

Court No. - 35

Case :- INCOME TAX APPEAL No. - 345 of 2010

Appellant :- The Commissioner Of Income Tax-I Kanpur

Respondent :- Dr.Virendra Swaroop Educational Foundation

Counsel for Appellant :- A.N. Mahajan (S.C.),Shambhoo Chopra

Counsel for Respondent :- Gautam Baghel,S.D.Singh

Hon'ble Bharati Sapru,J.

Hon'ble Vinod Kumar Misra,J.

Heard Sri Praveen Kumar, learned Counsel for the appellant-department and Sri S.D. Singh, learned Senior Counsel, assisted by Ms.Archi Agrawal, learned Counsel for the assessee.

This is an appeal filed by the department under Section 260-A of the Income Tax Act, 1961, against the order dated 26.02.2010, passed by the Income Tax Appellate Tribunal (Bench Lucknow) in I.T.A. No.571/LUC/2009, by which, the Tribunal has reversed the order dated 27.10.2009, of CIT-I, Kanpur, not giving benefit under Section 80G (5) of the Income Tax Act. The questions of law sought to be answered are hereunder :-

"(i) if the CIT comes to know that activities of the assessee's were not genuinely charitable one, he can cancel the registration in exercise of his powers vested u/s 12AA(3) of the Act and;

(ii) question of genuineness of the charitable trust cannot be examined in assessment proceedings rather can be examined by the CIT and in case it is found, at any stage, that the activities of the trust are not genuine or that there is no element of charity in the activities of the assessee, the CIT can withdraw the registration in exercise of his powers vested u/s 12AA(3) of the Act."

The C.I.T. refused to renew the approval of the assessee under Section 80G (5) of the Income Tax Act on account of the fact that for the

previous three years, the assessee has shown surpluses and, therefore, the CIT drew the conclusion that the activities of the assessee were in the nature of commercial enterprises and no charitable activity whatsoever was being pursued by the assessee. Being aggrieved by the order of the CIT dated 27.10.2009, the assessee filed an appeal before the ITAT and by the order dated 26.2.2010, the ITAT came to the conclusion that the assessee was entitled to be granted a renewal under Section 80G (5) of the Income Tax Act. The ITAT has referred in its order that the assessee fulfilled all the conditions laid down in clauses (i) to (v) of sub section 80G of the Income Tax Act, and, therefore, was entitled to be allowed an exemption under Section 11 of the Act. It is also held that there was no violation of the provisions contained in Section 13 of the Act and that for the earlier years it has been granted an approval and also recorded that there was no material changes from the facts of the earlier years in order to come to the conclusion that it was not carrying out activities of the charitable in nature.

The Tribunal while examining the matter, has recorded findings that there was no doubt with regard to the facts that the assessee was running an educational institution. It has further been recorded that as per the provisions of Section 11(1) of the Act, 15% of the income could have been accumulated and the income for the running year could be accumulated up to 85% for a period of five years and if such income was applied for the objects of the institution within the next five years, it cannot be said that institution was earning the profit even if there have been surpluses. The surpluses in the present case, it has

come on record was utilized for the setting up of two new institutions and this fact was not disputed by the department, at any stage. Further, there is no finding, whatsoever, that any of the surpluses were ever distributed as profits amongst the members of the educational society.

Learned counsel for the department has very strenuously argued that it is necessary for being granted a certificate under Section 80G(5) of the Act that purposes should be charitable. However, from the material available on record, he is unable to show any act of the assessee or any activity of the assessee, which would not amount to a charitable purpose within the meaning of Section 2 (15) of the Income Tax Act, which reads as under :-

"Charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watershed, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility."

From reading of the above definition, it is abundantly clear that the word education utilised in the section stands independently on its own and to suggest that the word may be confined either to the rich or poor or any other strata of the society is not acceptable. The word education has been used in its widest term. It cannot be confined to any section, indeed education is something which is the birth right of every individual. To confine it to a certain group would not be fair in view of the definition as given in Section 2 (15) of the Income Tax Act and in view of the provisions of Section 10 (23C) of the Income Tax Act. It is abundantly clear that the assessee was clearly entitled to be granted exemption under Section 80G (5) of the Income

Tax Act for the current year as it has been done in the previous year in view of the law and in view of the findings recorded.

Therefore, the questions of law are answered in favour of the assessee and against the department.

The appeal is dismissed. No costs.

Order Date :- 3.1.2017

m.a.

(Vinod Kumar Misra, J.)

(Bharati Sapru J.)

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