

Gurbax Singh
2017.04.03 16:25

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 282 of 2015
Date of decision: 23.2.2017**

The Commissioner of Income Tax (Exemptions), Chandigarh

.....Appellant

Vs.

Smt.Shanti Devi Educational Trust, 315-L, Model Town, Rewari

.....Respondent

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

Present: Mr. Denesh Goyal, Advocate for the appellant.
Mr. Ved Jain, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 10.12.2014, Annexure A.III passed by the Income Tax Appellate Tribunal, Delhi Bench ‘G’ New Delhi (in short, “the Tribunal”) in ITA No.639/Del/2013, for the assessment year 2007-08, claiming following substantial questions of law:-

“i) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT Delhi Bench “G” New Delhi is justified in deciding that the assessee be treated as registered trust though the trust was not registered under section 12AA of the Income Tax Act?

ii) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT Delhi Bench “G” New Delhi is justified in deleting the addition of ₹ 1,15,03,000/- despite the fact that the assessee was not registered under section 12AA of the Income Tax Act?

2. A few facts relevant for the decision of the controversy

involved as narrated in the appeal may be noticed. During the course of registration proceedings under section 12AA of the Act, the assessee trust submitted audited accounts for the financial years 2006-07, 2007-08 and 2008-09. On perusal of the balance sheet for the financial year 2006-07 relevant to the assessment year 2007-08, it was observed that the trust had collected a sum of ₹ 1,15,05,100/- as corpus fund. As the trust was neither registered under section 12AA nor under section 10(23C) (vi) of the Act during the year under consideration, the excess of income over expenditure was chargeable to tax. The assessee trust had not filed its return of income for the assessment year 2007-08 relevant to the financial year 2006-07. Notice under Section 148 of the Act was issued and case was selected for scrutiny assessment. The Assessing Officer held that as the assessee was not registered under section 12AA of the Act during the year under consideration, it was not eligible for exemption on account of corpus donation and excess of receipts over expenditure were added to taxable income, which was assessed at ₹ 1,15,03,000/-. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 12.12.2012, Annexure A.II, the CIT(A) upheld the additions made by the Assessing Officer and dismissed the appeal filed by the assessee holding that the assessee was not registered under Section 12AA of the Act for the year under consideration and as such the corpus donations were liable to be included as income. The assessee trust filed further appeal before the Tribunal. Vide order dated 10.12.2014, Annexure A.III, the Tribunal allowed the appeal filed by the assessee holding that the CIT(A) was not justified in upholding the action of the Assessing Officer on the basis that no registration under section 12AA of the Act was available to the assessee trust for the year under consideration and as such corpus

donations were liable to be included as income. Direction was issued to the Assessing officer to delete the addition treating the assessee as a registered trust with charitable objects. Hence the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant revenue submitted that the assessee was granted registration under Section 12AA w.e.f 1.4.2009 which would be operative for subsequent period whereas assessment was for the assessment year 2007-08 and therefore amount of ₹ 1.01 crores and ₹ 14 lacs totalling ₹ 1.15 crores was rightly taxed by the Assessing Officer.

5. Opposing the aforesaid contention, learned counsel for the assessee submitted that the assessee was entitled for benefit under section 10(23C) (iiiad) of the Act as the annual receipts were below ₹ one crore i.e. the amount prescribed under the Act and the rules. It was urged that the amount of gift of land valuing ₹ 1.01 crores would not be included in the annual receipts and therefore, taxable income shown at nil was correct.

6. The Tribunal while accepting the plea of the assessee recorded that the assessee was running three educational institutions. It had received donation of agriculture land by a registered gift deed dated 4.12.2006 from Smt. Vasu Devi and three others. The lands were valued at ₹ 1.01 crore. The assessee further received corpus donation of ₹ 15 lacs from three concerns. The registration under section 12AA of the Act had been granted to the assessee by the CIT w.e.f 1.4.2009 which was before the date of the assessment order passed on 30.12.2011 though obtaining registration under Section 12AA of the Act was not mandatory for claiming exemption under section 10(23C)(iiiad) of the Act. According to this provision, any income received by any person on behalf of any university or other educational

institution existing solely for educational purposes and not for the purpose of profit is exempt if the aggregate annual receipt of such university or educational institute does not exceed the amount of annual receipt as may be prescribed. After examining the matter, the Tribunal concluded that the objects of the assessee trust being charitable had not been objected nor it was the case of the revenue that the donation in the shape of land or amount had been utilised for any other purposes except on the objects of the assessee trust. Of course, no educational activity had been started by the assessee during the year but at the same time, this fact had not been doubted that the assets and funds received by it in donation were meant for achieving its objects. Thus, the Tribunal rightly while setting aside the orders of the authorities below directed the Assessing officer to delete the addition treating the assessee as registered trust with charitable objects. The relevant findings recorded by the Tribunal read thus:-

“6. In support of the grounds, the learned AR submitted that the first reason on the basis of the authorities below having denied the assessee’s exemption under section 11 is that its application for registration under section 12AA was rejected by the learned CIT. In this regard, the learned AR submitted that the matter was travelled upto the ITAT and registration under section 12AA was granted to the assessee by the learned CIT w.e.f 1.4.2009 while complying the direction of the ITAT. The learned AR submitted that the registration was granted well before the passing of the assessment order on 30.12.2011. He submitted further that the Finance (No.2) Bill 2014 proposed to allow benefit of availing exemption under section 11 and section 12AA to a trust or institution which has been granted registration subsequently in respect of preceding assessment years, the proceedings which are pending before the Assessing officer as on the date of such registration. The only condition is that the objects and activities of such trust or institution should

be same on the basis of which such registration has been granted. It has been further provided that no action for reopening of assessment proceedings under section 147 shall be taken by the Assessing Officer in the case of such trust or institution merely on the ground that such trust or institution has not obtained registration for the said assessment year.

7. The second issue on the basis of which the exemption has not been granted by the authorities below is that exemption under section 10(23C) of the Income Tax Act, 1961 cannot be granted to the assessee as no educational institution of the assessee trust has come into existence during the year. Learned AR submitted which is evident from the material made available on record that the assessee is a trust with object to do educational activities only. This is the first year of its coming into existence. It has got land donated and as such it is in the process of starting educational trust. Learned AR referred copies of acknowledgement of return, balance sheet, profit and loss account, corpus funds account, property account, cash book, bank account, bank commission account, bank interest account, trust deed dated 2.6.2006, requisite for amendment in trust deed, amended trust deed dated 23.12.2009, gift deed dated 4.12.2006, order dated 29.2.2012 of the ITAT directing the learned CIT(Appeals) to grant registration, order dated 5.6.2012 of the learned CIT granting registration under section 12AA and order under section 10(23C)(vi) dated 24.9.2012 granting approval, made available at page Nos. 1 to 77 of the paper book. Learned AR also placed reliance on the following decisions:-

- i) Nitya Education Society vs. JCIT (2012) 51 SOT 103;
- ii) CIT vs. Doon Foundation 154 ITR 208 (Cal.);
- iii) Param Hans Swami Uma Bharti Mission vs. ACIT (2013) – 140 ITD 429 (Del.);

8. The learned senior DR on the other hand tried to justify the first appellate order with the submission that undisputedly the trust had not commenced any activities for establishing the educational institution during the year under consideration and

no registration under section 12AA was available to the assessee trust for the year under consideration and as such the corpus donations are liable to be included as income.

9. Considering the above submission, we find from the first appellate order that the assessee is running three educational institutions namely Shanti Devi Law College, Shanti Devi School of Nursing and (iii) Shanti Devi Institute of Management and Technology. It had received donation of agriculture land by a registered gift deed dated 4.12.2006 from Smt. Vasu Devi and three others measuring 202 kanals and 3 marls. The lands were valued at ₹ 1.01 crore as per official circular rate of ₹ 4 lacs per killa and stamp duty and registration expenses of ₹ 3.10 lacs were born by the trust. The trust made entries in its books of account crediting the corpus fund and debiting the loan account with the notional value of land at ₹ 1 crore. The assessee further received corpus donation of ₹ 15 lacs from three concerns. During the year under consideration, the only receipt of trust was of ₹ 5450/- from bank interest and there was net loss of ₹ 2100/-. There are certain undisputed facts that the registration under section 12AA of the Act has been granted to the assessee by the learned CIT w.e.f 1.4.2009 which is before the date of the assessment order passed on 30.12.2011 and obtaining registration under section 12AA is not mandatory for claiming the exemption under section 10(23C) (iiiad) of the Act. As per this section, any income received by any person on behalf of any university or other educational institution existing solely for educational purposes and not for the purpose of profit is exempt if the aggregate annual receipt of such university or educational institute do not exceed the amount of annual receipt as may be prescribed. The learned CIT(Appeals) has upheld the denial of exemption by the Assessing officer on the basis that no educational institute have been started by the assessee during the year but at the same time, he has not denied this material fact that it is the first year of the trust and only land has been received as corpus donation and the construction of building

etc. has to be commenced. The Delhi Bench of the ITAT in the case of *Nitya Educational Society vs. JCIT* (supra) has held that objects of the assessee institute and their genuineness have been looked into by the prescribed authority while granting registration under section 12AA of the Act though such registration has been granted w.e.f 30.3.2009. The mechanism provided in section 12AA of the Act for grant of such registration suggests that the learned CIT must have conducted an inquiry about the genuineness of the activities of the trust and it also suggests that aims and objects contained in the Memorandum of Association are genuine and charitable in nature. In that case, society was in existence but actual educational activity has not taken place. The ITAT held that the assessee still would get the benefit of section 10(23C)(iiiad) of the Act. In the case of *Pawan Hans Swami Uma Bharti Mission vs. ACIT* (supra), it has been held by the Delhi bench of the ITAT that only annual receipt of school or university would be considered for deciding the exemption limit under section 10(23C) (iiiad). Total income of society running that school or university is not to be considered under that section. Income from interest and FDRs was an additional income of society and cannot be considered to be part of annual receipt of the school. It was held that the assessee was eligible for exemption under section 10(23C)(iiiad) of the Act as annual school receipts did not exceed ₹ 1 crore. In the case of *CIT vs. Doon Foundation* (supra), it has been held that if the assessee had taken steps towards the running of a full fledged teaching course then it would be construed that educational institution had been established and it will be entitled for exemption. In the present case before us, objects of the assessee trust being charitable have not been objected nor has it been a case of the revenue that the donation in the shape of land or amount have been utilized for any other purposes except on the objects of the assessee trust. Of course, no educational institution has been started by the assessee during year but at the same time, this fact has not been doubted or denied that assets and funds

received by it in donation were meant for achieving its objects. Under these facts and circumstances in totality, we are of the view that the learned CIT(Appeals) was not justified in upholding the action of the Assessing officer on the basis that no registration under section 12AA of the Act was available to the assessee trust for the year under consideration and as such corpus donation are liable to be included as income. We thus while setting aside the orders of the authorities below in this regard direct the AO to delete the addition treating the assessee as registered trust with charitable objects. The ground Nos. 3 to 5 involving the issue are thus decided in favour of the assessee and are allowed as such. The ground No.1 is general in nature and the issue raised in ground No.2 questioning the validity of initiation of the proceedings under section 147 of the Act has become infructuous in view of the finding on the main issue raised in ground Nos. 3 to 5 of the appeal.”

7. The findings of fact recorded by the Tribunal have not been shown to be illegal or perverse by the learned counsel for the appellant-revenue warranting interference by this Court. Further, identical issue has already been decided against the revenue by the Madras High Court in *The Commissioner of income Tax vs. Madrasa E-Bakhiyath-Us-Salihath Arabic College*, 2014(8) TMI 565 and this Court in *The Commissioner of Income Tax, Rohtak vs. Shanti Devi Educational Trust, Rewari*, ITA No.281 of 2012 decided on 29.9.2014. Thus, no substantial question of law arises. The appeal stands dismissed.

(Ajay Kumar Mittal)

Judge

February 23, 2017

‘gs’

(Ramendra Jain)

Judge

Whether reasoned/speaking order	Yes/No
Whether reportable	Yes