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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.118 of 2016 (O&M)
Decided on 29.10.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

Appellant

Versus

M/s Ambala Public Educational Society, Ambala

Respondent

* * *

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

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

Mrs. Radhika Suri, Sr. Advocate with
Mr. Manpreet Singh Kanda, Advocate
for the assessee-Society.

* * *

AVNEESH JHINGAN, J.

The Revenue has filed the present appeal under Section 260A of Income Tax Act, 1961 (for brevity 'the Act') against the order of Income Tax Appellate Tribunal, Chandigarh (for brevity 'ITAT') passed in ITA No. 748/Chd/2014, dated 21.05.2015, allowing the appeal of the assessee-Society.

2. The Revenue has claimed following substantial questions of law:

(i) "Whether the ITAT was right in law while insisting that the Commissioner at the time of granting exemptions, should only look at the objects of the trust, thereby in effect precluding the other statutory built in Section 12AA

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i.e. satisfaction about genuineness of activities?

(ii) *Whether the ITAT was right in law in allowing the appeal of the assessee in spite of the fact that the school run by the society is a family run school and where a miniscule 20 pupils are being provided freeships which also is in contravention to the Right to Education Act?*

(iii) *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in allowing appeal of the assessee despite the fact that the society is not registered under the new Haryana Registration & Regulation of Societies Registration Act, 2012?*

(iv) *Whether the Hon'ble Tribunal was right in law in passing the impugned order which is contrary to/ignoring their jurisdictional Tribunal/own earlier settled principals in the cases of PUDA vs. CIT reported as (2006) 103 TTJ CHD 988, Jalandhar Development Authority Vs. CIT reported as (2010) 35 SOT ASR 15 and Jammu Development Authority Vs. CIT reported as (2012) 52 SOT ASR 153 (upheld by Hon'ble J&K High Court and Hon'ble Supreme Court)?*

(v) *Whether in the facts and circumstances of the case and in law the Hon'ble ITAT is right in granting registration to the Society and setting aside the order of Commissioner, hence the impugned judgment is perverse?*

3. The assessee-Society is a Trust registered with the Registrar of Societies, Haryana vide registration No. 322 dated 18.05.1995. The assessee-Society was set up with various aims & objects including improvement in the standard of education of the backward students of rural areas and was running a school. The assessee-Society made an application for registration under Section 12A of the Act. The application was made on 25.03.2014. The Assessing Officer vide his report dated 25.07.2014 reported the aims

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& objects of the assessee-Society to the Commissioner of Income Tax (CIT). During the proceedings, the CIT was swayed by the fact that the Secretary of the assessee-Society was getting lease rent of ₹3,60,000/- per annum and wife of the Secretary was getting salary from the school. It was further stated that the assessee-Society was not registered under the New Haryana Registration & Regulation of Societies Registration Act, 2012 (hereinafter referred to as '2012 Act'). The application was rejected vide order dated 31.07.2014. The order of the CIT was assailed in appeal before the ITAT by the assessee-Society. The ITAT vide order dated 21.05.2015 allowed the appeal and ordered granting registration under Section 12A of the Act to the Society. Hence the present appeal by the Revenue.

4. Heard learned counsel for the parties.

5. Learned counsel for the Revenue contended that the ITAT has erred in allowing the appeal in spite of the fact that the assessee-Society was not registered under the 2012 Act. It was further contended that the school being run by the assessee-Society was a family affair as the Secretary was getting the lease rent and his wife was getting salary.

6. Learned counsel for the assessee-Society argued that there was no requirement under Section 12A of the Act that the Society should be registered under 2012 Act. It was argued that wife of the Secretary was qualified to be teacher and working in the School. She was being paid a salary of ₹25,709/- per month. Learned counsel further relied upon the assessment order passed for assessment year 2010-11 in which the assessing authority held that

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the amount earned by the assessee-Society had been utilized for educational purposes. It was submitted that the appeal filed by the Revenue is without merits and deserves dismissal.

7. The contentions raised by learned counsel for the Revenue lacks merit. There is no requirement under Section 12A of the Act that the assessee-Society is required to be registered under the 2012 Act. Moreover, the assessee-Society explained before ITAT that it had applied for registration under the 2012 Act but due to back log, grant of registration was delayed. The certificate regarding registration under 2012 Act was produced before the ITAT.

8. The application under Section 12A of the Act cannot be rejected merely on the ground that the Secretary of the Society was getting lease rent for the land given to the Society for running the School or his wife who had requisite qualification was teaching in the school and was being paid the salary. It is not the case set up by the Revenue that the exorbitant amounts had been paid by the assessee-Society to the Secretary or to his wife. No dispute has been raised to the fact that the assessee-Society is running a school as per its aims & objects. The CIT while rejecting the application has not doubted the genuineness of aims and objectives of the assessee-Society. On the other hand the Assessing Officer while finalising the assessment for assessment year 2010-11 under Section 143(3) of the Act has specifically recorded the finding that the income earned by the Society has been utilized for educational purposes.

9. However, we may hasten to add that in case, subsequently, the Revenue is satisfied that the activities of the

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assessee Trust are not for charitable purposes, department can always initiate action for cancellation of registration under Sub Section (3) of Section 12AA of the Act.

10. The order of the ITAT warrants no interference. No error has been pointed out in the findings recorded by the ITAT much less shown to be perverse. No substantial question of law arises.

11. The appeal is, accordingly, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 29, 2018
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Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No

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