

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 548 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE S.H.VORA**

-
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

DIRECTOR OF INCOME TAX (EXEMPTION)....Appellant(s)

Versus

VANCHHARA TIRTHADHIPATI- CHINTAMANI

PARASWAPRWABHU....Opponent(s)

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

MR TUSHAR P HEMANI, ADVOCATE for the Opponent(s) No. 1

MS VAIBHAVI K PARIKH, ADVOCATE for the Opponent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE S.H.VORA

Date : 24/03/2015

**ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. Feeling aggrieved by and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad (hereinafter referred to as "learned Tribunal") dated 11.10.2013 passed in ITA No.610/Ahd/2013, by which the learned Tribunal has allowed the said appeal preferred by the respondent herein and has directed the DIT (E) to grant the registration under section 12(aa) of the Income Tax Act to the assessee, the revenue has preferred the present appeal raising the following substantial questions of law.

"A. Whether the appellate Tribunal has substantially erred in setting aside the order of DIT (E) holding that dissolution clause is not necessary in the deed of charitable trust?

B. Whether in view of the fact that the assessee is a public charitable trust, should the deed not have a clause that upon dissolution no asset will go to any trustee, donor settler etc.?"

2. We have heard Shri M.R. Bhatt, learned counsel appearing on behalf of the appellant and Shri Hemani, learned advocate appearing on behalf of the respondent – original appellant.

3. From the impugned judgment and order passed by the learned Tribunal, it appears that the learned Tribunal has allowed the appeal preferred by the respondent herein relying upon the decision of the Coordinate Bench in the case of Shri Chargam Dasha Porwad Mahamandal, ITA Nos.337 and

338/Ahd/2013 and considering the fact that in the case of the respondent trust, there is a dissolution clause and the provisions made in the trust deed itself, in the eventuality, the trust is closed.

4. It is required to be noted that as such, the decision of the learned Tribunal in the case of Shri Chargam Dasha Porwad Mahamandal in ITA Nos.337 and 338/Ahd/2013 has been confirmed by the Division Bench of this Court vide order dated 18.2.2014 passed in Tax Appeal No.1147 of 2013 with Tax Appeal No.1148 of 2013.

5. Considering the fact that in the case of the respondent trust, as such, the trust deed does provide the dissolution clause, as such, substantial questions of law raised in the present tax appeal would not survive. So, in the impugned judgment and order passed by the learned Tribunal, the learned Tribunal has not held that the dissolution clause is not necessary in the deed of charitable trust. Even otherwise, from the order passed by the DIT (E), it appears that in the trust deed of the respondent trust, there is a provision/clause with respect to closure of the trust, which reads as under:

“If necessary to close the trust then the property of trust be handover other institution trust having similar objects by passing resolution by minimum 2/3rd majority of members and unanimous decision of committee working trustees.”

6. Under the circumstances, when the trust deed specifically provides for a closure of the trust and it specifically provides that if necessary to close the trust, than the property of the trust be handed over to other institution –

trust having similar objects by passing resolution by minimum 2/3rd majority of the trust and unanimous decision of the committee working trustees and considering the above, when the learned Tribunal has directed the DIT (E) to grant the registration under section 12(aa) of the Act, it cannot be said that the learned Tribunal has committed any error, which calls for the interference of this Court. It goes without saying that any decision to close the trust even in the eventuality as per the aforesaid clause shall always be after obtaining appropriate permission from the Charity Commissioner under the Bombay Public Trust Act.

7. Under the circumstances, and in view of the above and for the reasons stated above, the substantial questions of law raised/framed are not required to be answered and are accordingly not answered.

8. With this, present tax appeal is dismissed. No costs.

सत्यमेव जयते
THE HIGH COURT OF GUJARAT (M.R.SHAH, J.)
WEB COPY

(S.H.VORA, J.)

shekhar