IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY,THE 27TH DAY OF OCTOBER 2014/5TH KARTHIKA, 1936

ITA.No. 194 of 2014

AGAINST THE ORDER IN ITA 134/2014 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 27-06-2014

APPELLANT/ASSESSEE:

M/S.TRAVANCORE EDUCATION SOCIETY
REGISTERED OFFICE AT KALLAMBALAM POST
THIRUVANANTHAPURAM - 695 605.

(REPRESENTED BY ITS PRESIDENT A. SAINULABDEEN
S/O. ABDUL MAJEED, PRESIDENT
M/S. TRAVANCORE EDUCATION SOCIETY, KALLAMBALAM POST
THIRUVANANTHAPURAM - 695 605)

BY ADVS.SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX (CENTRAL), COCHIN
OFFICE OF THE COMMISSIONER OF INCOME TAX (CENTRAL)
INCOME TAX DEPARTMENT, GOVERNMNET OF INDIA, 5TH FLOOR
KANDAMKULATHY TOWERS, M.G. ROAD, ERNAKULAM -682 011.

R BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 27-10-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA.No. 194 of 2014

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE : A1 TRUE COPY OF THE APPLICATION FILED BY THE APPELLANT UNDER SECTION 12AA OF THE INCOME TAX ACT, 1961.

ANNEXURE A2: TRUE COPY OF THE ORDER DATED 28.6.2012 PASSED BY THE RESPONDENT.

ANNEXURE A3: TRUE COPY OF THE MEMORANDUM OF APPEAL IN I.T.A.NO.134 OF 2014 BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN ALONG WITH THE AFFIDAVITS.

ANNEXURE A4: TRUE COPY OF THE ORDER DATED 27.6.2014 IN I.T.A.NO.134 / COCH/2014 BEFORE THE INCOME TAX APPELLATE TRIBUAL, COCHIN BENCH, COCHIN.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & ANIL K. NARENDRAN, JJ.

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I.T.A.No.194 OF 2014

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Dated this the 27th day of October, 2014

JUDGMENT

Antony Dominic, J.

This appeal is filed against the order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.A.No.134 of 2014 which was filed by the appellant herein against the order passed by the Commissioner rejecting their application for registration under Section 12AA of the Income Tax Act, 1961.

2. We heard the counsel for the appellant and the learned Standing Counsel appearing for the respondent.

3. The appellant is a society registered under the Travancore - Cochin Literary, Science and Charitable Trust Act, 1955. The society has established an engineering college by name "Travancore Engineering College". During a search operation in the office of the appellant, several incriminating materials were found which disclosed the receipt of capitation fee for admission of students. It was collected by the trust in addition to the fee prescribed. The fact

that capitation fee was being collected was admitted by the Treasurer of the Trust Shri.Shajahan and the Secretary of the trust Shri.Sainulabdeen in the statements given by them. These facts revealed that the object of the trust was not charitable and it was therefore that the registration under Section 12AA of the Act was rejected.

4. The facts being as above, we are fully in agreement with the Tribunal that on materials it was evident that the trust was not carrying on any charitable activities entitling it for registration under Section 12AA of the Act.

5. In this appeal, the appellant has produced Annexures A5 and A6, affidavits filed before the Commissioner of Income Tax (Appeals) and before the Income Tax Appellate Tribunal, which show that the endeavor made therein is mainly to retract from the statements given by them. In so far as affidavit filed before the Commissioner of Income Tax Appeals is concerned, that appeal arising out of assessment order is still pending. The other affidavit filed before the Tribunal shows that for the first time before the Tribunal such an attempt was made. Having regard to the fact the affidavit only contained unsubstantiated claims made therein, we do not think that this affidavit would improve the case of the appellant.

6. The learned counsel for the appellant also placed reliance on the judgments in *Fifth Generation Education Society v. Commissioner Income Tax [185 ITR 635]*, *New Life In Christ Evangelistic Association v. Commissioner of Income Tax and Another [246 ITR 532]* to contend that when application is made under Section 12AA, the Commissioner is not required to examine the application of income of a trust. In our view, this principle has no application to the facts of the case. The rejection of the application made by the petitioner, as we have already noted, was for the reason that they were collecting capitation fee for admission and not on the ground that the funds of the trust were not applied for charitable purpose. For all these reasons, we do not find any merit in this appeal.

Income Tax Appeal is dismissed.

ANTONY DOMINIC,
Judge

ANIL K. NARENDRAN,
Judge

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