Chief Justice's Court

Case :- INCOME TAX APPEAL No. - 246 of 2014

Appellant :- The Commissioner Of Income Tax Kanpur
Respondent :- M/S Artificial Limbs Manufacturing Corpn. India
Counsel for Appellant :- S.C.

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice
Hon'ble Pradeep Kumar Singh Baghel,J.

The appeal under Section 260A of the Income Tax Act, 1961[1] by the Revenue arises from a decision of the Income Tax Appellate Tribunal[2] dated 13 June 2014. The assessment year to which the appeal relates is AY 2009-10.

The following questions of law have been raised:

> (1) Whether the ITAT erred in law in interpreting the provisions of amended Section 2(15) r/w Section 13(8) regarding the charitable nature of the assessee.
>
> (2) Whether the ITAT erred in law in ignoring the facts that assessee was producing artificial limbs and aids on commercial basis with profit motive and with no element of charity involved hence was not entitled to have its income considered u/s 11 to 13 of the Act.

The assessee is a Government Company and for the assessment year 2009-10 filed a return disclosing a nil income. The Assessing Officer noted that the net profit of the assessee under its profit and loss

1 the Act
2 the Tribunal

account was as follows:

A.Y.	Income
2006-07	5,06,20,682/-
2007-08	4,51,34,298/-
2008-09	1,93,14,368/-
2009-10	4,04,62,233/-

The Assessing Officer noted further that the assessee had a registration certificate under Section 12AA of the Act. However, it was held that during the year, relevant to the assessment year in question, the assessee had derived income from the business of manufacturing and sale of artificial limbs. In the view of the Assessing Officer the manufacture and sale of artificial limbs was the main business of the assessee and was not incidental to its object and hence, the income which was derived did not qualify any exemption under Section 11 of the Act. The Commissioner of Income Tax (Appeals)[3] relied on the orders of assessment for AYs 2003-04 to 2008-09 and directed the Assessing Officer to recompute the income of the assessee in terms of Sections 11 to 13, keeping in view that the Commissioner of Income Tax-II, Kanpur had already granted registration under Section 12AA. The Tribunal has simply affirmed these findings with the following observations:

> "5. We have considered the rival submissions. We find that as per para 8 of its order, the CIT(A) has directed the Assessing Officer to recompute the income of the assessee in

3 CIT(A)

> terms of section 11 to 13 of the Act keeping in view that CIT-II, Kanpur has already granted registration u/s 12AA of the Act. In assessment year 2008-09 also, similar direction was given by CIT(A) to the Assessing Officer and the Tribunal held that no interference is called for in such order of CIT(A). Accordingly, in the present year also, we hold that no interference is called for in the order of CIT(A)."

The basic issue as to whether the activity of the assessee falls within the description of Section 2(15) of the Act, has not been considered by the CIT(A) or, for that matter, by the Tribunal. The expression "charitable purpose" under Section 2(15) is *inter alia* defined to include relief of the poor, education and medical relief as well as the advancement of any other object of general public utility. The proviso to Section 2(15) qualifies the expression "the advancement of any other object of general public utility" by stipulating that if this involves carrying on an activity in the nature of trade, commerce or business, or any activity of rendering any service in relation thereto for consideration, it shall not be a charitable purpose.

In our view, having due regard to the specific finding which was recorded by the Assessing Officer, it would be appropriate for the CIT(A) to deal with the facts pertaining to the assessment year in question which has not been considered at all. The CIT(A) has simply relied on certain orders for previous assessment years without having regard to the facts pertaining to the assessment year in question. Hence, and for these reasons, we restore the proceedings back to the CIT(A) for fresh consideration of the appeal, with the clarification that all rights and contentions of the parties are kept open. Since we have restored the proceedings to the CIT(A), it is not necessary for this Court to express any finding on the questions of law as framed.

The appeal is, accordingly, disposed of. There shall be no order as to costs.

Order Date :- 27.11.2014
DS/-

(Dr. D.Y. Chandrachud, C.J.)

(P.K.S. Baghel, J.)

<u>Hon'ble Dr. D.Y. Chandrachud, CJ.</u>
<u>Hon'ble P.K.S. Baghel,J.</u>

Disposed of.

For order, see our order of the date passed on the separate sheets (four pages).

Order Date :- 27.11.2014
DS/-

(Dr. D.Y. Chandrachud, C.J.)

(P.K.S. Baghel, J.)