HONOURABLE SRI JUSTICE P. SAM KOSHY
AND
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

I.T.T.A.No.500 of 2006, I.T.T.A.No.555, 556 of 2013, I.T.T.A.Nos.2, 143 and 293 of 2014

COMMON JUDGMENT: *(per Hon'ble Sri Justice P.Sam Koshy)*

We have heard Sri S.Ravi, learned counsel for the appellant and Ms.K.Mamata, learned standing counsel for the respondent.

1. Since all these appeals are of the same assessee and the grounds of appeal being also same, the question of law decided also being the same, all these connected matters are taken up and decided by this common order. For convenience, I.T.T.A.No.500 of 2006 is taken up as the lead case so far as the facts are concerned.

2. The instant appeal under Section 260-A of the Income Tax Act, 1961 (for short, 'the Act') is filed assailing the order passed by the Income Tax Appellate Tribunal, Hyderabad Bench (B) (for short, "the Tribunal") in I.T.A.T.No.1067/HYD/2005 decided on 30.06.2006 for the Assessment Year 2002-2003.

3. Vide the impugned order, the Tribunal dismissed the appeal of the appellant-assessee affirming the order passed by the Commissioner of Income Tax (Appeals) – IV, Hyderabad, dated 07.04.2005, who in turn had affirmed the order passed by the Assessment Officer dated 14.03.2005 after completion of the assessment under Section 143(3) determining income of Rs.7,16,56,700/-.

4. The appellants are primarily aggrieved of the refusal of exemption claimed under Section 11 of the Income Tax Act.

5. The appeal was admitted on 22.09.2014 on the question of law, viz., "*whether the exemption claimed by the appellant under Section 11 of the Income Tax Act is acceptable?*"

6. However, during the course of hearing of the appeal finally, the learned Senior Counsel appearing for the appellants also stressed hard for considering the question of law, viz., "*whether on facts and in the circumstances of the case, the word 'fund' in Section 13(1)(f) of the Income Tax Act, 1961 can apply only to service income and not to 'corpus' of the trust?"*. He further stressed upon the question of law as to "whether the Tribunal should have held that, in any event and without prejudice to the claim of the appellants the denial of exemption on the whole of the receipt was illegal at least the amount to be taxed should have been confined to the amount invested by the appellants in HITEX".

7. The facts relevant for decision on the present appeal are that the appellants herein is a 'Society' under the Andhra Pradesh (now Telangana area) Public Societies Registration Act. The same was registered under Section 12-A, and also had the exemption under Section 80G of the Income Tax Act.

8. The substantial object of the above Society was, (i) to establish and form a National Academy for Construction (N.A.C.); (ii) for the service and benefit of the construction and allied industries by creating awareness, imparting training for increasing its relevance to the national level and also ensuring quality to the international standards. The mission statement of the Society also was on similar terms which were primarily to develop the technological advancement in the competitive construction industry which serves India's economical needs. To ensure quality in work adherence, to ensure having long-lasting aesthetical construction. To modernize construction with methodologies, materials and technologies. To encourage their use to upgrade the knowledge and skills of construction engineers, contractors, managers, supervisor and workers and inculcate professionalism, etc. Various Departments of the State Government were admitted as patron members of the appellant society. Patron members were required to contribute ₹ 30 lakhs each as a One-Time Membership. However, the only exception was two private limited companies, i.e., Larsen & Toubro Limited and Nagarjuna Construction Company Limited, who were the only two private players who were admitted as patron members. The erstwhile Government of Andhra Pradesh had also allotted land of extent 167.30 acres to the appellant-N.A.C. The Government of Andhra Pradesh issued a Government Order, dated 19.05.1998 and 20.06.1998 and through the said

G.O., the Government decided the source of revenue for the appellant-N.A.C. Other than the membership fees it was also ordered that 0.25% of the contract value has to be deducted from all the contractor's bill at the time of raising of bills and its remittance. In addition, certain other State Government bodies, viz., Urban Development Authority, the Municipal Corporation of Hyderabad, Cyberabad Development Authority, the Department of Tourism, were also invited to be participants in this project. It is noteworthy to mention here that the financial participation of Larsen & Toubro Infosity was to the extent of ₹.8.12 crores, i.e., around 11% of the equity share.

9. The appellants in between incorporated a joint stock company under the Companies Act, 1956. The said company was known as Hyderabad International Expositions Limited (HITEX). The said company was incorporated with an intention of holding exhibitions and also to promote object and mission of the appellant's society. The appellants have been filing their returns periodically claiming for exemption on its net service from income tax for the Assessment Year 2002-2003, and they have filed returns claiming exemption of its service amounting to Rs.7.16 crores.

10. During the course of assessment, the Assessing Officer found that the appellant-N.A.C. has made an investment of Rs.1.50 crores in the equity of HITEX. This, according to the Assessing Officer,

was in violation of Section 11(5) of the Act. Accordingly, the Assessing Officer had refused to grant exemption under Section 11 to the appellants and passed the Assessment Order on 14.03.2005. On account of the fact that the appellant company had made an investment of Rs.1.5 crores into the joint stock company towards equity, the assessing officer found the same to be in violation of Section 11 (5) of the Act.

11. Consequently, the assessing officer taxed the entire surplus of Rs.7.16 crores for the year under consideration. The exemption sought for under Section 11 by the appellant company stood rejected. It is this order which was subjected to challenge before the Commissioner of Income Tax (Appeals) unsuccessfully by the appellants-N.A.C. The appellants were further unsuccessful in their further attempt before the Tribunal while challenging the order passed by the Commissioner of Income Tax (Appeals) as well.

12. According to the appellant, the Tribunal in the course of confirming the order passed by the CIT Appeals as also the assessing officer's order, reached to a perverse finding which was otherwise not sustainable. According to the appellant, the finding of ITAT is also perverse for the reason that, all that was required to be ensured was whether the income of the society is utilised only for the objects for which the society stands established. As an alternative to the argument, it was also contended by the appellant

that even if the finding of the Tribunal was to be accepted, the appellant should have been held liable to pay tax only to the extent of the quantum that the department had expended its contribution towards M/s. HITEX. In other words, according to the appellant even if the version of ITAT is found to be justifiable, the income which can be held to be not entitled for exemption would be only to the extent of the investment that the appellant society had contributed in the company M/s. HITEX.

13. Learned Senior Counsel for the appellant heavily relied upon the Government order dated 19.05.1998 which was further modified vide Government order dated 20.06.1998. While canvassing his case, so far as the funds generated by the appellant's establishment are concerned according to the learned Senior Counsel, since the funds were paid voluntarily by the members and that the entire contribution made by the members became part of the Corpus. Further, whatever contributions that have been made by the appellant to M/s. HITEX was from the aforesaid corpus and was not from the funds of the company. Therefore the appellant could not have been denied exemption under Section 11, as sought for by the appellant. That the contribution made from the corpus to M/s. HITEX cannot be in violation of Section 11 (5) of the Act.

14. It was the further contention of the learned counsel for the appellant that the appellants were entitled to accumulate 25% of their income which in the instant case comes to around Rs.2.2 crores and it is only an amount of Rs.1.5 crores which has been invested by the appellant. Hence, the provision of Section 11 (5) of the Income Tax Act would not had been attracted in the instant case. It was also the contention of the learned counsel for the appellant that even otherwise, the amount of Rs.1.5 crores spent by the appellant towards HITEX was the amount collected by way of membership fees and which again is a capital receipt and therefore both, section 11 (5) and Section 13 (1) (d) of the Act, would not be applicable.

15. Learned counsel appearing for the department on the other hand justifying the order of the ITAT, contended that since the order of the assessing officer has already been subjected to scrutiny and challenge, there is hardly any scope left for the High Court in the instant case, particularly, in exercise of its powers under Section 260 A of the Act. It was the contention of the learned counsel for the Revenue that since there is already a concurrent finding of fact, no substantial question of law as such remains to be adjudicated upon through the present appeal.

16. According to the learned counsel for the Revenue, the very purpose of constituting the company – M/s. HITEX was with an

commercial intention. It was the contention of the department that the management of HITEX is earning huge amounts of revenue from the hundred acres of land which HITEX has received from the appellant company. It was further contention of the learned counsel for the Revenue that the appellant company have already parted hundred acres of their land, (which they had received from the Government) to M/s. HITEX, which itself establishes the fact that they have deviated from the object and mission of the society.

17. Further, in turn HITEX has gone commercial by collecting huge amounts of rents by way of regularly organizing exhibitions over the land of the appellant which stood allotted to M/s. HITEX by appellant. Learned counsel for the Revenue, further contended that since there was a deviation from the object and mission by the society, the assessing officer has rightly refused the exemption as claimed under Section 11 of the Act.

18. Having heard the contentions put forth on either side and on perusal or records, it would be relevant at this juncture to take note of the admitted factual matrix of the case. Admittedly, the appellant is a society established with a specific purpose, object and mission. According to the appellant, it was not established to earn profits, but was with an intention of promoting the quality of construction and bringing international standards. The said object and mission could have been achieved only by undertaking

activities for the promotion of education, training, research and imparting professionalism and skill formation at all levels of construction. It was with an intention of exercising and expanding the object and mission that the society constituted a joint venture – M/s. HITEX with an intention of achieving the mission and object of the society in a better manner as is claimed by the appellant.

19. However, in contravention to the aforesaid mission and objects, what is apparently visible from the pleadings of the appellants is that, the Government initially had allotted Rs.167 crores of land to the appellants in achieving the goal. However, the appellants in addition to the establishment of a joint venture – M/s. HITEX, also parted hundred acres of their land to M/s. HITEX. The newly established joint venture i.e. M/s. HITEX started utilizing the land for purpose of holding exhibitions of all natures and in the process, has been earning huge amounts in the form of rental on the same. It is also learnt that HITEX has also used the said land for commercial purpose by allotting the land to other commercial establishments. Thus, earning profits is in clear violation of the purpose, mission and object of the society. It was this aspect, which was duly considered by the assessing officer at the first instance and by the CIT Appeals later on, and the two orders were further also affirmed by the ITAT. Thus, there is a concurrent

finding of the two appellant forums based on factual matrix available on record and most of which being undisputed.

20. As regards the alternative prayer of the appellant of at least refusal of exemption under Section 11 of the Act be restricted to the extent of investment made by the appellant in the joint venture unit i.e. M/s. HITEX, would not be acceptable for the reason that with the amount of investment already carried out by the appellant in M/s. HITEX, coupled with the fact that the appellant have parted hundred acres of land allotted to them to be used by the said joint venture – M/s. HITEX for gaining rental and other income. The said joint venture has been earning huge amounts of income from the said land by giving it on rent for many other purposes, in addition to, holding of exhibitions, etc. The income of which, or the profit earned by the joint venture also being shared with the appellants to some extent also would lead to the contravention of the object, purpose and mission of the society with which, it was established.

21. The appellant contended that the amounts lying in the corpus was from the voluntary contributions made by the members. Therefore, the investment towards the equity of M/s.HITEX by the assessee should not be treated as an investment or a deposit within the meaning 13 (1) (d). It is only channelizing of its funds and that too from the corpus which has been received

exclusively from the membership fees collected from its members. The said contention of the appellant cannot be accepted for the simple reason that the Government Instructions/Government orders on the basis of which the appellant company was receiving funds were no longer exists as the same were struck down by this Court.

22. It is relevant to mention that Section 13(1)(d) of the Act prohibits exemption of any sum invested or deposited otherwise than any mode specified under Section 11(5)of the Act. The appellant society has been registered under Andhra Pradesh (Telangana Area) Public Societies Registration Act and also has exemption under Section 80G of the Income Tax Act as well as. In view of the investment of Rs.1.5 crore in HITEX Society, which is established with commercial intend, the Appellant-Society clearly deviated from its objects, for which the society has been established. The appellant-Society by acting contrary to its objects cannot claim exemption under Section 11 of the Act. The deviation, contravention, disentitles the society from claiming the benefit/exemption under Section 11 of the Act. It is pertinent to note that Section 13 (1)(d) as amended by the Finance Act, 1983, provides that the income of any charitable or religious trust or institution will not be entitled to exemption under Sections 11 and 12, if certain conditions stipulated therein are not complied with.

23. In 1998, the Government of Andhra Pradesh established the National Academy of Construction (NAC) by orders in G.O.Ms. No.103, Transport, Roads & Buildings (R.III) Department, dated 16.6.1998, with the objective of achieving development of the construction industry, and engaging in activities for the promotion of education, training, research, professionalism and skill formation in the construction industry. So as to ensure adequate availability of funds to NAC, the Government of Andhra Pradesh issued G.O.Ms.No.92, T.R&B (B.I) Department, dated 19.5.1998 directing the Executive Engineers to conclude supplemental agreements with the contractors for works under execution, and for those works to be entrusted in future, to deduct 0.25% of the gross amount of the bill and remit it to the ICTI.

24. About two years after G.O.Ms.No.92 was issued, the Government issued yet another order *vide* G.O.Ms.No.61, T.R&B (R.III) Department, dated 11.4.2000, directing inclusion of a clause in the tender notices and agreements for recovery of 0.25% from the gross bill of the contractors, with a view to mobilize funds for the NAC. A similar order, being G.O.Ms.No.98, Irrigation & CAD Department, dated 5.7.2000, was issued directing inclusion of such a clause from 1.6.2000.

25. G.O.Ms.No.92, dated 19.05.1998, issued by the R&B Department and G.O.Ms.No.98, dated 05.07.2000 issued by

Irrigation & CAD Department, were challenged by filing Writ Petition No.23750 of 2020 and batch and the learned single Judge of this Court, vide order dated 19.07.2005, set aside the two impugned Government Orders holding that the impugned deduction of 0.25% from gross bills as contribution to NAC, "*is not traceable to any law for the time being in force*", and that the resolution of the Builders Association of India itself, "*does not take away rights of petitioners to challenge the impugned order more particularly when said G.O. is issued without any statutory authority*".

26. Challenging the same, the State of Andhra Pradesh and others filed Writ Appeal Nos.2117 of 2005 and batch and 760 of 2008 and the Division Bench of this Court dismissed the said Writ Appeals vide order dated 21.07.2010 with the observation that "it is very clear that the Government itself contemplated the mandatory contributions to be made by the contractors. The law does not permit such extraction by forceful contributions. As rightly held by the learned single Judge, the Government Orders lack legal sanction and, therefore, they cannot be sustained."

27. In view of passing of G.O.Ms.No.92 dated 19.05.1998, the corpus amount generated by the appellant is not voluntary contribution and thus, the contention of the appellant that investment of Rs.1.5 crore in HITEX be treated as group corpus fund is not sustainable.

28. The appellant is a society, registered under Andhra Pradesh (Telangana Area) Public Societies Registration Act and is registered under Section 12A and exempted under Section 80G of Income Tax Act, 1961. The principal object of the society was, used to impart training, promotion of education, research etc, in the field of construction and allied industries. However, contrary to the objects of the society, an amount of Rs.1.5 crore was invested in HITEX, the objects of which are not similar to that off the appellant society and in fact, it is also involved in using the land for commercial purpose. Apart from investment of Rs.1.5 crore in HITEX, the appellant society had also transferred 100 acres of land on lease out of 167.30 Acres of land which was allotted by the Government to the Appellant. The Assessing Officer had taken note of transfer of 100 acres by the appellant society to HITEX, however, in his wisdom, he did not further enquire into the terms and conditions of such transfer and as to whether lease rental or any amounts are being received by the appellant society.

29. Thus, investment of Rs.1.5 crore and transfer of 100 acres of land by the Appellant to HITEX squarely covered under Section 13(1)(d) of the Act, 1961 and, therefore, the appellant society made themselves disentitle to the benefit under Section 11 of the Act, 1961 in view of violation of section 11(5) of the Act,1961.

30. The Delhi High Court in *DIT (Exemption)* v. *Charanjiv Charitable Trust*[2] dealt with an issue of whether the assessee violated Section 13(1)(c)(ii) read with Section 13(3) of the IT Act. The Court agreed with the contentions of the Revenue that the real motive of the assessee was to advance its surplus monies to APIL without charging any interest and since APIL was a prohibited person within the meaning of Section 13(3), it was held that the assessee has committed a violation of the provisions of Section 13 of the Income tax Act and therefore, the Trust was not eligible for the entire exemption under Section 11 of the IT Act.[3]

31. The High Court of Kerala in *Agappa Child Centre* v. *CIT*[4] dealt with a similar issue. The Assessee a public charitable trust, purchased a refrigerator and kept it at the residence of its managing trustee. The Court held that the Managing Trustee was one of the prohibited persons as per Section 13(3). Therefore, the Court held that the entire exemption of the trust is to be denied.

32. In view of the facts explained above, the appellant failed to make out any case warranting interference of this Bench with the order passed by the Income Tax Appellate Tribunal.

33. For all the aforesaid reasons, we are of the firm view that the question of law framed by the Court while admitting the petition, so also the question of law stressed by the learned Senior Counsel for the appellant during the course of the arguments deserves to be

decided in the negative. Thus, all these Appeals deserves to be and are accordingly rejected, confirming the concurrent finding of facts arrived at by the two forums below. No order as to costs.

34. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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P.SAM KOSHY, J

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LAXMI NARAYANA ALISHETTY, J

Date: 31.08.2023
Gsd/ndr/kkm