

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

ON THE 23<sup>RD</sup> DAY OF JULY, 2015

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

I.T.A.NO.5023/2011

BETWEEN

THE COMMISSIONER OF INCOME TAX  
KHEMJIBAI COMPLEX  
Dr. AMBEDAKAR ROAD  
BELGAUM

... APPELLANT

(By Sri. Y V RAVIRAJ, ADV.,)

AND

M/s. VIJAYA MAHANTESH VIDYAVARDHAK  
SANGHA, HUNGUND  
BAGALKOT DISTRICT

... RESPONDENT

(By Sri SANGRAM S KULKARNI, ADV.,)

THIS ITA FILED U/SEC.260A OF THE INCOME TAX ACT,  
1961 AGAINST ORDER PASSED IN ITA.NO.150/PNJ/2010 DTD:  
9-5-2011 ON THE FILE OF THE INCOME TAX APPELLATE  
TRIBUNAL, PANAJI BENCH, PANAJI, ALLOWING THE APPEAL  
FILED BY AN ASSESSEE.

RESERVED ON 30.6.2015

PRONOUNCED ON 23.07.2015

THIS APPEAL COMING ON THIS DAY, P.S.DINESH KUMAR J.,  
DELIVERED THE FOLLOWING:

JUDGMENT

Revenue has preferred this appeal calling in question the order dated 9.5.2011 in ITA No.150/PNJ/2010 passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji ('ITAT' for short).

2. This appeal was admitted on 10.12.2012 to consider the following questions of law:-

1) *Whether the Tribunal is correct in Law and Facts, holding that the respondent assessee society's action in maintaining separate account in respect of vermicular project without bringing into society's account which is mandatory in view of provisions of Section 11 that assessee should maintain books of account in respect of grants, income received by it and its utilization?*

2) *Whether the Tribunal is correct in Law and facts, holding that the respondent assessee is not required to take the grant of money received from the Govt. of India, in its books which is contrary to the provisions of Sec.80G(5)(iv) of the Income Tax Act, 1961, which require maintenance of regular books of account in order to claim exemption under Sec.80G of the I.T. Act, 1961?*

3) *Whether the ITAT is correct in law and facts, holding that the respondent assessee society has not committed any fault of not accounting for such grant money as income of the assessee and utilize the same to the extent of 85% which is mandatory in view of provisions of Sec.11(2) of the IT Act 1961?*

4) *Whether the tribunal is correct in law and facts, in holding that respondent assessee society cannot be punished for the misappropriation of funds by the Chairman and the Secretary of the society as the same would defeat the very purpose and intention of the Legislature in bringing the provisions of Sec.13 of the IT Act 1961?*

5) *Whether the tribunal is correct in law and facts, in relying upon the decision of Rajasthan High Court in the case of CIT v. Cosmopolitan Education Society reported in 244 ITR 495 when the facts and circumstances were totally different that of the case of the respondent in whose case has reported various discrepancies and violations which indicate not only the Chairman and Secretary but also the respondent assessee has violated in discharging its duties and as such the decision relied upon by the Tribunal is not applicable to the facts of the case?*

3. The facts leading to this case are that the respondent filed an application for renewal of exemption under Section 80G of the Income Tax Act, 1961 [‘Act’ for short] before the Commissioner of Income Tax, Belgaum, who vide order dated 28.3.2010 rejected the said application. It was contended by the respondent that it is running various educational institutions in Bagalkot District. It had also founded a foundation namely, ‘S.S. Kadapatti Agriculture and Rural Development Foundation’ to undertake Vermiculture Project, which was sanctioned by Government of India involving manufacture of organic manures. In terms of the order passed by the Ministry of Rural Development, the project was to be implemented by Vijay Mahantesh Vidyavardhak Sangha and co-ordinated by Zilla Panchayat, Bagalkot. Out of total sanctioned grant of Rs.4.26 Crores, first installment of Rs.1,29,74,000/- was sanctioned during the year 2006-07. On these among other reasons, respondent sought for renewal of exemption under Section 80G. The Commissioner has held in his order that receipt of a sum of Rs.1,18,50,000/- from the Government towards Vermiculture

project during the year 2007-2008 and details of transactions with regard to expenses of Rs.71,47,430/- said to have been incurred were not reflecting in the books of accounts of the Society. The accounts revealed only some of the advances given to the Vermiculture Project and therefore the applicant was called upon to explain. A Consultant on behalf of the respondent sought to explain that the Society had spent a sum of Rs.61,30,812/- towards capital expenditure and Rs.10,16,078/- on revenue expenditure on Vermiculture Project. The Commissioner did not accept the claim of the Society made through the Consultant. The Commissioner also noted that certain advances were given to outside institutions. On consideration of the material before him, the Commissioner ultimately held that the respondent was not eligible for consideration of the application for exemption under Section 80G(5) and rejected the same as per Section 80G(5)(i) of the Act. The said order passed by the Commissioner was challenged by the assessee – respondent before the ITAT, Panaji, which came to be allowed by the impugned order. Hence, this appeal.

4. We have heard Sri Y.V. Raviraj, learned standing Counsel for Income Tax Department and Sri Sangram S. Kulkarni, learned Counsel for the respondent and perused the records.

5. Learned Counsel for the Revenue mainly contends that the exemption under Section 80G is extended to certain institutions, which are doing youmen services. Such exemption is subject to certain conditions, which *inter alia* include maintenance of proper accounts.

6. Assailing the order of the ITAT, learned Counsel submits that the Tribunal erred in reversing the order of the Commissioner of Income Tax without there being any cogent reasons to do so. He draws our attention to the reasoning of the impugned order in paragraph – 16 of the impugned order, wherein, the Tribunal has considered the merits of the case and arrived at a conclusion that the dispute is only with regard to some advances given to the Vermiculture Project by the Society and the Society had treated the said project as a separate entity

and a separate account of the project was maintained. The Tribunal, on this premise held that the project belonged to the assessee – Society.

7. Learned Counsel for the Revenue submits that the appellate authority has only recorded some of the contentions of both parties and finally held that the Commissioner of Income Tax has proceeded on a wrong premise to hold that financial help rendered by the assessee was similar to loan. He contends that the Tribunal has further held that such assumption by the Commissioner was not sustainable on facts to deny the benefit of registration to the respondent and allowed the appeal on such erroneous assumptions. The learned standing Counsel, further submits that the issue involved in the case is, that the respondent – assessee had admittedly received large sums of money from the Central Government for the Vermiculture Project which were not reflecting in the Books of the respondent – Society. The Commissioner of Income tax had meticulously gone into each aspect of the matter and passed a detailed order. On the other hand, the Tribunal has not re-examined the issue in detail with

reference to the factual matrices of the case insofar as the income, expenditure and maintenance of the accounts by the respondent is concerned, while reversing the findings recorded by the Commissioner. The Tribunal ought to have re-examined the matter afresh and passed the order with cogent reasons fully backed by narration of facts of the case. Hence, the impugned order is liable to be set aside.

8. Per contra, learned Counsel appearing for the respondent while supporting the order of the Tribunal submits that the respondent – assessee is carrying on youmen service and submits that the impugned order does not suffer from any illegality and prays for dismissal of the same.

9. We have given our anxious consideration to the submission made at the bar and perused the records.

10. The principle ground upon which the Commissioner rejected the application is that proper accounts were not maintained by the respondent – assessee. The Commissioner has

laboured substantially in adverting to the various entries in the Books to arrive at his conclusions.

11. Learned Counsel for the Revenue is right in his submission that the paragraphs dealing with the merits of the case in the impugned order passed by the Tribunal, do not advert to any factual matrices of the case insofar as the figures reflecting income and expenditure which were adverted to by the Commissioner of Income Tax in extenso. The appellate authority has reversed the findings of the Commissioner. However, the impugned order is not supported by reasons and does not suggest that the Tribunal had re-appreciated the facts with reference to the various financial entries found in the order passed by the Commissioner. Whenever an order is passed by a quasi – judicial authorities either upholding or reversing a finding of lower authority, the appellate order must necessarily record cogent reasons with reference to facts and reasons contained in the order assailed before appellate authority. On perusal of the order of the Tribunal, we are of the considered view that the Tribunal has not adverted to the various aspects of factual matrices, which resulted

in rejection of application by the Commissioner. Admittedly, the Tribunal is the last fact-finding authority. The Commissioner while rejecting the application has adverted to various aspects of the matter to support his reasoning. They include receipt and expenditure by the Trust and posting of entries in the books of accounts of Trust. The whole intent and purpose of granting exemption under section 80 to a Trust or an Organisation is to facilitate the donors to get the benefit of tax exemption and at the same time, the Trust or the organisation to get donations. Such a Trust or Organisations which perform their duties to further their aims and objects are duty bound to maintain proper accounts. Admittedly, the applicant was enjoying the benefit of exemption for the previous years. It has taken a definite stand that accounts with regard to the project work is separately maintained. The Commissioner has adverted to various aspects and rejected the application. Therefore, the Tribunal ought to have considered each and every aspect and examined as to whether or not the findings recorded by the Commissioner are in accordance with law. In the

circumstances, we feel it appropriate that the matter must be reconsidered by the Tribunal in the light of what is stated hereinabove. Accordingly, we deem it appropriate to remand the matter to the ITAT for re-consideration.

12. In the result, we proceed to pass the following:-

ORDER

- (i) Appeal is *allowed*;
- (ii) Order dated 9.5.2011 in ITA No.150/PNJ/2010 passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji, is set aside; and
- (iii) The matter is remitted back to the Income Tax Appellate Tribunal, Panaji Bench, Panaji for fresh consideration in accordance with law.

No costs.

Sd/-  
JUDGE

Sd/-  
JUDGE

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