IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 140 of 2015 (O&M)

Date of Decision: 21.9.2015

Improvement Trust, Abohar

....Appellant.

Versus

Commissioner of Income Tax, Amritsar

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. K.L. Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate for the appellant.

Mr. Denesh Goyal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay in refiling the appeal is condoned.

2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 9.12.2013 (Annexure A-6) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 320(ASR)/2013, claiming the following substantial questions of law:-

i. Whether on the facts and in the circumstances of the case and in view of the legal provisions the ITAT Amritsar was justified in confirming the order of the CIT Bathinda in cancelling the registration of the appellant- Trust u/s 12AA of the Income Tax Act, 1961 on the grounds of its carrying out the activities in accordance with statutes and thereby holding it to be carrying out activities of trade, business or commerce with a profit motive?

ii. Whether on the facts and in the circumstances of the case the ITAT Amritsar was justified in cancelling the registration of the appellant-Trust u/s 12AA of the Income Tax Act, 1961 from retrospective effect and holding that the appellant is liable to pay tax w.e.f. 1.04.2003?

3. The facts, in short, necessary for adjudication of the instant appeal as narrated therein are that the appellant-Trust was constituted under the Punjab Town Improvement Trust Act, 1922 (for brevity, "the 1922 Act"). Income of the Trust was exempt under section 10(20A) of the Act upto assessment year 2002-03. However, the said Section was omitted by Finance Act, 2002 w.e.f 2003. The Trust was granted registration under Section 12AA of the Act w.e.f. 12.6.2003 on the directions of the Tribunal issued in misc. application vide order dated 4.3.2010 (Annexure A-1). The Commissioner of Income Tax, Bathinda (CIT) vide order dated 23.8.2010 (Annexure A-2) granted registration to the Trust under Section 12AA of the Act on the directions of the Tribunal. The CIT issued notices dated 22.6.2012 (Annexure A-3) and dated 23.10.2012 (Annexure A-4) to the Trust to show cause as to why the

registration granted under Section 12AA of the Act be not cancelled under Section 12AA(3) of the Act. Vide order dated 18.2.2013, the CIT cancelled the registration under Section 12AA of the Act of the Trust by holding that its income was not exempted since 1.4.2003 and was, therefore, taxable. The registration was cancelled in view of the amended provision of Section 2(15) of the Act w.e.f. 1.4.2009 and holding that the Trust is engaged in the business, trade and commerce. Feeling aggrieved, the Trust filed an appeal before the Tribunal who vide order dated 09.12.2013 (Annexure A-6) upheld the order of the CIT and dismissed the appeal. Hence, the present appeal.

4. We have heard learned counsel for the parties.

5. Learned counsel for the assessee submitted that in view of the provisions of 1922 Act, the matter is required to be remanded to the Tribunal to adjudicate whether the activities of the appellant were covered within the meaning of 'charitable' in nature or not even after the insertion of the proviso to Section 2(15) of the Act w.e.f. 1.4.2009 i.e. in respect of the assessment years 2009-10 onwards. Learned counsel for the revenue supported the order passed by the Tribunal.

6. Similar issue came up before this Court in ITA No. 73 of 2013 (Improvement Trust through Shri APS Virk s/o Late Shri Kartar Singh Virk, Chairman, Dr. Mela Ram Road, Bathinda, Punjab v. Commissioner of Income Tax, Aayakar Bhawan, Amritsar) wherein this Court vide order dated 6.8.2014 remanded the matter to the Tribunal to decide the same afresh keeping in view the proviso to Section 2(15) of the Act inserted w.e.f. April 1, 2009 with reference to the provisions of the 1922 Act after affording an opportunity of hearing to the parties in accordance with law.

7. In view of the above, the order dated 9.12.2013 (Annexure A-6) passed by the Tribunal is set aside and the matter is remanded back to the Tribunal for fresh adjudication keeping in view the proviso to Section 2(15) of the Act inserted w.e.f. April 1, 2009 with reference to the provisions of the 1922 Act after affording an opportunity of hearing to the parties in accordance with law. Needless to say that anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the case. However, the Tribunal shall make sincere efforts to decide the matter expeditiously. The appeal stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

September 21, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**