IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 126 of 2009
Date of decision: 20.02.2017

Commissioner of Income Tax, Panchkula

……Appellant

Vs.

M/s Haryana State Agricultural Marketing Board, Panchkula

…..Respondent

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

Present: Mr Tajender K. Joshi, Advocate for the appellant.

Mr. Shakti Mehta, Advocate for Mr. Vinod S. Bhardwaj, Advocate for the assessee.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 126, 568 of 2009, 588 of 2010, 110 of 2011, 40 of 2012 and 323 of 2015 as issue involved in all these appeals is identical. However, the facts are being extracted from ITA No. 126 of 2009.

2. ITA No. 126 of 2009 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 which (in short, "the Act") against the order dated 19.08.2008, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (A), Chandigarh (in short, "the Tribunal") in ITA No. 577/CHANDI/2008 for the assessment

year 2004-05. On 10.02.2010, this appeal was admitted to consider the following substantial question of law.

> "Whether on the facts and circumstances of the case, the Learned ITAT has erred in holding that the assessee is eligible for exemption under Section 11 without appreciating the fact that the assessee did not maintain books of account as stipulated under the Income Tax Act, 1961 which was stated by the auditor itself and the assessee therefore not satisfying the necessary conditions?

3. In ITA No. 588 of 2010, additional substantial question of law raised by the appellant-revenue reads thus:-

> "Whether on the facts and circumstances of the case, the learned ITAT is justified in allowing the exemption under Sections 11 and 12 to the assessee without considering the merits of the case for the year under consideration especially when the facts of the case for the year under consideration are not identical to those of the earlier years, merely by relying on its earlier order?"

4. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 126 of 2006 may be noticed. The respondent-assessee M/s Haryana State Agricultural Marketing Board, Panchkula filed its return of income for the assessment year 2004-05 on 11.11.2004 declaring income at NIL. The assessment was completed under Section 143(3) on 22.12.2006, Annexure A.1 by the Assessing Officer at total taxable income of ₹ 11,03,11,164/-. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 17.03.2008, Annexure A.2, the CIT(A) partly allowed the appeal of the assessee. It was held that the assessee being a statutory body cannot function beyond the statutory provisions under which

it has been created. Non production of sanction letters due to paucity of time, may be procedural irregularity but it shall not affect the taxability of income so long as expenditure has been incurred towards the object of the Board. It was concluded that the Assessing Officer was not justified in denying exemption in respect of the surplus that had been brought to tax. Not satisfied with the order, the revenue filed an appeal before the Tribunal. Vide order dated 19.08.2008, Annexure A.3, the Tribunal upheld the order passed by the CIT(A) and dismissed the appeal of the revenue. It has been recorded by the Tribunal that even while granting registration under Section 12A of the Act, the assessee was found to be maintaining accounts which were duly audited. The assessee was also found having complied with the requirement of law in getting its account audited. There is finding by the CIT(A) that the auditors had certified in the audit report and they had examined the books of account and trial balances of various offices. This factual position was not controverted by the revenue. Thus, the Tribunal did not find any infirmity in the order passed by the CIT(A). Hence, the instant appeals by the revenue.

5. We have heard learned counsel for the parties.

6. On April 11, 2014, learned counsel for the respondent-assessee stated that the books of account of the assessee were being maintained and in the audit reports, it was mentioned with regard to the preparation of profit and loss account and balance-sheet. Learned counsel prayed for time to produce the audit reports. On 11.02.2016, learned counsel for the respondent-assessee prayed for further time to produce relevant material to substantiate that the record was maintained in which the various incomes and expenditure could be easily verified. On 24.01.2017, learned counsel for

the assessee again prayed for time to file an application placing certain documents on record. The needful was not done.

7. A perusal of the order passed by the Tribunal dated 19.08.2008, Annexure A.3 shows that while completing the assessment, the Assessing Officer denied the benefit of exemption under Sections 11and 12 of the Act on the ground that the accounts of the assessee were not correct and no separate books of account had been maintained as required under the Act. The assessment was completed not in the status of charitable institution. Thus, the exemption was not allowed. The matter went to the Tribunal and it was sent back to the Assessing Officer. The Assessing Officer completed the assessment. The CIT(A) sought remand report from the Assessing Officer. The assessee claimed that the books of account were regularly maintained. Accordingly, the Assessing Officer was asked to examine the matter vide letter dated 23.07.2007. While granting registration under Section 12A of the Act, the assessee was found to be maintaining accounts which were duly audited. It was further recorded by the CIT(A) that the auditors had certified in the audit report that they had examined books of account and trial balance of various offices. In view of this finding the Tribunal did not find infirmity in the order passed by the CIT(A). The relevant findings recorded by the Tribunal read thus:-

> "We have considered the rival submissions and perused the material on file. Brief facts are that the assessee is a statutory body, set up under Haryana State Agricultural Market Board, for the welfare of the farming community at large and is a charitable organization carrying on the charitable activities as defined in Sec-2(15) of the Act. As far as, registration is concerned, the issue was settled and the assessee was granted registration. While completing the assessment the learned Assessing Officer denied the benefit of exemption under

Section 11 and 13 on the ground that accounts of the assessee are not correct and no separate books of account have been maintained as required under the Act, consequently the assessment was completed as AOP and not in the status of charitable institution. Therefore, exemption claimed by the assessee under Section 11(1) was not allowed. The matter even travelled to the Tribunal and it was set aside to the learned Assessing Officer. In the set aside proceedings and pursuance to compliance of the order of the Tibunal, the learned Assessing Officer completed the assessment. During first appellate stage, learned CIT(A) again sought the remand report from the Assessing Officer and the same was duly considered. The remand report dated 24.12.2007 is in the Paper Book available on the file. The learned CIT(A) has also considered the submissions of the assessee which are available at page 4 onwards. Even written submissions filed by the assessee were forwarded to the learned Assessing Officer for examination and comments. There is finding in the impugned order that the learned Assessing Officer instead of examining the books of account, simply reiterated his observations as made in the earlier assessment order. In its written submissions, the assessee has claimed that books of account were regularly maintained, therefore, the learned Assessing Officer was asked to examine the matter vide letter dated 23.07.2007 along with certain directions. Even while granting registration under Section 12A of the Act, the assessee was found to be maintaining accounts which are duly audited. The assessee was also found having complied with the requirement of law in getting its accounts audited. At page 16 of the impugned order, there is a finding that the auditors have certified in the audit report that they have examined the books of account and trial balance of various offices. This factual matrix was not controverted by the revenue. Even otherwise the assessee is a statutory body and cannot function beyond the statutory provisions under which it was created. In view of this finding, we have not found any infirmity in the impugned order of learned CIT(A), consequently the same is upheld."

8. Learned counsel for the revenue very emphatically submitted that the finding recorded regarding maintenance of books of account by the assessee are perverse and more so when inspite of taking several opportunities before this court as well, the learned counsel for the assessee was unable to substantiate these findings by producing the record in the High Court. Thus, the finding recorded by the Tribunal is required to be verified and since the respondent-assessee has not been able to produce the books of account and the audit report, it is appropriate to set aside the impugned orders and remand the matter back to the Tribunal for fresh decision in accordance with law after hearing both the parties. As regards the additional substantial question of law raised in ITA No. 588 of 2010, though no serious error was raised, since the matter is being remanded, the Tribunal shall look into this fact also.

9. As a result, all the appeals stand disposed of accordingly.

(Ajay Kumar Mittal)
Judge

February 20, 2017 **(Ramendra Jain)**
'gs' **Judge**

Whether speaking/reasoned Yes/No

Whether reportable **Yes**