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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : ITA 231/2017

1:ARUNACHAL POLICE HOUSING and WELFARE CORPORATION LTD.
POLICE HEADQUARTERS, GANGA, ITANAGAR, ARUNACHAL PRADESH-791113

VERSUS

1:COMMISSIONER OF INCOME TAX and 2 ORS,
AAYKAR BHAWAN, 3RD FLOOR, CHRISTIAN BASTI, G.S. ROAD,
GUWAHATI 781005

2:COMMISSIONER OF INCOME TAX APPEALS
GUWAHATI AAYAKAR BHAWAN
3RD FLOOR CHRISTIAN BASTI
G.S. ROAD
GUWAHATI 781005

3:INCOME TAX OFFICER
WARD
NORTH LAKHIMPUR
P.O. NORTH LAKHIMPUR

Advocate for the Petitioner : DR.ASHOK SARAF

Advocate for the Respondent : MR.S SAIKIA

Linked Case : ITA 232/2017

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Advocate for the Petitioner : MR.Z ISLAM
Advocate for the Respondent : MR. S SARMA

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. A.S. BOPANNA

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

12-02-2019

(A.S. BOPANNA, C.J.)

Heard Dr. Ashok Saraf, learned senior counsel assisted by Mr. P Baruah, Mr. P.Das and Mr. S.P. Sharma, learned counsel for the appellant. Also heard Mr. Sanjay Sarma, learned Standing Counsel, Finance and Taxation Department for the respondents.

The appellant in these appeals are assailing the assessment orders dated 29.12.2011, the order passed by the CIT (Appeals) dated 02.07.2013 and the order dated 31.05.2017 passed by the Income Tax Appellate Tribunal relating to the Assessment Years 2009-2010 and 2010-2011. Since the consideration ultimately was made by a common order in I.T.A. No.496 and 497/Kol/2013 and these two appeals arise out of the said common order, we have taken up these appeals together, heard and disposed of by this common order.

The substantial question of law framed in these appeals is also common to both these appeals, which reads as hereunder :

i) Whether on the facts and in the circumstances of the case, the appellant corporation is not entitled to the benefit of exemption under Section 10(26B) of the Income Tax Act, 1961 ?

ii) Whether the finding arrived at by the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati in its order dated 31.05.2017 in ITA No.496/Kol/2013 is perverse and thereby the impugned order dated 31.05.2017 is liable to be set aside and/or quashed ?

For the purpose of narration of facts, we have referred to the facts as in I.T.A. No.231 of 2017, which relates to the Assessment Year 2009-2010. All other aspects would be similar in I.T.A. No.232 of 2017 except for the Assessment Year being 2010-2011.

The brief facts are that the appellant Corporation is established and registered based on the Memorandum of Association and Articles of Association as at Annexure-A to the memo of appeal. In that light, considering that the appellant Corporation is set-up in the name and style, Arunachal Police Housing & Welfare Corporation Limited and the benefit derived is by the police personnel serving in Arunachal Pradesh, the appellant has sought exemption of the income tax by invoking the provision as contained in Section 10(26B) of the Income Tax Act, 1961, ("IT Act" for short).

In order to appreciate the matter in its correct perspective, it would be profitable to extract and take note of Section 10(26B), which reads as hereunder :

> "***10. <u>Incomes not included in total income</u> , - In computing the total income of a previous year of any person, any income falling within any of the following causes shall not be included –***
>
> ….
>
> ***(26B) any income of a corporation established by a Central, State or Provincial Act or of any other body, institution or association (being a body, institution or association wholly financed by Government) where such corporation or other body or institution or association has been <u>established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them</u>.***
>
> ***Explanation.- For the purpose of this clause, -***
>
> ***(a) "Scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in clause (24) and (25) of article 366 of the Constitution;***
>
> ***(b) "backward classes" means such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified-***
>
> ***(i) by the Central Government; or***
>
> ***(ii) by any State Government,***
>
> ***as the case may be, from time to time;".***
>
> ***(emphasis supplied)***

In that background, what arises for consideration is as to whether the benefit as provided in the said provision is admissible in respect of income tax payable by the appellant herein by considering the same to have been formed for promoting the interest of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them, as provided under the provision relating to exemption ?

Learned senior counsel for the appellant while assailing the orders passed by the Assessing Officer, CIT(Appeals) and the Income Tax Appellate Tribunal would contend that in the instant case the appellant Corporation has been formed for the welfare of the police personnel who are working in Arunachal Pradesh and when as per the observation of the CIT (Appeals), 98 % of the population in Arunachal Pradesh belongs to Scheduled Tribes, in such circumstance, the benefit will enure to the member of the appellant Corporation who are police personnel who are serving in Arunachal Pradesh. Further contention is, as per notification dated 20.03.1995, reservation has been provided to the Scheduled Tribes candidates to the extent of 50% in Grade "A" posts and by another notification dated 27.08.1997, the reservation provided to Group 'C' and 'D' posts is to the extent of 80% and as such majority of the personnel would belong to Scheduled Tribe. In that light, it is contended that if the said aspect is kept in view, the benefit as claimed under Section 10(26B) would be admissible. Having contended so, the learned senior counsel would refer to observation as contained in the assessment order to indicate that the reason as assigned to decline benefit is that the main object for the incorporation of the Corporation does not indicate that it is for promoting the interest of Scheduled Castes or the Scheduled Tribes or backward classes. The denial for the said reason is not justified. It is also contended that the observation as made by the CIT (Appeals) as also the Appellate

Tribunal to the effect that if such benefit is granted to the appellant Corporation, all corporations established in Arunachal Pradesh would seek for such exemption is not justified. He contends that all that is required to be noticed is the reason for which the appellant Corporation has been set up, the manner in which its activities are undertaken and the beneficiary being Scheduled Tribes. He would further contend that the observation as made by the Assessing Officer, CIT (Appeals) as well as the Appellate Tribunal to indicate that the appellant Corporation is also set up with the object of undertaking works of other Departments/Companies including the office and residential buildings in and outside Arunachal Pradesh is not justified inasmuch as no work outside Arunachal Pradesh has been undertaken by the appellant Corporation. In such circumstance also, that could be segregated and the benefit can be provided. In that light, it is contended that the orders passed by the Assessing Officer, CIT (Appeals) and the Appellate Tribunal are not sustainable and they are liable to be set aside.

The learned counsel for the Revenue would take us through the orders passed by the Assessing Officer as also the Tribunal and would contend that when the authorities have taken into consideration the nature of activities of the appellant and, in that light, have kept in view the provisions of law and have arrived at the conclusion, the same does not call for interference. Hence, he seeks to sustain the orders passed by the Assessing Officer, CIT (Appeals) and the Appellate Tribunal.

In the above background, having taken note of the provision under which the exemption is claimed and also the substantial question of law as framed by this Court for consideration, at the outset, it would be appropriate to take note of the objects for which the appellate Corporation has been set up. The same reads as hereunder :

"***(A) Main objects to be pursued on the incorporation of the Company:***

1. To formulate and execute Housing Schemes for the benefit & welfare of employees of the Police Department, Government of Arunachal Pradesh.

2. To undertake construction of buildings for the housing of personnel of the Police Department and also to undertake design, construction, repair and allied works for all kinds of buildings for the Police Department.

3. ***To undertake the works of other Departments/Companies including office and residential buildings in & outside Arunachal Pradesh."***

A perusal of the objects of the appellant Corporation would disclose that the same has not been set up exclusively for Scheduled Castes or the Scheduled Tribes or backward classes even among the police personnel. The main object as seen therefrom is to formulate and execute housing scheme for the benefit and welfare of the Police Department, Government of Arunachal Pradesh without specific reference to any category of employee in the Police Department, much less the Scheduled Tribe personnel. If that be the position, irrespective of the fact as to whether the work is being undertaken within Arunachal Pradesh or outside, the very purpose for which the Corporation has been set up would indicate that the same is not for the benefit of the Scheduled Castes and Scheduled Tribes or other backward classes or for promoting their interests. In that background, if the provision in Section 10(26B) is taken note, the exemption that could be claimed is only when the institution or association has been established and formed for promoting the interest of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them. In that circumstance, even if the contention as put forth on behalf of the appellant that the Appellate Tribunal has noticed that 98% of the population of Arunachal Pradesh comprises of Scheduled Tribes, that alone does not provide for any benefit to the appellant herein. Further the notifications dated 20.03.1995 and 27.8.1997 though provide for reservation in recruitment keeping in view Article 16 of the Constitution of India, that by itself cannot indicate that the Corporation has been set up for the benefit of the Scheduled Tribes.

The learned senior counsel for the appellant in support of his contention has referred to the decision in the case of ***Commissioner of Income-Tax –Vs.- Harijan Evam Nirbal Varg Avas Nigam, (1997) 226 ITR 696***. In the said case, the Division Bench of the Allahabad High Court while considering the question that had been posed for its opinion had arrived at a conclusion that the benefit as claimed under Section 10(26B) as admissible on having taken note of the activities of the respondent therein. In that regard, at the outset, it is noticed that the Nigam itself has been established for the benefit of Harijan. In that light, a consideration was made and also the object as contained was taken into consideration. Though the learned senior counsel for the appellant has sought to refer to the clauses as contained in the objects therein and the consideration that was made to indicate even in respect of the object which did not limit the benefit to the Harijan, the benefit has been granted therein, we are of the opinion that such consideration in the said case was made keeping in view the very object for which the Nigam was set up and, in that background, the activities that were undertaken for the benefit of the Harijans. In that circumstance, when such benefit was extended, the said decision would not be of any assistance for the present consideration.

The learned senior counsel has also relied on the decision of this Court in the case of ***Arunachal Pradesh Forest Corporation Limited Vs. Assistant Commissioner of***

Income Tax, Tezpur Circle and others, (2007) 290 ITR 139. In the said decision, the Arunachal Pradesh Forest Corporation Limited has claimed the benefit under Section 10(26B) though not having been established by specifically stating that it is for the benefit of the Scheduled Tribes. While making a consideration of that aspect, this Court had taken note of the fact that the Corporation had been set up to promote the development of the local population and on taking note that admittedly the tribal population constitutes the bulk of entire population, the benefit as claimed is held admissible. This is distinguishable from the facts of that case and as arising in the instant case. In the said case the Corporation had been set up for the entire population of the State and, in that light, the situation of the overwhelming tribal population was taken note as such population would be benefitted. However, in the instant facts as already noted, the appellant Corporation was set up for the benefit of police personnel in Arunachal Pradesh, in the name and style of Arunachal Police Housing and Welfare Corporation Limited, for the purpose of formulating and executing housing scheme for the benefit and welfare of the employees of the Police Department, Government of Arunachal Pradesh. In that view, it is not set up for the purpose of the general population, but limited to a particular class of employees of the Government of Arunachal Pradesh and in such circumstance, all persons of the Police Department cannot be considered as belonging to Scheduled Tribe, even if the reservation policy for recruitment is kept in view. Therefore, in such circumstance, the benefit of the provision, as referred to, would not be applicable to the present case.

In the above background, if the assessment orders dated 29.12.2011, the order dated 2.7.2013 of the CIT (A) and the order dated 31.5.2017 of the Income Tax Appellate Tribunal are taken note, the consideration made is in a similar fashion. Though the learned senior counsel seeks to contend that the reason as assigned therein are not justified, a composite perusal of the ultimate conclusion as reached is with reference to the exemption as provided under the Act and to arrive at a conclusion as to whether the same is admissible. Hence, the mere observations in the order alone would not vitiate the order. In that view, we are of the opinion that the substantial questions in these appeals are to be answered against the appellant, which is, accordingly, done.

In that view, these appeals being devoid of merit stand dismissed.

JUDGE CHIEF JUSTICE

Comparing Assistant