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

**Income Tax Appeal No.231 of 2016
Date of decision: September 11, 2017**

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant

versus

Shri Mahavir Jain Society (Regd.), Daresi Road, Ludhiana

....Respondent

***CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL***

Present: Mr. Denesh Goyal, Sr. Standing Counsel
for the appellant-Revenue.

Mr. S.K. Mukhi, Advocate
for the respondent-assessee.

AJAY KUMAR MITTAL, J.

1. The appellant-Revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 30.09.2015 (**Annexure A-2**) passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, 'the Tribunal') in ITA No.910/CHD/2013, claiming the following substantial questions of law:-

“(i) Whether the order passed by the ITAT in contrary to the

facts and law, hence the ITAT order is perverse?

(ii) Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was justified in holding that the assessee was entitled to registration u/s 12A on the ground that CIT has not commented adversely on the objects of the assessee society whereas documentary evidence asked for, that would have enabled examination of genuineness of activities, were not furnished by the assessee?

(iii) Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was justified in holding that bona-fide registration of a society is not a pre-condition for granting registration under Section 12AA even when it had been brought on record that civil as well as criminal proceedings were going on in various courts, vis-a-vis disputes amongst the members of the society, which lead to conclusion that affairs of the society are not being run in a manner that enures to the benefit of general public?"

2. A few facts relevant for decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee is a society. It filed an application dated 26.02.2013 for grant of registration under Section 12AA of the Act. The Commissioner of Income Tax-I, Ludhiana, [in short, 'the CIT)], vide the order dated 27.08.2013 (Annexure A-1), refused to grant registration to the Trust, *inter alia*, on the ground that the assessee failed to produce the documentary evidence in support of aims and objects of the society. The assessee did not submit audited financial statements and offered no explanation regarding registration of the society twice with the Registrar of Firms and Societies, Chandigarh on 12.09.1974 and 30.04.2009. Aggrieved by the order, the

assessee filed an appeal before the Tribunal. Vide order dated 30.09.2015 (Annexure A-2), the Tribunal allowed the appeal and held the assessee entitled to be granted registration under Section 12A of the Act. It was, *inter alia*, recorded by the Tribunal that the CIT had not commented adversely on the objects of the assessee-Society. It was also noticed that the assessee-Society had filed no documentary evidence to prove that the aims and objects of the Society were being done by it. It was further recorded that the non-furnishing of audited financial statements and being registered twice were not relevant for establishing whether the activities of the assessee were genuine or not and registration of a Society was not pre-condition for granting registration under Section 12AA of the Act. Hence, the instant appeal by the appellant-Revenue.

3. We have heard learned counsel for the parties.

4. Section 12AA of the Act reads thus:-

“12AA.(1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of subsection (1) of section 12A, shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or

institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Principal Chief Commissioner or Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Principal Commissioner or Commissioner and the Principal Commissioner or Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed

unless such trust or institution has been given a reasonable opportunity of being heard.

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.”

5. Section 12AA of the Act prescribes procedure for registration of trust or institution by the Principal Commissioner or the Commissioner of Income Tax after perusing the objects of the trust or institution and the genuineness of its activities. The order is required to be passed in writing.

6. In the present case, the assessee had filed an application on 26.02.2013 for grant of registration under Section 12AA of the Act before the CIT. Vide order dated 27.08.2013 (Annexure A-1), the CIT refused to grant registration to the assessee-Society, *inter alia*, on the ground of non-production of documentary evidence in respect of aims and objects of

the society, absence of audited financial statements and non-explanation regarding registration of the society twice with the Registrar of Firms and Societies, Chandigarh. Aggrieved by the order, the assessee filed an appeal before the Tribunal. The matter was considered in detail by the Tribunal. It has been categorically recorded by the Tribunal that one of the objects of the Society as mentioned in its bye-laws was to provide free medical aid by opening hospitals, diagnostic centers, maternity home and by organizing special medical camps. These activities had also been demonstrated in the previous three years by the respondent-assessee in its Balance Sheet, Income & Expenditure account, Receipt & payment Account which were produced before the CIT. Further, the CIT had not commented adversely on the documents placed before it. With regard to the reason that the assessee had not furnished audited financial statements, it has been recorded by the Tribunal that the same were not relevant for establishing the fact whether the activities of the Trust were genuine or not. Even the provisions of the Act do not require audited financial statements to be furnished while seeking registration under Section 12AA of the Act. Rule 17A of the Income Tax Rules, 1962, provides the documents which should accompany the application under Section 12A of the Act for registration of charitable or religious trust or institution. As regards the plea that the assessee had offered no explanation about the registration of the Society twice, it was recorded by the Tribunal that registration of a society was not a pre-condition for granting registration under Section 12AA of the Act. Thus, it was rightly

concluded by the Tribunal that the CIT was not justified in rejecting the application for registration of the assessee-Society by insisting on the conditions not contemplated by the statute. The relevant findings recorded by the Tribunal in this regard read thus:-

“13. We find that one of the objects of the assessee society as stated at point no.6 in the bye laws reproduced above was to provide free medical aid, by opening hospitals, diagnostic centers, maternity home and by organizing special medical camps. We also find that the assessee society had clearly demonstrated the carrying on of this activity in the previous three years through its Balance Sheet, Income & Expenditure account, Receipt & payment Account, filed before the Ld. CIT. The Ld. CIT has not controverted or commented adversely on these documents placed before it. Therefore we find that the genuineness of the activities of the assessee society is also established. Further we find that the Ld. CIT has erred in stating that no documentary evidences were filed to substantiate the carrying on of the objects of the society, despite the voluminous documents and information placed before him during the proceedings as stated above.

14. We also find that the Ld. CIT has erred in rejecting the assessee's application u/s 12A, for the reason that the assessee had not furnished audited statement and that the assessee society was registered twice. We find that

aforestated reasons are not pertinent for the purpose of establishing whether the activities of the assessee society were genuine or not. Audited financial statements are not relevant for establishing the fact whether the activities of the trust were genuine or not, which is corroborated by the fact that even the provisions of the Income Tax Act, 1961, do not require audited financial statements to be furnished, while seeking registration under Section 12AA. Rule 17A of the Income Tax Rules, 1962, list the documents which should accompany the application under section 12A for registration of charitable or religious trust or institution. At point no.(b) of the Rules it is stated that “where the trust or institution has been in existence during any year or years prior to the financial year in which the application for registration is made, two copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up” have to be submitted. Clearly as per the Rules, the requirement is furnishing of only the accounts of the trust or institution seeking registration and nowhere the word “audited” accounts have been used. Therefore the non furnishing of audited financials cannot by itself be a criteria for holding the activities of a Trust of society as not being

genuine and therefore refusing grant of registration under section 12AA. Moreover, the Ld. AR demonstrated before us by referring to its paper book page no.61-65, that reason for non-furnishing of audited results was duly explained to the Ld. CIT. The Ld. AR stated that the assessee had appointed M/s Shammi Garg & Co. C.A., Ludhiana as its auditors for the 2009-10, and referred to Page no.61 of the Paper Book, which was the appointment letter issued by the assessee society to the CA firm. The Ld. AR, thereafter referred to paper Book No.62, which was the communication of the new auditors, with the previous auditors i.e. M/s S.S. Periwal & Co., seeking no objection to their appointment as auditors of the society. At Paper book No.63, the Ld. AR reproduced the letter sent by the previous auditors to the new auditors, objecting to their appointment. At paper book 64, was placed the letter sent by the assessee society to the previous auditors, strongly objecting to their refusal to grant NOC to the new auditors. The Ld. AR further drew our attention to the letter written by the assessee society to the President of the Institute of Chartered Accountant of India to resolve the dispute of appointment of auditors. The Ld. AR also stated before us that the dispute had not been resolved to date. The Ld. AR stated that in view of the same the assessee was prevented from getting its books audited. We find that

the Ld. CIT has not controverted the explanation of the assessee. In view of the above facts and discussion, we hold that non-furnishing of audited financials cannot be a pertinent consideration for holding the activities of the assessee society as ingenuine. We therefore hold that the same cannot be treated as a consideration for refusing to grant registration to the assessee society u/s 12AA.

15. We further find that the refusal of grant of registration to the assessee society for offering no explanation regarding registration of the society twice is also incorrect. The Ld. AR, during the course of arguments drew our attention to Paper Book 52, 58 and 60 whereby the assessee society had vide its letter dt.27/05/2013 and 22/08/2013 explained as follows:

“No enclosure of certificates dated 17/09/1974 and 30/04/2009 are there as noted in your letter dated 21/05/2013. The Society is working under the certificate issued on 17/09/1974 and the present working is also under going under it. No bad intentions are there. The Society in year 2009 was formed by the Ex-President and Finance Secretary but which has no relevance as on date and the Society documents i.e. Governing Body list on yearly basis is being submitted to Registrar of Firms & Societies, Chandigarh for Society registered on 17/09/1974.”

We therefore find that the contention of the Ld. CIT that the assessee had offered no explanation about the registration of

the society twice is not correct. In any case registration of a society is not a pre condition for granting registration under Section 12AA. A perusal of Rule 17A of the Income Tax Rules 1962, referred to above would show that the only requirement is to furnish the documents evidencing the creation of the trust or establishment of the institute in original, which we find, the assessee society has furnished in the form of Trust Deed.

16. In view of the facts stated above we hold that Ld. CIT was not right in refusing registration to the assessee society for non-furnishing of explanation regarding registration of the assessee society twice.

In case of CIT vs. R.M.S. Trust (Madras) [2010] 326 ITR 310 it was held as under:

“At this stage of considering application for registration under S.12A, only inquiry which could possibly be made would be whether the applicant-trust has made application and whether the accounts are maintained in the manner as suggested in the said section CIT was not justified in rejecting application for registration for want of amended trust-deed since it is not a prerequisite condition for registering the applicant as a trust, Tribunal was justified in setting aside the order of CIT and remitting the matter for decision afresh.”

We therefore hold that the CIT was not justified in rejecting the application for registration of the assessee society by

insisting on conditions not contemplated by the statute.”

6. Learned counsel for the appellant-Revenue has not been able to show that the view taken by the Tribunal is erroneous. He has also not been able to produce any material on record to show that the approach adopted by the Tribunal is legally unsustainable. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 11, 2017

'gs'

Whether speaking/reasoned? **Yes**

Whether reportable? **Yes**