IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-153-2017

Date of Decision: 11.7.2017

The Commissioner of Income Tax (Exemptions), Chandigarh

...Appellant.

Versus

M/s Lord Krishna Charitable Trust, Rohtak

...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 6.7.2016 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 6799/Del/2013, claming 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 holding the assessee eligible for registration and in directing the CIT to grant registration whereas in the rejection order the CIT had established that the assessee's activities were not genuine?

II. Whether on the facts and in the circumstances of the case, the order of the ITAT is not perverse in directing the CIT to grant registration without going into the applicant's stated aims/objects and activities and without satisfying itself about the genuineness of the same?

III. Whether on the facts and in the circumstances of the case, the ITAT's order is not perverse in holding that the nature of activities by which income is derived is not relevant for the purpose of drawing satisfaction about the genuineness of activities of trust while granting registration?

IV. Whether on the facts and in the circumstances of the case, the ITAT was justified in ignoring the specific findings of the CIT that the applicant's aims/objects and terms of memorandum were not of charitable nature?

V. Whether on the facts and in the circumstances of the case, the order of the ITAT is not perverse in ignoring CIT's conclusion that applicant's activities were not genuine even as it was based on its failure to prove genuineness of cash credits?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee moved an application under Section 12AA of the Act in Form 10A to the Commissioner of Income Tax (CIT) along with a copy of the trust deed dated 14.12.2007, income and expenditure accounts and balance sheets of the Trust along with audit reports for the financial years 2007-08, 2008-09 and 2009-10 for grant of registration. The CIT vide order dated 26.9.2011 dismissed the said application. Feeling aggrieved by the order dated

26.9.2011, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 31.8.2012 restored the issue of registration under Section 12AA to the CIT for deciding afresh on merits in accordance with law after affording reasonable opportunity of being heard. In compliance thereto, the CIT called for a report from the Assessing Officer through the Joint Commissioner of Income Tax, Rohtak who furnished his report dated 18.10.2013 and did not recommend for registration under Section 12AA of the Act. The CIT vide order dated 5.11.2013 (Annexure A-1) rejected the application of the assessee under Section 12AA of the Act for grant of registration holding, that the aims and objections of the assessee were not charitable in nature. Against the order dated 5.11.2013 (Annexure A-1), the assessee filed an appeal before the Tribunal who vide order dated 6.7.2016 (Annexure A-2) allowed the appeal and directed the CIT to grant registration to the assessee as per law. 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, nothing had been placed by the revenue to show that the fees charged by the assessee from the students had been used for the purposes other than running the Educational Institution managed by the assessee-trust. There is nothing on record to suggest that the objects and activities of the assessee-trust are not of charitable character. Further, the Assessing Officer while passing the assessment order under Section 143(3) of the Act for the assessment year 2012-13 had accepted the income of the assessee at Nil as returned by the assessee. Therefore, the income derived by the assessee by way of fees from the students was

applied for the aims and objects of the trust. The CIT had not found that the activities carried out by the assessee were not in consonance with its objects. Still further, in the enquiry report submitted by the Assessing Officer, nothing was mentioned as to on what basis he did not recommend for registration to the assessee. The Tribunal had rightly held that the trust was eligible for registration and directed the CIT to grant registration to the assessee, with the following observations:-

> "6. We have considered the rival submissions and have perused the material available before us. The provisions of Section 12AA provide for a procedure to be followed by the Commissioner for the grant of registration to a trust or an institution. According to this procedure, the Commissioner shall call for documents and information and conduct enquiries to satisfy about the genuineness of the activities of the trust or institution. After the Commissioner is satisfied about the charitable or religious nature of the objects and genuineness of the activities of the trust or institution, he will pass an order granting registration. If he is not so satisfied, the provisions of Section 12AA require him to pass an order refusing such registration. We thus note that Section 12AA of the Act prescribes the scope and ambit of the enquiry that the Commissioner is authorized to carry out at the time of grant of registration to a trust or institution. The scope and ambit of the enquiry revolves around the nature of the objects being charitable or religious and the

genuineness of the activities of the trust or institution. In this context, Hon'ble Karnataka High Court in the case of **Sanjeevamma Hanumathe Gowda Charitable Trust v. Director of Income Tax (Exemption) [285 ITR 327]** has set out the guidelines that for the purposes of registration under Section 12AA the authorities have to be satisfied about the genuineness of the activities of the trust or institution and how the income derived from the trust property is applied to charitable purpose and not the nature of the activity by which the income is being derived by the trust. The Assessing Officer while passing the scrutiny assessment u/s. 143(3) for A.Y. 2012-13 has accepted the income of assessee at Nil as returned by the assessee. In this view of the matter, it can hardly be said that the income derived by the trust by way of fees from the students were applied by the assessee trust for the purpose other than the aims and objects of the trust. It is also not the case of the Commissioner that the fees charged from the students have been used for the purposes other than running the Educational Institution managed by the Assessee Trust. It is also not the case of the Commissioner that the activities carried out by the assessee are not in consonance with its objects. The learned CIT has also not mentioned the exact enquiry report sent by the departmental authorities to ascertain as to on what basis

> they did not recommend for registration to the assessee. The decision relied upon by the Commissioner in the case of Kale Khan Mohammad Hanif v. CIT may be relevant for assessment proceedings, but not for registration u/s. 12AA and hence, distinguishable on facts. Therefore, in view of decision of Hon'ble Karnataka High Court referred to above and various other decisions relied upon by the learned counsel for the assessee-trust, we are of the considered opinion that the learned CIT was not justified in rejecting the application of assessee for grant of registration. Accordingly, we hold that that appellant-trust is eligible for registration and accordingly direct the learned CIT to grant registration to the assessee trust as per law."

5. No illegality or perversity could be demonstrated by learned counsel for the revenue in the aforesaid findings recorded by the Tribunal.

6. In view of the above, no scope for interference by this Court is made out so as to take a different view expressed by the Tribunal. Thus, no substantial question of law arises. The appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 11, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	**Yes**
Whether Reportable	**Yes**