IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-115-2017

Date of Decision: 17.8.2017

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant.

Versus

M/s JK Education Samiti, JKR Public School, Gohana

...Respondent.

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

PRESENT: Mr. Denesh Goyal, Senior Standing Counsel 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 22.7.2016 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Delhi Bench (Friday), New Delhi (hereinafter referred to as "the Tribunal") in MA No. 08/Del/2016 in ITA No. 6251/Del/2013, claiming the following substantial questions of law:-

I. Whether on the facts and in the circumstances of the case, the order of the ITAT is not perverse in dismissing the miscellaneous application on the ground that the revenue has not pointed out any mistake in the order whereas it was clearly pointed out that the CIT had declined grant of registration as the applicant had not been able to prove genuineness of its activities. The applicant did not furnish documentary evidence in support of unsecured loan a fact overlooked by the ITAT while directing to grant registration?

II. Whether on the facts and in the circumstances of the case, the ITAT is justified in declining the prayer of the revenue to recall its order passed in ITA No. 6251/Del/2013 in the light of Hon'ble P&H High Court's observations contained in its order in the case CIT-I v. Sri Guru Gorakh Nath Charitable Educational Society upholding CIT's powers to look into the genuineness of objects and activities when the basis is that of non-supply of information?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee moved an application for registration under Section 12AA of the Act to the Commissioner of Income Tax (CIT). The CIT vide order dated 24.9.2013 (Annexure A-1) dismissed the said application holding that neither aims/objects and terms of memorandum of the assessee are of the charitable nature nor there are activities which may be put to a test of genuineness. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 20.5.2015 (Annexure A-2) held the assessee to be eligible for registration and directed the CIT to grant registration to the assessee. Thereafter, the revenue moved MA No. 08/Del//2016 before the Tribunal for recalling its order and referring the matter back to the CIT for fresh consideration. However, the Tribunal vide order dated 22.7.2016

(Annexure A-3) dismissed the said miscellaneous application. Hence, the present appeal by the revenue.

3. After hearing learned counsel for the revenue, we do not find any merit in the appeal.

4. Examining the factual matrix, it may be noticed that the CIT vide order dated 24.9.2013 (Annexure A-1) rejected the application of the assessee for registration under Section 12AA of the Act primarily on the ground that the assessee had failed to produce material to establish the authenticity of the unsecured loan received by it. On the aforesaid premises, it was concluded that the assessee had been charging hefty fees and was not established for charitable purpose and the activities were also not genuine. In appeal, the Tribunal vide order dated 20.5.2015 (Annexure A-2) while allowing the appeal directed the CIT to grant registration to the assessee under Section 12AA of the Act. The Tribunal vide order dated 20.5.2015 after examining the factual matrix and the case law on the subject had categorically concluded as under:-

> "It is an undisputed fact that assessee is running educational institution as is apparent from the assessment order of earlier years placed at paper book pages 124-126 and moreover the object clause as placed in paper book pages 3-14 suggests that assessee is running school for educational purposes. The argument of Ld. D.R. that original constitution needs to be examined with respect to objects clause does not hold much force as A.O. in assessment orders of earlier years (as placed in paper book pages 124-126) has noted that society was running

a school. In view of above facts and circumstances and in view of the judgments as noted above, we direct the Commissioner to allow registration u/s 12AA of the Act. The A.O. during assessment proceedings will however be entitled to examine the books of accounts of assessee with a view to examine any violation of the act and can disallow exemption u/s 11 if anything adverse is found."

5. It was recorded that the object clause of the assessee as placed on the paper book shows that it is running school for educational purposes. The assessment order of earlier years as placed in the paper book had also clearly pointed out to the same effect. However, liberty was granted to the Assessing Officer to examine the books of account and in case there was any violation of the Act then to disallow exemption under Section 11 of the Act. No illegality or perversity could be demonstrated in the aforesaid approach of the Tribunal.

6. However, inspite of the same, the revenue moved an miscellaneous application before the Tribunal for recalling the order, Annexure A-2. The Tribunal had noticed that by moving the MA, the revenue had tried to review the order which was not permissible under Section 254 of the Act. Further, vide order dated 20.5.2015, the Tribunal had clearly held that the Assessing Officer would be entitled to examine the books of account of the assessee during assessment proceedings and if anything adverse was found, the Assessing Officer can disallow exemption under Section 11 of the Act. The Tribunal had rightly held that the revenue has failed to point out any mistake apparent on the face of the record and rectifiable under Section 254(2) of the Act, with the following

observations:-

> "3. We have considered the averments of the Revenue in the light of order sought to be rectified. A perusal of the miscellaneous application shows that the Revenue has raised such contentions in this application which requires reappraisal of facts, consideration of long drawn arguments and elaborate discussion. In fact, the department has tried to review the order of the Tribunal in the name of rectification, which is not permissible in the proceedings u/s 254 of the Act. A perusal of order sought to be recalled shows that the Tribunal has passed an elaborate order discussing therein the procedure of Section 12AA and the powers of the CIT for granting or refusing the registration. Not only this at the end of order, the Tribunal has given categorical finding that the AO during assessment proceedings will however, be entitled to examine the books of accounts of assessee with a view to examine any violation of the Act and can disallow exemption u/s 11 if anything adverse is found. This finding itself contains complete answer to the averments made in this MA by the Revenue. In act, the Revenue has failed to point out any such mistake in the order, which is apparent on the face of record and rectifiable u/s 254(2) of the Act. We, accordingly, being not empowered to review the order of the Tribunal, are of the opinion, that the Misc. application filed by the

Revenue is not fit to be accepted. Accordingly, the Misc. application of the Revenue deserves to be dismissed."

7. Equally, no illegality or perversity could be demonstrated by learned counsel for the revenue in the aforesaid findings recorded by the Tribunal.

8. Thus, no substantial questions of law arises in this appeal. Accordingly, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 17, 2017 **(AMIT RAWAL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**