IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.A. No. 36 of 2017

DATE OF DECISION : 14.07.2017

The Commissioner of Income Tax (Exemptions), Chandigarh

.... APPELLANT

Versus

M/s Infant Jesus Education Society

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Denesh Goyal, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

1. The appellant-revenue impugns the order dated 26.04.2016, Annexure A-2, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short “the Tribunal”) through the present appeal filed under Section 260-A of the Income Tax Act, 1961 (in short “the Act”) in ITA No. 777/Chd/2015, claiming following substantial questions of law :-

> (i) Whether on the facts and circumstances of the case, the order of the Tribunal is not perverse in directing the Principal Chief Commissioner of Income Tax to grant approval under Section 10 (23C) (vi) of the Act on the ground that the Right of Children to Free and Compulsory Education Act, 2009, is not applicable in the case of applicant whereas the Principal Chief Commissioner of Income Tax had denied

exemption on the ground that applicant was existing for the purposes of profit as it was not providing reservation to EWS in admission with grant of full tuition fee waiver to them thereby indicating its profit motive.

(ii) Whether on the facts and circumstances of the case, the Tribunal's order is not perverse in directing grant of approval on the basis of genuineness of activities which is a condition envisaged in the second proviso and cannot override the basic requirement of existing solely for educational purposes and not for profit.

(iii) Whether on the facts and circumstances of the case, the Tribunal was justified in directing to grant exemption without commenting on the Principal Chief Commissioner of Income Tax's observation that the assessee had failed to fulfil the crucial condition that it was existing solely for educational purpose and not for purpose of profit.

(iv) Whether on the facts and circumstances of the case, the Tribunal has erred in directing the approval to be accorded instead of reverting it back for re-examination in the light of its findings.

2. Briefly, the facts of the appeal, necessary for adjudication of the controversy involved, may be noted. The respondent-assessee is a society registered under the Societies Registration Act, 1860, on 12.09.1986. The society is running St. Stephen's Preparatory School in Sector 46-A, Chandigarh, since the year 2006 and the school is from Class Play to Class K.G. The respondent-assessee applied for grant of exemption under Section

10 (23C) (vi) of the Act for the year 2013-14 onwards. The exemption was applied vide application dated 22.-09.2014. The application for exemption was processed and a letter dated 16.09.2015 was issued by the Principal Chief Commissioner of Income Tax, N.W. Region, Chandigarh, asking for certain information including the information about compliance made to Right of Children to Free and Compulsory Education Act, 2009 (commonly known as RTE Act). The respondent-assessee filed reply providing the information asked for and further, the assessee took the stand that the RTE Act is not applicable to it, as its school is only from Class Play to Class K.G.

3. The Principal Chief Commissioner of Income Tax, vide order dated 30.09.2015, Annexure A-1, rejected the application under Section 10 (23C) (vi) of the Act, primarily on the ground that the assessee had not been complying with the provisions of RTE Act.

4. Aggrieved of the order of the Principal Chief Commissioner of Income Tax, the respondent-assessee filed appeal before the Tribunal. The Tribunal, vide order dated 26.04.2016, allowed the appeal of the assessee. It held that provisions of the RTE Act are not applicable to the school being run by the respondent – assessee. The Tribunal set aside the order of the Principal Chief Commissioner of Income Tax and directed him to grant registration to the assessee. Hence the present appeal by the revenue.

5. We have heard learned counsel for the appellant-revenue.

6. It would be expedient to examine relevant statutory provisions.

7. Section 10 (23C) (vi) of the Act is re-produced below :

"any university or other educational institution existing solely for educational purposes and not

> *for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority."*

Under the aforesaid provision, any income derived by an assessee shall not form part of its taxable income in the case of any university or other educational institution which is existing solely for educational purposes without any profit motive other than those mentioned in sub-clause (iiiab) or (iiiad) provided prior approval is accorded by the prescribed authority.

8. Clauses (f) and (n) of Section 2 and Section 12 of the RTE Act read thus :-

> *"2 (f) – "elementary education" means the education from first class to eighth class;*
>
> *2 (n) - "school" means any recognised school imparting elementary education and includes -*
>
> > *(i) a school established, owned or controlled by the appropriate Government or a local authority;*
> >
> > *(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;*
> >
> > *(iii) a school belonging to specified category; and*
> >
> > *(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.*

12. Extent of school's responsibility for free and compulsory education *– (1) For the purposes of this Act, a school, -*

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion :

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of Section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such maner as may be prescribed :

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of Section 2 :

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of if having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."

9. The "elementary education" has been defined in Section 2 (f) of the RTE Act to mean education from class 1 to 8. The definition of "school" contained in Section 2 (n) of the RTE Act inter-alia postulates that school which imparts education from class 1 to 8 including school owned or

controlled by Government or local authority, a school which is fully aided or partially aided by Government or local authority for its expenses, school belonging to specified category and unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or local authority. Section 12 of the RTE Act deals with extent of school's responsibility for free and compulsory education. It provides for situations where schools are under obligation to impart free and compulsory education.

10. The only issue involved in the present appeal is whether the provisions of the RTE Act would apply to the school being run by the assessee-society, which imparts education from Class Play to Class K.G only.

11. It is not disputed that the school in question is only upto K.G class. No doubt has been raised with regard to the genuineness of the activities of the society. There was no challenge with regard to genuineness of the activities of the society either before the Tribunal or before this court.

12. The Tribunal, after considering Sections 2 (f), (n) and 12 of the RTE Act, came to the conclusion that these provisions are applicable to the schools imparting education from Ist Class to 8^{th} Class, and hence the school of the respondent – assessee will not be governed by the RTE Act. The operational part of the order of the Tribunal is reproduced below :-

> *"A bare perusal of the provisions of Section 2 (n) read with Section 2 (f) would reveal that the schools which are covered by the provisions of RTE Act are those which impart elementary*

> *education, meaning education from class 1 to class 8. In the present case it is an undisputed fact that the school run by the assessee society is imparting education below class 1. Clearly the assessee society is not a school as per the definition given in the RTE Act in section 2 (n) and is therefore not covered by the provisions of the RTE Act. Further the provisions of Section 12 (1) (C) read along with the proviso reveals that where the schools imparting elementary education are also imparting pre school education, the provision of compulsory admission to 25% students belonging to the weaker section of the society, shall apply to the pre school education admission also. In the present case the school run by the assessee society is not imparting elementary education in the first place therefore the question of attracting the provision of section 12 (1) (C) and the proviso thereto does not arise at all. Therefore in our considered opinion the school is not governed by the provision of RTE Act at all and the basic premise of the learned Principal Chief Commissioner of Income Tax for denying approval of the assessee society therefore fails."*

13. Learned counsel for the appellant – revenue has not been able to show that the provisions of the RTE Act are applicable in the present case. He has further not been able to show that the findings recorded by the Tribunal are in any way illegal or perverse warranting interference by this

Court. Consequently, no substantial question of law arises and the appeal stands dismissed.

(AVNEESH JHINGAN)
JUDGE

July 14, 2017 **(AJAY KUMAR MITTAL)**
ndj **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes