

TAXAP/628/2010 6/8 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 628 of 2010

with

CIVIL APPLICATION NO.117 OF 2010

IN

TAX APPEAL NO.628 OF 2010

AND

TAX APPEAL No. 629 of 2010

with

CIVIL APPLICATION NO.118 OF 2010

IN

TAX APPEAL NO.629 OF 2010

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MS.JUSTICE H.N.DEVANI

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
Whether this case involves a substantial question of law as to the
 - 4 interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

DIRECTOR OF INCOME TAX (EXEMPTION) - Appellant(s)

Versus

SHIA DAWOODI BOHRA JAMAT - Opponent(s)

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Appearance :

MR MR BHATT, SR. COUNSEL with MRS MAUNA M BHATT for Appellant
MR MANISH J SHAH for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI**

Date : 12/04/2010

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. Vide order dated 22nd March, 2010, notice for final disposal had been issued in both these appeals.
2. Both these appeals under section 260 of the Income Tax Act, 1961 (the Act) arise out of common order dated 22nd December 2009 made by the Income Tax Appellate Tribunal (the Tribunal), hence, the same were

taken up for hearing today and are being disposed of by this common judgment.

3. Admit. The following substantial question of law arises for consideration in each of these appeals:

Whether the Income Tax Appellate Tribunal was justified in allowing the appeal by merely placing reliance upon certain decisions without recording as to how and in what manner the said decisions are applicable to the facts of the present case?

4. Considering the nature of controversy involved in the present appeals, which lies in a very narrow compass, the appeals are taken up for final hearing today.
5. The respondent-Trusts in both these appeals filed applications for registration under section 12AA of the Act in Form No.10A. The Director of Income Tax (Exemptions), (herein after referred to as the Director), after granting the respondent-assessee an opportunity of hearing, held that the assessee were not entitled to exemption under sections 11 and 12 of the Act and accordingly, rejected the applications for registration. Being aggrieved, the assessee carried the matter in appeals before the Tribunal and succeeded.
6. Mr. M. R. Bhatt, learned Senior Counsel for the appellant submitted that the Director had, upon appreciation of evidence on record and ascertaining the objects of the assessee Trusts, come to the conclusion that the benefits were intended only for the Dawoodi Vohra Community and were not intended for the public at large. That while holding that the assessee Trusts were not entitled to exemption of income under sections 11 and 12 of the Act, the Director had placed reliance upon the decision of the Supreme Court in *CIT v. Palghat Shaadi Mahal Trust*,

254 ITR 212. Inviting attention to the impugned order of the Tribunal, it is submitted that the Tribunal has merely placed reliance upon a decision of the Indore Bench of the Tribunal as well as a decision of the Madhya Pradesh High Court and held that the issue is squarely covered in favour of the assessee without recording any findings of fact as to how the said decisions were applicable to the facts of the present case. It is submitted that if the Tribunal was inclined to take a different view from that of the Director, it was incumbent upon the Tribunal to give some reasons as to why it was not agreeable with the findings recorded by the Director.

7. Pursuant to issuance of notice, Mr. J. P. Shah, learned advocate has put in appearance on behalf of the respondents in both the appeals. The learned advocate has supported the impugned order of the Tribunal and has submitted that no case is made out to warrant interference.
8. On a perusal of the orders passed by the Director in each of the appeals, it is apparent that the facts of both the cases are not identical. In Tax Appeal No.628 of 2010 the respondent Trust had claimed that it was created before 1.4.1962. The Director has in the orders passed under section 12AA of the Act, considered the object of the Trusts and has upon appreciation of the evidence on record, come to the conclusion that as the benefits of the Trusts as per the material on record are intended only for the Dawoodi Bohra Muslim community who are not covered by Explanation 2 to section 13 of the Act, the same are hit by the provisions of section 13(1)(b) of the Act. The Director held that in the light of the decision of the Supreme Court in *CIT v. Palghat Shaadi Mahal Trust* (supra) the respondent Trusts were not entitled to exemption of income under sections 11/12 of the Act.
9. As can be seen from the impugned order of the Tribunal, in paragraph 1

of its order, the Tribunal has merely recorded the fact regarding rejection of the applications under section 12AA of the Act and the challenge thereto. In paragraph 2, the Tribunal has recorded that the Director has rejected the registration of the applications under section 12AA of the Act on the ground that the case of the assessee is hit by the provisions of section 13(1)(b) of the Act. In paragraphs 3 and 4 of the impugned order, the Tribunal has recorded that the learned Counsel for the assessee has submitted that the issue is covered by the decisions of the ITAT, Indore Bench in the case of Dawoodi Bohra and others v. CIT, 317 ITR (AR) 133 (Indore), which has been confirmed by the M.P. High Court in the case of CIT v. Dawoodi Bohra Jamat, 317 ITR 342 (MP), and has quoted extracts from the said decisions. In paragraph 5 of the order, the Tribunal has recorded that the learned D.R. relied upon the orders passed by the Director. In paragraph 6, the Tribunal has recorded that it is of the view that the issue is covered in favour of the assessee by the order of the ITAT, Indore Bench in the case of Dawoodi Bohra and others v. CIT, 317 ITR (AR) 133 (Indore), which is confirmed by the M.P. High Court in the case of CIT v. Dawoodi Bohra Jamat, 317 ITR 342 (MP). Following the said decision, the Tribunal has set aside the order of the Director with a further direction to grant registration to the assessee under section 12AA of the Act.

10. In the entire order, the Tribunal has not recorded any findings of facts. No reasons are assigned as to why the Tribunal does not agree with the findings recorded by the Director. The Tribunal has merely stated that the case of the assessee is covered by the decisions referred to hereinabove without so much as mentioning as to how and in what manner the said decisions are applicable to the facts of the present case. The Director, while rejecting the applications under section 12AA of

the Act, has placed reliance upon a decision of the Supreme Court whereas the Tribunal has allowed the appeal by placing reliance on a decision of the Madhya Pradesh High Court confirming a decision of the Indore Bench of the Tribunal. No reason whatsoever has been assigned in the impugned order as to why the decision of the Supreme Court is not applicable to the facts of the present case and as to why preference has been given to decisions of a High Court and Tribunal as against a decision of the Supreme Court.

11. It is settled legal position, that the decisions of the Courts are not to be applied in the abstract, but are to be applied to the facts of the case. Without recording any findings of fact, one fails to understand as to how the Tribunal has come to the conclusion that the decisions on which it has placed reliance are applicable to the facts of the present case. It has been oft reiterated that the Tribunal is the final fact finding authority, hence, the order of the Tribunal should reflect findings of fact as well the reasons for arriving at its conclusions on the basis of the findings recorded by it. The impugned order of the Tribunal is totally lacking in all quarters.
12. In *Commissioner of Central Excise, Bangalore v. Srikumar Agencies*, 2008 (232) E.L.T. 577 (S.C.) the Supreme Court was dealing with a similar case wherein without detailed analysis of the factual position involved, the Customs, Excise and Gold (Control) Appellate Tribunal had merely referred to some judgments and submissions of the learned counsel for the assesseees to hold that the assesseees were entitled to relief, the Court held that courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. That disposal of appeals by mere reference to decisions was not the proper way to deal

with the appeals.

13. Another fact which is required to be noted is that separate orders had been passed by the Commissioner (Appeals) in case of each of the assesseees. The orders passed by in both the appeals are different. The facts in both the cases are also different, however, the Tribunal has dealt with both the cases as if the facts are same without even noticing the facts recorded by the Director. In the circumstances, the impugned order of the Tribunal which even otherwise is a non-speaking order, stands vitiated on account non-application of mind and as such cannot be sustained.
14. For the foregoing reasons the appeal is allowed. It is held that the Tribunal was not justified in allowing the appeal by merely placing reliance upon certain decisions without recording as to how and in what manner the said decisions are applicable to the facts of the present case. The impugned order of the Tribunal is, accordingly, quashed and set aside. ITA No.2502/Ahd/2009 and ITA No.2503/Ahd/2009 are restored to the file of the Tribunal for deciding the same afresh in accordance with law after affording the parties an opportunity of hearing.

CIVIL APPLICATIONS NO.117 OF 2010 & 118 OF 2010:

In view of the order passed in the main appeals, these Civil Applications do not survive and the same are disposed of accordingly.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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