IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 246 of 2017
Date of decision: 04.07.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

……Appellant

Vs.

M/s Partap Education & Research Society, Village Chanour, Tehsil Indora, District Kangra (HP) PAN AABAP9103F

…..Respondent

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

Present: Mr. Denesh Goyal, Senior Standing Counsel
for the appellant-revenue.

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 21.10.2016, Annexure A.2, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the Tribunal") in I.T.A. No.428/Chd/2016, claiming following substantial questions of law:-

> (i) Whether the ITAT has erred, in the facts and circumstances of the case, in arriving at the conclusion that the activities of the society were genuine even when infractions in the accounts had been pointed out in the rejection order apart from pre-ponderance of cash dealings in the bank account?
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> (ii) Whether the ITAT has, in the facts and circumstances, erred in concluding that the CIT(E) has a mere suspicion about the

altruistic intent even when the composition of the trust, its activities of the past and other aspects had been clearly brought out to prove that the working of the society was not transparent. The ITAT has erred in ignoring the dictum that the genuineness of activities necessarily involve complete transparency on part of the trusts/societies in sections/clauses that benefit assessees?

(iii) Whether on the facts and in the circumstances of the case, the ITAT was justified in setting aside the CIT(E)'s order whereas in the order the ITAT has itself admitted the 'possibility' of gaining unmerited benefit by the members of the assessee society which also lent credence to the CIT(E)'s belief that the activities were not in consonance with the stated objects?

(iv) Whether on the facts and in the circumstances the ITAT has ignored the establishment dictum that in case of clauses beneficial to the assessee the onus, being entirely on the applicant, is clearly not redeemed in the instant case as the assessee had not produced the details of fee structure, number of students, details of students granted fee waiver etc?

(v) Whether the ITAT has not rebutted the findings of the CIT(E) and has to that extent erred in granting registration instead of reverting the issue back to the CIT(E) for fresh adjudication with its own findings?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee filed an application for grant of registration under Section 12AA of the Act on 31.08.2015 before the Commissioner of Income Tax (Exemptions) [CIT(E)]. Vide order dated 29.02.2016, Annexure A.1, the said application was rejected. During the course of proceedings for registration, the CIT(E) inter alia raised the following objections:-

(i) the assessee society was a closely held concern financed mostly by the loans from family and relatives of the members of the society and the same was not going to the corpus of the society.

(ii) no donation was received by the assessee society, hence, it was not amenable to public charity.

(iii) land owned by the society belonged to the family of the members of the society.

(iv) there were fees which remained outstanding for recovery in the balance sheet of the assessee in the year 2013-14.

(v) the fees received by the school in the second year was the same as that in the first year.

(vi) the assessee society had not provided the fee structure, details of number of students actually studying, details of students granted fee waiver.

On the basis of the above objections, the CIT(E) denied the registration by holding that the assessee society and its school was intended and designed purely for imparting education on commercial principles and that there was no altruistic intent built into the scheme of activities. Further the activities of the society did not stand corroborated vis-a-vis the stated objects. Aggrieved thereby, the respondent-assessee approached the Tribunal pleading that the objections pointed out by the CIT(E) had no bearing on the genuineness of the objects and the activities of the trust. Vide order dated 21.10.2016, Annexure A.2, the Tribunal directed the CIT(E) to grant registration to the assessee under Section 12AA of the Act by observing that the objects of the assessee society were charitable and genuineness of activities carried out by the assessee had not been questioned. Hence the instant appeal by the appellant-revenue.

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

4. In the present case, application for registration under Section 12AA of the Act was rejected by the CIT(E) holding that the assessee-society

and its school was intended and designed purely for imparting education on commercial principles and that there was no altruistic intent built into the scheme of the activities. The matter was examined in detail by the Tribunal under the relevant statutory provisions and the case law on the point. It was recorded by the Tribunal that the main object of the society was for imparting education. It was created with the object to promote education among the students at large irrespective of their caste, creed, religion, region or social status. Thus, undisputedly, the objects of the assessee-society were held to be charitable. With regard to the genuineness of the activities of the assessee-society, financial statements for the years 2013-14 and 2014-15 clearly reflected that the assessee was carrying out the activity of imparting education. Receipts of fees and other charges from students and also expenses incurred on running the school were also placed on record. It was further recorded by the Tribunal that the discrepancies/deficiencies pointed out by the CIT(E) had no bearing on the genuineness of the activities of the assessee trust. Since, the genuineness of the object and activities of the assessee-society had not been questioned by CIT(E), the Tribunal rightly granted registration under Section 12AA of the Act to the assessee-society and set aside the order passed by the CIT(E). The relevant findings recorded by the Tribunal read thus:-

> "11. Adverting to the facts of the present case we find that there is no dispute about the fact that the object of the assessee society was imparting education. Para 2 of the order of the CIT states that the assessee trust was created with the object to promote education among the students at large irrespective of their caste, creed, religion or social status. The Aims and Objects of the assessee society outlined above also reveal the above fact. Education, as per the provisions of section 2(15) of the Act which defines the term "charitable purpose", is a charitable purpose.

Thus undisputedly, the objects of the assessee society are charitable.

12. As for the genuineness of the activities of the assessee society also, the Financial Statements of the assessee society for the financial years 2013-14 & 2014-15 placed at paper book page no. 25-34 clearly reflect the fact of the assessee carrying out the activity of imparting education by showing receipts of fees and other charges from students and also expenses incurred on running the school. These facts have not been disputed by the Commissioner before whom these documents were also placed vide assesses letter dated 10.02.2016 placed at PB-22-24. Moreover the discrepancies/deficiencies pointed out by the Commissioner of Income Tax, we find, have no bearing at all on the genuineness of the activities of the trust. The fact that no donations have been received by the society, that it is financed entirely by loans from members of the society, that land belong to members of the society, that fees are outstanding for recovery, that there has been no increase in the fees received in the financial year 2014-15 as compared to FY 2013-14 and also the fact that there are cash transactions in its bank account, have no reflection on the factum of the assessee carrying out its stated object of imparting education. In fact, we find that the Ld. CIT has not questioned the genuineness of the activity carried out by the assessee but has only questioned the altruistic intent built into the scheme of activities of the assessee society. Meaning thereby that the Ld. CIT was of the belief that the school was being run primarily for the benefit of the members of the society. But the findings on which this belief is based, reproduced above, are mere suspicion to this effect. That the society is closely held, managed and financed does not lead to the conclusion that it is being run for the benefit of its members. At the most there can be a possibility of such a situation arising but, on the basis of these observations alone it cannot be said that the Society is running only for the benefit of its members and therefore its activities are not genuine. The Hon’ble Punjab and Haryana High Court in the

> case of ***CIT Vs. Baba Kartar Singh Dukee Educational Trust*** [2014] 221 Taxman 493, has held that any suspicion regarding the genuineness of activities of the Trust cannot be the sole reason for rejecting an application made under section 12A of the Act. Moreover the issues highlighted by the Ld. CIT, being apprehensions related to application of income of the Society, may have a bearing while determining the exempt Income of the Society as per the provisions of sections 11 & 12 of the Act, which is stage subsequent to grant of Registration and is therefore not relevant for the purpose of granting registration under section 12 AA of the Act. The jurisdictional High Court in the case of ***CIT Vs. Surya Educational and Charitable Trust*** [2013] 355 ITR 280 has held that the object of section 12AA is to examine the genuineness of the objects of the trust and not the application of income of the Trust for charitable purposes, which stage arises later on, on filing of return of income.
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> 13. Clearly therefore, the genuineness of the objects and activities of the assessee society not being questioned, the Ld. CIT could not have refused grant of registration under section 12A of the Act to the assessee society.We therefore set aside the order of the CIT and direct that the assessee be granted registration under section 12A of the Act."

Even before this Court, learned counsel for the appellant-revenue has not been able to point out any error or illegality in the view taken by the Tribunal granting registration to the assessee-society under Section 12AA of the Act, after examining the entire facts and circumstances of the case, relevant statutory provisions and the case law on the point.

5. Learned counsel for the revenue relied upon judgments in ***Scientific Educational Advancement Society Vs. Union of India and another*** (2010) 323 ITR 84 (P&H), ***St. Francis Convent School Vs. Central Board of Direct Taxes & Ors.*** (2012) 67 DTR 251(P&H), ***All India J.D. Educational***

Society Vs. Director General of Income-Tax (Exemptions) (2011) 338 ITR (Delhi), ***Dawn Educational Charitable Trust Vs. Commissioner of Income-Tax*** (2015) 370 ITR 724 (Ker), ***Commissioner of Income-Tax Vs. Sri Guru Gorakh Nath Charitable Educational Society*** (2015) 378 ITR 685 (P&H), ***Sree Anjaneya Medical Trust Vs. Commissioner of Income-Tax*** (2016) 382 ITR 399 (Ker) and ***Norka Roots Vs. Commissioner of Income-Tax*** (2018) 401 ITR 224 (Ker). All these cases are based on individual fact situation involved therein. Each case has to be decided on its own facts. Thus, the learned counsel for the revenue cannot derive any advantage from these decisions.

6. In view of the above, we do not find any ground to differ with the view taken by the Tribunal. Consequently, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 04, 2018 **(Avneesh Jhingan)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**