Reserved on 23.05.2019

Delivered on 31.05.2019

Court No. - 5

Case :- INCOME TAX APPEAL No. - 1 of 2019

Appellant :- People Cause Foundation,Lucknow Thru.Dir. Kanchan Agarwal
Respondent :- Income Tax Appellate Tribunal,Lucknow Bench,Lucknow & Anr.
Counsel for Appellant :- Anesh Kumar Agarwal,Sanjay Saxena Advocate
Counsel for Respondent :- Manish Mishra

Hon'ble Dr. Devendra Kumar Arora,J.
Hon'ble Alok Mathur,J.

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Anesh Kumar Agarwal, learned counsel for the appellant as well as Sri Manish Mishra, learned counsel for the respondent.

2. This appeal under Section 260(A) of the Income Tax Act, 1961 (*hereinafter referred to as "the Act, 1961"*) has been filed challenging the order dated 28.09.2018, passed by the Income Tax Appellate Tribunal (*hereinafter referred to as "the ITAT"*), in Income Tax Appeal No. 60/LKW/2018 - People Cause Foundation, Lucknow Vs. CIT (Exemptions), Lucknow, so far as it relates to the remand of the matter to the Commissioner of Income Tax (Exemptions), Lucknow.

3. The instant appeal was admitted by this Court by means of order dated 10/01/2019, on the following substantial questions of law which are being reproduced herein below:-

> "(I) Whether the respondent no.1, i.e. the Ld. ITAT Lucknow could remand the instant matter to the respondent no.2, i.e., the CIT (Exemp) Lucknow when all the issues involved in the matter were well adjudicated by the CIT (Exemp) Lucknow and neither any issue was remaining to be adjudicated nor was framed by the Ld.ITAT Lucknow any new issue directing it to be decided by the CIT (Exemp) Lucknow in the matter ?
>
> (II) Whether the Ld.ITAT Lucknow could remand the matter when the entire matter/evidences were available before it and the Ld.ITAT Lucknow was under a legal obligation to decide the instant matter itself on merits ?
>
> (III) Whether the matter should be remanded simply on the ground that the lower court has decided any material efficiently within a record period of time without raising any doubts about the veracity and legality of that order ?" This will be treated as an additional substantial question of law no.(III) to the appeal."

4. Learned counsel for the appellant submitted that appellant is a Company incorporated under Section 8 of the Companies Act, 2013 on 12/02/2016 and had obtained a certificate under Section 12-A Of the Act, 1961 from the office of Commissioner of Income Tax (Exemption), Lucknow, and had also applied for the certificate under Section 80G of the Act, 1961 on 20/06/2017 on prescribed Form No.10G with all the requisite information. The said application was dismissed, against which the appellant preferred an appeal on 23/01/2018 before the ITAT, Lucknow, decided by order dated 28/09/2018, which has been impugned in the instant appeal.

5. The ITAT in its order dated 28/09/2018 has remitted the matter back before the Commissioner of Income Tax (Exemption) to be decided afresh after verifying the facts of the case in accordance with the documents submitted by the assessee and specifically to determine the genuineness of those documents and, to come out with a speaking order.

6. The Commissioner of Income Tax (Exemption) in his order dated 13/12/2017, while rejecting the application of the assessee, took into account the fact that the applicant has deliberately not submitted any details regarding the identity of the donors, and concluded that this is a malafide attempt on part of the applicant to introduce the unaccounted money to the person, as donation. He further observed that the applicant, to verify the genuineness of the expenses did not produce the vouchers with respect to expenses incurred, and therefore the Commissioner of Income Tax (Exemption) was unable to come to a finding as to whether the activities of the assessee are charitable, and on the basis of the evidence filed it was also observed that the applicant disclaim to be involved in activities which apparently are for profit-making on commercial lines and away from the term "charitable purpose", and therefore, rejected the application of the applicant under Section 80G(5) of the Act, 1961.

7. With regard to the questions of law framed by this Court, from a perusal of record and most specifically the order of the Commissioner of Income Tax Exemption dated 13/12/2017, would indicate that the application for grant of exemption was preferred on 20/06/2017, and on examination of various documents filed along with the application, the Commissioner of Income Tax (Exemptions) came to the conclusion that the applicant has not carried out the acts of charity during the said period, and has deliberately not submitted

any details thereof in order to deliberately obscure the real identity of the donors, and therefore they had failed to verify the genuineness of the expenses as claimed in income and expenditure account. Not a single activity can be seen as irrelevant to the objects declared by the applicant, and also the fact that material available on record does not suggest any initiative on part of the applicant as it is not possible to verify the claim of the applicant as he has never been able to produce the books of account nor expenses and therefore the Commissioner of Income Tax (Exemptions) exemptions could not form a satisfaction as mandated under the law for according the registration.

8. Before the ITAT, it was contended that the registration under Section 12A of the Act, 1961 had been accorded, and it was further stated that required information, details, vouchers, photographs had also been submitted as evidence before the Commissioner of Income Tax (Exemptions), and it was further submitted that the nature of activities can be examined at the stage of registration under Section 80G(5) of the Act, 1961 and objectives and/or idea incorporated in the memorandum of Association cannot be revisited. Before the ITAT from documents, the assessee tried to impress that the expenses shown in the books of accounts as donations contained the full details of the donors, and all the evidences as desired by the Commissioner of Income Tax (Exemptions) were available on record.

9. From the perusal of the impugned order it is evident that it weighed in the mind of the ITAT that despite numerous documents having been filed as evidence before the Commissioner of Income Tax (Exemptions), the same have not been duly taken note of, and the application of the assessee for registration has been rejected without examining the evidence filed by him, and therefore, remanded the matter to the Commissioner of Income Tax (Exemptions) to look into

each and every aspect of the case and the take a fresh decision after affording opportunity of hearing to the assessee.

10. The main contention raised by the assessee in this appeal is, that in the facts and circumstances of the case the matter could not have been remanded back as the entire material was available before the ITAT to come to subjective satisfaction as to whether in the given circumstances the assessee was eligible for being granted a certificate under Section 80(G)(5) of the Act, 1961, or not.

11. In our considered view, for the purpose of deciding as to whether or not to grant approval under Section 80G of Act, 1961, a Commissioner of Income Tax (Exemptions) has to only examine whether or not the conditions set out in Section 80G(5)(i) to (v) of the Act, 1961 are satisfied. The first and foremost thing to be seen is whether or not any income earned by the assessee is not being liable to inclusion in its total income under any of the provisions of Sections 11and 12 or Clause (23AA) or Clause (23C) of Section 10 of the Act, 1961. It has to be borne in mind that since the assessee is granted approval for the future years, and since there is no way that anyone can have the clairvoyance of knowing whether or not the assessee will eventually be able to comply with the conditions, if any, attached to the exemptions, as long as the exemption is available in principle and as long as the assessee can reasonably claim to be able to satisfy the conditions attached to such exemption, one has to proceed on the basis that the condition laid down under Section 80G(5)(i) of Act, 1961 is satisfied. It cannot be open to the Commissioner of Income Tax (Exemptions) to reject the approval under Section 80G only on the ground that it is not conclusively established now that the assessee will be finally eligible in future for exemption under Sections 11, 12 and 10(23AA) or 10(23C). The next thing to be ensured by the Commissioner of Income Tax

(Exemptions) is non-existence, in the instrument, Constitution or Rules governing the Institution of any provision for the transfer or application at any time of the whole or any part of the income or assets of the Institution or fund for any purposes other than the charitable purposes. That can of course be done by examining the provisions in instruments and rules of the Institution. The next thing to be ensured is that the Institution or fund is not expended for the benefit of any particular religious community or caste. As regards the requirements of Section 80G(5)(iv), all that is to be seen is that the assessee maintains accounts of its receipts and expenditure.

12. In facts of the case at hand from examination of the ledgers and documents produced by the assessee the Commissioner of Income Tax (Exemptions) could not form a subjective satisfaction with regard to the above , and also charitable objects of the applicant. Before the ITAT, the applicant placed all the relevant material, and the ITAT has rightly remanded the matter to the Commissioner for taking into account all the evidence produced by the assessee and to form a subjective satisfaction in this regard.

13. Learned counsel for the applicant in support of his contentions produced the judgement in the case of **J.Balaji Singh vs Diwakar Cole** in **Civil Appeal No. 5540 of 2017** wherein the Hon'ble Supreme Court has considered the question as to whether the High Court was right in remanding the case to the Trial Court for fresh trial on merits. The Supreme Court upheld the contention of the first appellate Court in remanding the matter to the Trial Court has to be decided in light of the additional evidence adduced by the parties, and further observed that it was not necessary for the first appellate Court to enter into the merits of the case and form an opinion when the matter was being remanded. The Apex Court in paragraph number 27 has clearly held as under :-

> *"we are also unable to agree with the High Court when it that the first appellate court instead of remanding he case in the case would trial court should have heard the appeal on merits. This finding, in our view, is bad in law for the reason that firstly, it is not possible for the first of the court to have recorded evidence at the appellate state. Secondly, having regard to the nature of actual controversy involved in keeping in view the nature of additional evidence filed which to needed to be proved in evidence, it was not possible to retain the people itself and invite finding only on additional evidence by taking recourse to thousand under rule 25, and lastly, the whole summer, as directed by the force of the court, would enable the trial court will be appreciate the entire evidence on proper perspective while deciding the suit a fresh on merits."*

14. The aforesaid judgment does not support the cause of the appellant, rather it is supporting the stand taken by the Tribunal in remanding the matter back to the Commissioner of Income Tax (Exemptions) for passing a fresh order.

15. The appellant also relied on the judgment of **Ashoksinh Jayendrasinh vs state of Gujarat** in **Criminal Appeal number 1123 of 2010**, wherein the Apex Court in paragraph 17 has held that where the appreciation of evidence is erroneous, the Supreme Court would certainly appreciate the evidence. The learned counsel submitted that the ITAT should have itself appreciated the evidence rather than remanding the case to the Commissioner of Income Tax (Exemptions). The aforesaid decision which has been passed in criminal proceedings, where all the evidence were on record. The facts of the case and the nature of proceedings in **Ashoksinh**

Jayendrasinh vs state of Gujarat are very different from the case at hand. In the present case the Commissioner of Income Tax (Exemptions) could not form a subjective satisfaction on account of the fact that the assessee did not submit the documents as directed by the Commissioner of Income Tax (Exemptions).

16. Before the ITAT it seems, the appellant was able to point out the relevant documents from which charitable nature of the society could be deciphered. The ITAT therefore in the facts and circumstances of the case observed that the Commissioner of Income Tax (Exemptions) has not examined the entire documents placed before him, and these are matters which require factual verification of the Commissioner of Income Tax (Exemptions) who has the requisite machinery to undertake such an exercise. The appellate Court certainly have the power of remand, and the ITAT has rightly remanded the matter back to the Commissioner of Income Tax (Exemptions) for fresh decision, and sufficient reasons have been stated by the ITAT in support of its decision to remand the case which cannot be found wanting.

17. The counsel for the respondent on the other hand has relied on a decision passed by a Division Bench of this Court in the case of **New Cawnpore Flour Mills Pvt Ltd vs Commissioner of Income Tax,** reported in **2005 (275) ITR 45** wherein the Tribunal remanded the matter to the Commissioner of Income Tax (Exemptions) as the same was short and cryptic and did not consider the different aspect of the matter, and while confirming the said order of the Tribunal the High Court observed as under :-

> *"We do not find any infirmity in the approach adopted by the tribunal in the present case. Even otherwise, in the case of CIT v Naresh Chandra Bhargava (1987) 167*

> *ITR 288(All) this court has held that where the tribunal does not decide any point against or in favour of either the two parties and remands the case first appellate authority for a fresh hearing and disposal, no reference lies in such circumstance. He is also relied upon the case of Roxy Engineering vs Commissioner of income tax reported in (2009) 316 ITR 247 wherein the division bench of the Punjab and Haryana High Court has held that no question of law would arise from an order passed by the time remanding the case back to CIT for a decision a fresh."*

18. In light of the discussion made hereinabove the ITAT rightly remanded the matter back to the Commissioner of Income Tax (Exemptions) for fresh consideration and decision on the basis of the evidence available on record regarding genuineness of the documents and to pass a speaking order. The questions are answered accordingly.

19. The appeal is accordingly **dismissed**.

20. Commissioner of Income Tax (Exemptions) shall take decision on the application of the assessee, expeditiously, say within a period of one month from the date a certified copy of this order is produced before him, in accordance with law, after affording opportunity of hearing to the assessee.

21. Before parting, we would like to mention that from the perusal of the record it seems that the counsel for the appellant is a director and main functionary in the company as evident from the certificate filed by him personally before the CIT exemptions dated 07/12/2017, and the PAN card bearing no. AAZPA1138Q at page 93 of the writ petition, probably this was the reason why the case was argued over zealously and vehemently. The learned counsel should have informed

this court about his relationship with the appellant. We deprecate and condemn such a practice. The vakalatnama has been issued by one director in favour of another, and also who happen to be husband-and-wife.

Order Date :- 31.5.2019
A. Verma