IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 236 of 2015 (O&M)
Date of decision: 16.03.2017

M/s The Improvement Trust Malerkotla

……Appellant

Vs.

Commissioner of Income Tax, Ludhiana II and another

…..Respondent

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

Present: Mr. Rohit Sud, Advocate for the appellant.
Mr. Denesh Goyal, Senior Standing Counsel for the respondent.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 236 of 2015 and 47 of 2016 as learned counsel for the parties are agreed that the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No. 236 of 2015.

2. After hearing learned counsel for the parties, the delay in filing/refilling both the appeals is condoned.

3. The following substantial questions of law have been claimed by the appellant-assessee in ITA No. 236 of 2015 filed under Section

260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 27.03.2014, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") in ITA No. 380/CHD/2013, for the assessment year 2009-10:-

> "(i)Whether in the facts and in the circumstances of the present case, the respondent could have cancelled the registration already granted to the trust when no condition under Section 12AA (3) of the Act had been satisfied?
>
> (ii) Whether in the facts and in the circumstances of the present case, the respondent could have cancelled the registration without recording any specific finding that the activities of the trust of institution are not genuine?"
>
> (iii) Whether in the facts and in the circumstances of the present case, after the grant of registration under Section 12A of the Act can the Assessing Officer go into the objects and hold them to be non-charitable. If not whether the learned Tribunal was justified to hold that the activities done by the appellant trust do not qualify for exemption?"
>
> (iv) Whether in the facts and in the circumstances of the present case, the impugned orders are liable to be set aside that on one hand it is observed that the case laws relied by the CIT were relating to granting registration under Section 12A of the Act and not relating to the exemption provided under Sections 11 and 12 of the Act and on the other hand the learned ITAT has itself heavily placed reliance on the judgment of ***PUDA Vs. CIT*** which was relating to the grant of registration under Section 12A of the Act making it contradictory?
>
> (v) Whether in the facts and circumstances of the case, the action of the authorities below, the impugned orders Annexure A2 and A3 are legally sustainable in the eyes of law?

4. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 236 of 2015 may be noticed. The appellant-assessee is a trust situated at Malerkota in the State of Punjab. It was granted registration under Section 12A of the Act, vide order dated 16.01.2009, Annexure A.1. The said registration was withdrawn vide order dated 12.02.2013, Annexure A.2 on the ground that the assessee trust was not charitable in nature within the meaning of Proviso to Section 2(15) of the Act. Aggrieved by the said order, the appellant-assessee filed an appeal before the Tribunal. Vide order dated 27.03.2014, Annexure A.3, the Tribunal dismissed the appeal. Hence, the instant appeals by the appellant-assessee.

5. We have heard learned counsel for the parties.

6. Learned counsel for the appellant-assessee submitted that the Tribunal while deciding the issue against the appellant, had relied upon its own decision in the case of ***Improvement Trust Bathinda Vs. CIT Bathinda*** ITA No. 366/(Asr)/2012 dated 18.12.2012**.** It was against the said decision that ITA No. 24 of 2014 ***Improvement Trust Dr. Mela Ram Road, Bathinda through its Chairman Shri Varinder Kumar Sharma, IAS Vs. The Assistant Commissioner of Income Tax, Circle I, Bathinda*** was filed in this Court. On 06.08.2014, this Court disposed of a bunch of 8 appeals including ITA No. 24 of 2014 by passing order in ITA No. 100 of 2014, wherein the matter was remanded to the Tribunal to adjudicate the issue regarding the nature of activities of the appellant trust whether they were in the nature of charitable within the meaning of Section 2(15) of the Act in respect of the assessment years in question or not. The operative para of the order reads thus:-

> "After hearing learned counsel for the parties, in our opinion, the matter requires to be remitted to the Tribunal to adjudicate the issue regarding the nature of activities of the appellant trust whether they are in the nature of charitable within the meaning of Section 2(15) of the Act in respect of assessment years in question or not, keeping in view the arguments raised by the learned counsel for the appellant-assessee and to pass fresh orders relating to assessment proceedings thereafter in accordance with law."

7. In view of the above, the impugned orders passed by the Tribunal in both the appeals are set aside and the matter is remanded to the Tribunal to decide the same afresh in the light of the submissions made by the learned counsel for the parties, after affording an opportunity of hearing to the parties in accordance with law. Needless to say, anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy. Sincere efforts shall be made to decide the matter expeditiously. As a result, both the appeals stand disposed of.

(Ajay Kumar Mittal)
Judge

March 16, 2017 **(Ramendra Jain)**
'gs' **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No