(2009) 01 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 1764 of 2009

Sinhgad Technical Education Society	APPELLANT
Vs	
Mr. P.L. Pathade, Asstt. Commissioner of Income Tax and Others	RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 12A, 13(1), 220(6)

Citation : (2009) 111 BOMLR 862 : (2009) 222 CTR 333 : (2009) 180 TAXMAN 246

Hon'ble Judges : Ranjana Desai, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : J.D. Mistry and Nitin Dhumal, for the Appellant; Vimal Gupta, for the Respondent

Judgement

J.P. Devadhar, J.—Heard. Rule. Rule made returnable forthwith and by consent of parties, the petition is taken up for final hearing.

2. This petition is filed to challenge the order dated 12-1-2009 passed by the CIT (A), whereby while fixing the appeals for hearing on 4-2-2009, the CIT (A) has disposed of the stay applications by directing the petitioner to pay 10% of the demands raised for A.Y. 2005-06 and A.Y. 2006-07 by 30-1-2009 and further directed the petitioner to pay a sum of Rs. 50 lakhs by 27th of every month till the appeals are heard and disposed of.

3. The petitioner - trust which was established in the year 1993 to impart education in different branches had obtained registration u/s 12A of the Income Tax Act, 1961 (''Act'' for short) on 17-1-1994 as a result whereof the income of the assessee was exempted from payment of income tax.

4. On 20-7-2005, the premises of Shri M.N. Navale, principal trustee of the petitioner was searched wherein cash amounting to Rs. 1.20 crores as well as other documents were seized. In the light of the aforesaid action, the registration

granted to the petitioner was cancelled. However, on appeal filed by the petitioner, the I.T.A.T. by its order dated 19-9-2008 set aside the order cancelling the registration and restored the said registration granted u/s 12A of the Act.

5. In the meantime, by assessment orders all dated 7-8-2008, the Assessing Officer made reassessments/assessment for A.Y. 1999-2000 to A.Y. 2006-2007.

6. Demands raised for A.Y. 1999-2000 to A.Y. 2004-2005 have been stayed by the C.I.T. and the dispute in the present petition is, whether the C.I.T. (A) is justified in declining to grant absolute stay of the demands raised for A.Y. 2005-2006 and 2006-2007 during the pendency of the appeals filed by the petitioner for those two assessment years. Demand raised for A.Y. 2005-2006 is Rs. 50,00,812 and the demand raised for A.Y. 2006-2007 is Rs. 15,42,70,384/-. Demands raised for these two years are basically due to the additions made on account of the donations received by the petitioner from the students which are not accounted and are siphoned of by the principal trustee in violation of Section 13(1)(c) of the Act. By the impugned order, the petitioner is directed to pay 10% of the demand (approximately 1.50 crores) by 30-1-2009 and thereafter Rs. 50,00,000/- by the 27th of each succeeding month till the disposal of the appeal.

7. Mr. Mistry, learned Counsel appearing on behalf of the petitioner submitted that the C.I.T. (A) having fixed the appeals for final hearing on 4-2-2009 ought to have stayed the demands till the disposal of the appeals. He submitted that the petitioner - trust duly registered u/s 12A of the Act is exempted from payment of tax. However, high-pitched assessments have been made by arbitrarily denying the exemption and huge demands have been raised. Relying on the C.B.D.T. instruction No. 96 dated 21-8-1969, Mr. Mistry submitted that where the income determined was substantially higher than the returned income, say twice the later amount or more, the assessing officer was bound to hold in abeyance the collection of tax in dispute till the decision on the appeals provided there was no lapse on the part of the assessee. In the present case, the income assessed is more than double the returned income and there is no lapse on the part of the petitioner. Therefore, the aforesaid instruction of the Board was binding on C.I.T. (A) and in this connection, he relied upon a decision of the Rajasthan High Court in the case of Maharana Shri Bhagwat Singhji of Mewar (Late his Highness) Vs. Income Tax Appellate Tribunal, Jaipur Bench and Others, .

8. Mr. Mistry further submitted that the petitioner had made out a strong prima facie case for grant of stay and that the C.I.T. (A) had failed to exercise the discretion vested in him reasonably and in conformity with the principles of equity, justice and good conscience. He submitted that there was no violation of Section 13(1)(c) of the Act and the addition of Rs. 22,45,06,500/- made in A.Y. 2006-07 as undisclosed income on account of donation is wholly unjustified because whatever amount received from the students have been properly recorded in the books maintained by the assessee. He submitted that in the absence of any material on record to show that the donations have in fact been received, making additions on account of donations by recasting the account is

wholly unjustified. In these circumstances, especially when the appeals are fixed for hearing on 4-2-2009, he submitted that the C.I.T. (A) ought to have stayed the demand till the disposal of the appeals.

9. Mr. Mistry submitted that by the impugned order, the C.I.T. (A) has directed payment of Rs. 1.5 crores by 30-1-2009 and if that order is enforced, it would cripple the operations of the petitioner and adversely affect the career of over 36,500 students and more than 5000 employees. He submitted that the cash and bank balance of the petitioner as on 17-1-2009 was Rs. 1.18 crores whereas the liabilities as on 17-1-2009 was Rs. 40.93 crores. Moreover, the petitioner is running a free General and Dental Hospital and its liability is to the tune of Rs. 2.34 crores. Accordingly, Mr. Mistry submitted that it is impossible for the petitioner to pay 10% of the demand which comes to approximately Rs. 1.5 crores. Alternatively, Mr. Mistry submitted that the petitioner may be directed to furnish bank guarantee in the sum of Rs. 1.50 crores till the disposal of the appeals for A.Y. 2005-06 and A.Y. 2006-07.

10. Mr. Gupta, learned Counsel appearing on behalf of the respondents supported the order of C.I.T. (A) and submitted that order of C.I.T. (A) is more than reasonable and, therefore, no interference is called for. He submitted that from the documents on record, it is clearly established that the petitioner has been collecting donations from the students and these donations are siphoned of by the principal trustee of the petitioner in violation of Section 13(1)(c) of the Act. The amounts so siphoned of are invested by the principle trustee in immovable properties like land and buildings, which are let out to the petitioner at exorbitant rents again in violation of Section 13(1)(c) of the Act. In these circumstances, directing payment of 10% of the demand is fair and reasonable. If the petitioner is directed to furnish bank guarantee instead of cash payment of Rs. 1.50 crores, it would affect public revenue and in this connection he relied upon a decision of the Apex Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, . Accordingly, Mr. Gupta submitted that the petition deserves to be dismissed in limine.

11. We have carefully considered the rival submissions. Although the assessments for all the assessment years from 1999-2000 to 2006-2007 have been passed on 7-8-2008, the assessments for A.Y. 2005-2006 and A.Y. 2006-2007 are not comparable with the assessments made for A.Y. 1999-2000 to A.Y. 2004-2005. Therefore, absolute stay granted for those years have no bearing while dealing with the stay applications for A.Y. 2005-06 and A.Y. 2006-07.

12. Perusal of the assessment order for A.Y. 2006-07 shows that the addition of Rs. 22.45 crores has been made as undisclosed income on account of donations received for granting admission to the students. In para 5 of the assessment order, the A.O. has referred to the letters addressed by reputed persons including M.L.A. and M.P. to the principal trustee requesting for reduction in fees/donations from the students named therein. In para 5.2, the A.O. has referred to a sample

slip found at the residence of Mr. Navale, which reads thus:

Ankita Arun Burud

MBA (SPOM)

3.5

sd/- (Signature of Shri Navale)

The A.O. has arrived at the conclusion that the figure of "3.5" in the aforesaid slip represents the donation for granting admission to the student for the M.B.A. course. Accordingly, addition of Rs. 22.45 crores have been made as undisclosed income on account of donations.

13. The question, therefore, to be considered is whether the amount of Rs. 22.45 crores added as undisclosed income has been actually received by the petitioner as donation for granting admission to the respective students without recording the same in the books of the petitioner and siphoned of by the principal trustee in violation of Section 13(1)(c) of the Act? Whether the particulars of cash collected/cash deposited set out in Annexure I to the assessment order are relatable to the donation of Rs. 22.45 crores allegedly received by the petitioner - trust/principal trustee or is it a figure arrived at by recasting the accounts ? What is the effect of assessing the amount of donation in the hands of principal trustee? All these questions are required to be considered at the final hearing of the appeals which is scheduled on 4-2-2009.

14. Even though the appeals are scheduled to be heard on 4-2-2009, since the petitioner is disputing the correctness of the endorsements made on the seized documents, disposal of the said appeals is bound to take time. In the meantime, whether the petitioner should be directed to deposit the tax as ordered by the C.I.T. (A) is the question before us.

15. It is contended by the petitioner that every document seized during the course of search has been properly explained. However, in the absence of any specific statement made before the A.O. or in the writ petition to the effect that no donation has been received or whatever donation received has been accounted for in the books maintained by the petitioner, we find it difficult to accept the contention of the petitioner.

16. Reliance placed by the petitioner on the Board''s instruction No. 96 is misplaced because the said instruction is not intended to cover cases where the income of the Public Trust is found to have been siphoned of in gross violation of Section 13(1)(c) of the Act. In such a case, the assessment made cannot be said to be a high pitched assessment. Similarly, the decision of the Rajasthan High Court relied upon by the petitioner is distinguishable on facts. In that case, there was no evidence that the accountable person had cash belonging to the estate of the deceased. In that context, it was held that the tribunal was not justified in directing deposit of 25% of the disputed duty. In the present case, on the basis

of the seized documents the finding recorded is that the admissions were granted subject to donation and the donation received has been diverted to the principal trustee Whether the donations were actually received by the petitioner and whether they are recorded in the books or the additions are made by recasting the accounts is the question to be considered by the appellate authority at the final hearing of the appeals.

17. Reliance placed by the counsel for the revenue on the decision of the Apex Court in the case of Dunlop India Limited (Supra) is also distinguishable on facts. In that case, the dispute was relating to the excise duty payable on clearance of the goods manufactured. The High Court had allowed clearance of the goods subject to furnishing a bank guarantee. In that context, while setting aside the order of the High Court, the Apex Court held that in matters of public revenue the interim order ought not to be granted on mere prima facie grounds. In the case before us, the dispute is regarding the income allegedly earned by the petitioner and the liability to tax income at the hands of the petitioner trust having registration u/s 12A of the Act. Moreover, the instruction/circular issued by the Board empowers the tax authorities to grant total stay of demand in appropriate cases till the disposal of the appeal. Even Section 220(6) of the Act confers powers on the assessing officer to exercise discretion and treat the assessee as being not in default in respect of the amount in dispute on such conditions as he deems fit, even though time for payment has expired and the appeal is pending. Thus, the decision of the Apex court relied upon by the Counsel for the revenue is distinguishable on facts.

18. Taking overall view of the matter, especially the fact that the undisclosed income on account of donation has also been taxed in the hands of the petitioner trust as well as the principle trustee and the fact that the hearing of the appeals is scheduled to commence from 4-2-2009, we are of the opinion that the interest of justice would be met by passing the following order:

a) The order of CIT (A) dated 12-1-2009 is modified to the extent that the stay of recovery of tax payable in respect of A.Y. 2005-06 and A.Y. 2006-07 shall be subject to the petitioner furnishing within a period of four weeks from today, a bank guarantee in the sum of Rs. 1.50 crores valid till the disposal of the appeals and eight weeks thereafter.

b) The petitioner shall not take any adjournment in the appeals, which are scheduled for hearing on 4-2-2009.

c) The C.I.T. (A) shall dispose of the appeals in accordance with law without being influenced by the observations made in this order.

19. Rule is made absolute in the above terms with no order as to costs.

