entitled to exemption U/s. 10(22A) dealing with individual grounds enlisted in appeal is not considered necessary."

The revenue preferred an appeal against the order of the CIT(A) which was dismissed following the order of the Tribunal for the assessment year 1986-87 and 1987-88 as would appear following the views expressed by the learned Tribunal:-

"We find that the A.O. denied exemption to the assessee following his orders for the assessment years 1986-87 & 1987-88. This issue came up before the Tribunal for the aforesaid years where the Tribunal confirmed the order of the CIT (Appeals) by which the exemption was allowed to the assessee. Considering those facts, in the assessment year 1988-89 the CIT (Appeals) allowed similar exemption and further held that primary object and final activities of the assessee company were within the purview of eligibility under section 10(22A) of the Act, The Tribunal following its earlier order for the assessment years 1986-87 & 1987-88, upheld the order the CIT (Appeals) for the assessment year 1988-89 also vide

its order dated 18.3.2000 in I.TA. No. 2137/Cal./1993. We respectfully follow the aforesaid order of the Tribunal and hold that the funds were raised by the assessee company for philanthropic purposes. In view of the same, we feel that there is no infirmity in the order of the CIT (Appeals) for the year under consideration and its is accordingly upheld."

The present appeal has been preferred by the revenue. The following question of law was formulated:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the Association was eligible for exemption under section 10(22A) of the Income Tax Act, 1961 as a medical institution existing solely for philanthropic purposes?"

We have considered the following questions in great detail in our judgement delivered on the same day pertaining to the assessment year 1988-89.

"i)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in granting exemption under Section 10(22A) of the Act ignoring the fact that the assessee had lent money on interest to different companies?

ii)Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the assessee fulfilled the conditions stipulated in Section 10(22A) of the Income Tax Act, 1961 and directing to allow deduction under Section 10(22A) of the Act?"

The aforesaid questions have been answered in the negative. No new facts and circumstances are involved in this case. In the relevant year the income arose out of interest as in the assessment year 1988-89. All the facts in the relevant year are the same as in the assessment year 1988-89. Therefore, we answer the question formulated above in the negative for the same reasons assigned by us in our judgement allowing the Income Tax Appeal No.32 of 2001 between the same parties.

A question, however, has been raised by Mr. Khaitan that the tax effect in this case is less than Rs.20,00,000/-. Therefore, following the Circular No.21 of 2015 dated 10th December, 2015 issued by the Central Board of Direct Taxes the appeal should be dismissed.

He in support of his submission relied upon a judgement of this Court in the case of ITAT No.83 of 2011 CIT, Kolkata –Vs.- Ceramic Decorator (P) Ltd. wherein the following views were expressed:-

"At the very outset, Mr. Nizamuddin, learned advocate appearing for the appellant, points out that the tax effect of the present appeal is less than Rs.10 lakh and this case does not come within the exception as pointed out in CBDT Instruction No.3/11 dated 9th February, 2011.

In view of the aforesaid fact, we find that this appeal has been filed by violating the instruction issued by the CBDT, which was binding upon the appellant in view of the provisions contained in Section 268A of the Income Tax Act, 1968. We, thus, dismiss this appeal on that ground alone."

He has also drawn our attention to an affidavit filed by the assessee wherein the assessee has alleged as follows:-

" I say that the Assessing Officer made a mistake in mentioning the amount of income tax as Rs.17,96,619/- whereas the correct amount of tax @ 50% on the assessed income of Rs.33,44,150/- amounted to Rs.16,72,075/-. At the same time, the figure of surcharge of Rs.2,50,811/- mentioned in the challan is correct, being 15% of the correct amount of tax of Rs.16,72,075/-. Further, the interest under section 234B of Rs.8,23,968/- mentioned in the challan approximates the interest chargeable under section 234B with reference to the correct amount of income tax of Rs.16,72,075/- and is short by Rs.17/- only.

I say that if the income tax is taken at Rs.17,96,619/- as mentioned in the challan, it gives a rate of 53.72% of the assessed income. The surcharge of Rs.2,50,811/- mentioned in the challan is 13.96% of Rs.17,96,619/-. If interest under section 234B were calculated with reference to the said figure of Rs.17,96,619/- plus Rs.2,50,811/- aggregating to Rs.20,47,430/- after deducting the tax deducted at source of Rs.7,78,462/-, such interest @ 2% per month for the period from April 1, 1992 to March 31, 1995 would work out to Rs.9,13,657/-.

I say that it would be apparent from the aforesaid that the amount of tax demand on the assessed income of Rs.33,44,150/- amounted to Rs.19,22,886/- comprising tax of Rs.16,72,075/- and , surcharge of Rs.2,50,811/- but the Assessing Officer wrongly took the tax at Rs.17,96,619/- instead of Rs.16,72,075/- resulting in overstatement of the tax demand by Rs.1,24,544/- at Rs.20,47,430/- . Copy of a statement in this behalf is annexed hereto and marked "C"."

Mr. Saraf, learned counsel disputed the submissions made by Mr. Khaitan. He added that the revenue is not obliged to withdraw the appeal under the circular dated 10th December, 2015.

The question whether the revenue is liable to withdraw the appeal and the question whether the appeal can be entertained if the tax effect is less than the prescribed amount was gone into by a Division Bench of this Court in an earlier decision which was relied upon by Mr. Khaitan and which we have quoted above.

Since we are bound by that decision of the Division Bench the appeal is disposed of by the following order.

The question is answered in the negative and in favour of the revenue.

The matter is, however, remanded back to the assessing officer for examining the tax effect, in the light of the Circular no.21 of 2015 dated 10th December, 2015 issued by CBDT. After hearing the submission of the assessee on this limited aspect of the matter the assessing officer shall examine whether the tax effect is less than Rs.20 lakhs. In case he holds in the affirmative the appeal shall stand dismissed.

(GIRISH CHANDRA GUPTA, J.)

I agree. **(INDRAJIT CHATTERJEE, J.)**