(2006) 07 KL CK 0007

In the High Court Of Kerala

Case No : IT Appeal No''s. 22, 51, 55 and 80 of 1999

ITO — APPELLANT

Vs

Nedunichalil Trust Hospiial — RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:
Income Tax Act, 1961 — Section 10(22A), 12A

Citation : (2008) 296 ITR 492

Hon'ble Judges : V. Ramikumar, J;K.S. Radhakrishnan, J

Bench : Division Bench

Judgement

K.S. Radhakrishnan, J.—These appeals arise out of a common order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA No. 278/Coch./95 and connected matters. Respondent-assessee is a hospital run by a charitable trust. In response to notice u/s 148, dated 19-7-1991, the assessee filed its return for the assessment year 1989-90 on 20-9-1991 declaring nil income. Return was posted for evidence. Assessee claimed that it is a charitable hospital solely existing for philanthropic purposes and not for the purpose of profit and as such is fully exempt from tax u/s 10(22A) of the Income Tax Act. Reliance was also placed on the decision of this Court in Commissioner of Income Tax Vs. Pulikkal Medical Foundation Pvt. Ltd., . Assessing authority noticed that the facts in Pillikkal Medical Foundation (P.) Ltd.s case (supra) and, the assessee''s case are entirely different and took the view that the assessee is conducting the hospital on commercial lines and consequently not entitled to get exemption u/s 10(22A) of the Act. It was also noticed that the assessee hospital is fully managed by a family trust which was not registered u/s 12A of the Income Tax Act. It was also noticed that the total expenses including free treatment is nominal when compared to total hospital collections. It was also noticed that the assessee had made substantial profit during the years in question. Assessment was accordingly completed rejecting the assessee''s claim for exemption u/s 10(22A) of the Act.

2. Assessee took up the matter in appeal before the Commissioner (Appeals).

Appeal was allowed following the decision of this Court in Pulikkal Medical Foundation (P.) Ltd.s case (supra). Commissioner took the view that the assessee had satisfied all the conditions for claiming exemption u/s 10(22A) of the Income Tax Act. Revenue took up the matter in appeal before Tribunal. Tribunal rejected the appeal, against which these appeals have been preferred.

3. Sri P.K. Raveendranatha Menon, senior counsel appearing for the revenue supported the orderof the Income Tax Officer and submitted that since the hospital is functioning on commercial lines, the assessee is not entitled to get exemption u/s 10(22A) of the Act. Counsel submitted that the decision of this Court in Pulikkal Medical Foundation (P.) Ltd.s case (supra) would not apply to the facts of this case.

4. Sri K.M.V. Pandalai, appearing for the assessee on the other hand contended that the mere fact that hospital runs on commercial lines does not mean that the object of the trust is not charitable. Counsel also submitted that the income and expenditure statement would indicate that the excess of income over expenditure comes to Rs. 1,2 1, 101 for the year 1989-90 and income for the purpose of Income Tax was computed at Rs. 1,58,368 and the assessee is entitled to exemption u/s 11 and also u/s 10(22A) of the Income Tax Act. Counsel submitted that the Commissioner as well as the Tribunal are justified in interfering with the order passed by the assessing authority.

5. The question as to whether the institution is entitled to get exemption u/s 10(22A) of the Act would depend upon the fact whether the institution exists solely for charitable purposes or not. In Pulikkal Medical Foundation (P.) Ltd. case (supra), the court held that the real test is to find out the dominant or primary purpose of the institution. If the primary purpose is philanthropic, the inclusion of some objects for earning profit for the implementation of the primary object would not alter the character of that primary object. In that case, the assessee satisfied all the conditions for claiming exemption u/s 10(22A) of the Act. So far as this case is concerned, in our view, there is no proper factual foundation to decide whether the institution exists solely for philanthropic purposes and not for purposes of profit. No finding has been recorded as to the manner in which and for what purpose, the profits were appropriated and t1hese are relevant f actors in view of Pulikkal Medical Foundation (P.) Ltd.s case (supra). The burden is always on the assessee to produce materials before the assessing authority to establish that it is being run solely for philanthropic purposes. When the assessee is claiming exemption the burden is on the assessee to produce relevant materials and claim exemption u/s 10(22A) of the Act. Income Tax Officer came to the conclusion that the hospital is being run on commercial lines. True, the Commissioner (Appeals) has taken a different view. In our view, there is no factual foundation for establishing such a claim before the assessing authority. Under such circumstance assessing authority came to the conclusion that the assessee is not entitled to exemption u/s 10(22A) of the Act.

6. In the facts and circumstances of this case, we feel it would be appropriate

that the matter be remitted back to the assessing authority for fresh consideration. It is open to the assessee to furnish all materials before the assessing authority to establish that the institution is entitled to get exemption u/s 10(22A) of the Act. We are therefore inclined to set aside the orders passed by the Commissioner (Appeals) as well as the Tribunal and send back these cases to the assessing authority for fresh consideration. Assessee may make available all relevant records to the assessing authority. We make it clear that we are not expressing any final opinion either way and leave it to the assessing authority to pass fresh orders within a period of three months from the date or receipt of copy of this judgment.

income tax appeals are disposed of as above.