IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 378 of 2017 (O&M)
Date of decision: 05.07.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

……Appellant

Vs.

Labana Sikh Educational Society, Barara, Ambala, PAN-AABTL2722M

…..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.

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 18.01.2017, Annexure A.2, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the Tribunal") in I.T.A. No.287/CHD/2016, claiming 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 that the CIT has not made adverse remarks on the objects and activities of the applicant and thereby directing to grant registration to the applicant whereas the CIT had clearly held in its order that the genuineness of the activities did not stand corroborated as it was claiming wrong exemption?

(ii) Whether making wrong claims, in the returns of income, in contravention of the statutory provisions doesn't have a bearing on the genuineness of the applicant and is it the case that such entities need to be given benefit of clauses that exempt their incomes from taxation?

(iii) Whether on the facts and in the circumstances of the case, the ITAT has erred in directing the registration to be accorded instead of reverting it back for re-examination in the light of its findings?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The Commissioner of Income Tax (Exemption) [CIT(E)] rejected assessee's application for registration under Section 12AA on the ground that the assessee had been claiming exemption under Section 10(23C)(iiiad) of the Act, whereas, its receipts exceeded the prescribed limit of ₹ one crore. It was further noticed that the assessee institute was substantially financed by the Government and as such it was not eligible to claim exemption under Section 10(23C)(iiiad) of the Act. Further, the assessee had been running its institutions on commercial lines. Since, the assessee had been making wrong claims of exemption, its activities did not stand corroborated. It was, thus, concluded that the running of the institutions of the assessee on commercial lines was not of charitable nature and hence not entitled to registration under Section 12AA of the Act. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated 24.01.2017, the Tribunal set aside the order passed by the CIT(E) and directed to grant the registration. It was held that the CIT(E)'s observation on wrong claim of exemption under Section 10(23C)(iiiad) of the Act or its failure to claim exemption under Section 10(23C)(iiiab) of the Act is not a

reflection on the genuineness of the activities of the assessee. Hence the instant appeal by the appellant-revenue.

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

4. Admittedly, in the present case, the assessee's application for registration under Section 12AA of the Act was rejected by the CIT(E) vide order dated 29.01.2016, Annexure A.1. As per Section 12AA of the Act, the CIT(E) for the purpose of grant of registration has to consider the genuineness of the objects and activities of the trust. After examining the entire facts, material on record and the relevant statutory provisions, it has been recorded by the Tribunal that nothing adverse has been found by the CIT(E) regarding the genuineness of the objects of the respondent-society. The main aim of the respondent-assessee was running of Sant Mohan Singh Khalsa Labana Girls College. Thus, the objects of the respondent-assessee related to imparting education and were charitable under Section 2(15) of the Act. Genuineness of the activities of the respondent-assessee had not been doubted by the CIT(E). Even before the Tribunal, the Certificate of Registration of Societies was filed showing that the respondent-assessee was registered on 12th of November 1981. Copy of Constitution of the society was also filed to prove that it was formed primarily for the purpose of imparting education and thus had a charitable object. Further copy of the balance-sheet and profit and loss account for the year ending 31.03.2015 was filed showing receipts of the college and school run by the respondent-society primarily from fees. Thus, the genuineness of the activities carried out by the respondent-assessee were proved. With regard to the finding given by the CIT(E) that the respondent-assessee had wrongly claimed exemption under Section 10(23C)(iiiad) of the Act, since the total income of the society, college and school run by it, exceeded ₹ one crore which was the limit set

under the statute for claiming exemption, it was recorded by the Tribunal that this had no reflection on the genuineness of the activities carried out by the respondent-assessee. Thus, it was rightly concluded by the Tribunal that the objects and activities of the respondent-society had not been doubted. Consequently, the order passed by the CIT(E) was rightly set aside by the Tribunal. The relevant findings recorded by the Tribunal read thus:-

> "7. In this legal backdrop, we find that the facts in the present case demonstrate that nothing adverse has been found by the Commissioner Of Income Tax regarding the genuineness of the objects of the applicant society. In fact, the observations of the learned Commissioner of Income Tax in this regard are that the main aim of applicant society is running of Sant Mohan Singh Khalsa Labana Girls College and other objects and any other educational institute with a view to providing all round balanced and wholesome education to the youth so as to make them worthy citizens of this great country. Clearly, the objects of the appellant society relate to imparting education and are charitable as defined under section 2(15) of the Act. Further we find that there is no adverse observation regarding the activities carried on by the appellant society by way of imparting education filed before the learned Commissioner of Income Tax, copy of registration of the society, the constitution/ by-laws, the letter of registration all were filed before the learned Commissioner of Income Tax, who after perusing the same has not found anything adverse regarding the activities carried on by the assessee society. Thus, clearly, the genuineness of the activities of the applicant society has not been doubted by the learned Commissioner of Income Tax. Even before us the Certificate of Registration of Societies was filed showing that the applicant society was registered on 12th November, 1981. Copy of Constitution of the society was filed to prove that it was formed primarily for the purpose of imparting education and thus had a charitable object. Further copy of the Balance Sheet and Profit

and Loss Account for the year ended on 31.03.2015 was filed showing receipts of the College and School run by the applicant society primarily from fees, thus proving the genuineness of the activities carried out by it.

8. What the learned Commissioner of Income Tax found objectionable is that the applicant society, being liable to claim exemption under section 10(23C)(iiiab), since it is wholly financed by the State Government has not done so. Clearly, this is not a reflection on the genuineness of the activities being observation of the learned Commissioner of Income Tax, the applicant society is eligible to claim exemption under section 10(23C)(iiiab) of the Act which grants exemption to institutions existing solely for the purpose of imparting education. The other adverse finding of the learned Commissioner of Income Tax is vis-à-vis the fact that applicant society has wrongly claimed exemption under section 10(23C)(iiiab) of the Act since aggregating the income of the society, college and school run by it, the same exceeds Rs.1 Crore which is the limit set under Statue for claiming exemption under section 10(23C)(iiiab) of the Act. Again we find that this has no reflection on the genuineness of the activities carried out by the applicant society, but is an affirmation of the genuineness of the activities since it calls into question the claim of exemption under section 10(23)(iiiab) of the Act, which grants exemption from tax of incomes of institutions receipts during a financial year does not exceed a specified limit, on account of the income exceeding a particular limit but does not doubt the genuineness of the activities carried out by the assessee. Further the observation of the Ld. CIT that the institutions of the applicant society are being run on commercial lines, we find has no basis. Ld. CIT has merely made a general comment on the above lines which is not supported by any affidavit."

5. Learned counsel for the appellant-revenue has not been able to point out any error or illegality in the findings recorded by the Tribunal

warranting interference by this Court. No substantial question of law arises.

Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 05, 2018 **(Avneesh Jhingan)**
'gs' **Judge**
Whether speaking/reasoned **Yes**
Whether reportable **Yes**