IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 864 of 2008 (O&M)

Date of Decision: 9.5.2016

The Commissioner of Income Tax-I, Chandigarh

....Appellant.

Versus

M/s Simla Catholic Diocese Society, Chandigarh

...Respondent.

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?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Denesh Goyal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26.6.2008 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 471/CHANDI/2008, for the assessment year 2002-03, claiming the following substantial questions of law:-

i) Whether in the facts and circumstances of the case, the Hon'ble ITAT is right in law in holding that the assessee is entitled for exemption under Section 11(1)(a) of the Income Tax Act, 1961?

ii) Whether in the facts and circumstances of the case, the Hon'ble ITAT is right in law in holding that trust means faith and not status in the context of the assessee?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income for the assessment year 2002-03 on 31.3.2005 declaring the income at 'nil' in the status of charitable trust claiming refund of ₹ 1,88,003/- on account of Tax Deducted at Source (TDS). Since the return was belated and there being a refund, the assessee applied for condonation of delay in filing the return under Section 119(2)(b) of the Act before the Chief Commissioner of Income Tax, who directed the Assessing Officer to treat the return of the assessee for the assessment year 2002-03 as a valid return and consider its claim for refund as per the Act. The Assessing Officer vide order dated 21.11.2007 (Annexure A-1) treated the assessee as an institution and not a trust and assessed the income of the assessee at ₹ 73,74,140/- plus agricultural income of ₹ 3,71,955/- rate purposes while disallowing the exemption under Section 11(1)(a) of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 27.3.2008 (Annexure A-2) allowed the appeal and held that the assessee was entitled to exemption under Section 11(1)(a) of the Act relying upon the judgment dated 29.1.2008 passed by the Tribunal in the case of the assessee for the assessment year 2003-04. Against the

order, Annexure A-2, the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 26.6.2008 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The matter is no longer *res integra*. This Court in the case of the assessee for the assessment year 2003-04 in **ITA No. 566 of 2008 (Commissioner of Income Tax-I, Chandigarh v. M/s Shimla Chandigarh Diocese Society, Catholic Church, Sector 19-A, Chandigarh)** decided on 19.8.2009 adjudicated both the questions, as noticed above, against the revenue and dismissed the appeal. Further, the Special Leave Petition (Civil) No. 21049 of 2010 filed against the order dated 19.8.2009, was dismissed by the Apex Court vide order dated 01.08.2011.

5. In view of the above, the substantial questions of law are answered accordingly. The appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 9, 2016
gbs

(RAJ RAHUL GARG)
JUDGE