IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-422-2017

Date of Decision: 22.10.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

...Appellant.

Versus

The Rural Education & Women Welfare Society, SAS Nagar

...Respondent.

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

PRESENT: Mr. Denesh Goyal, Sr. Standing Counsel for the appellant.

Mr. Sanjay Ghalawat, Advocate for
Mr. Rohit Sud, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 7.3.2017 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 546/(ASR)/2016, claiming the following substantial questions of law:-

"I. Whether on the facts and 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 established that the applicant was operating on commercial principles and eligible for registration?

II. Whether on the facts and circumstances of the case, the order of the ITAT is not perverse in holding that non filing of return of income is not a valid ground to deny registration u/s 12AA of the I.T. Act, 1961 when the CIT is fully empowered u/s 12AA(1)(a) to call for such documents to satisfy himself about the genuineness of the activities of the applicant. Whether the term 'such documents' would not include returns of income for the purpose of determination of genuineness of activities of a Trust?

III. Whether on the facts and circumstances of the case, the powers conferred u/s 12AA(4) inserted w.e.f. 1.10.2014 cannot be exercised by the CIT while granting registration u/s 12AA(1) even when the evidence adduced during proceedings, reveals infraction of statute?

IV. Whether on the facts and 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 necessary for adjudication of the instant appeal as mentioned therein may be noticed. The assessee filed an application under Section 12AA of the Act on 9.3.2016 in form No.10A for grant of registration in the office of Commissioner of Income Tax (Exemption), Chandigarh [for brevity 'the CIT(E)']. The CIT(E) vide order dated

29.9.2016 (Annexure A-1) rejected the said application by noticing, *inter alia,* that the assessee was operating on commercial principle and had amassed capital funds of ₹ 5.59 crores and fixed assets to the extent of ₹ 5.85 crores since it started its operation in 2007; the emphasis of the society was mainly on creation of assets rather than on re-deployment of funds towards education and to add their vehicles and buses; the transportation charges being earned by the assessee were approximately 40% of the fee income received from the students and the fee structure was not in sync with the instruction issued by the Central Board of School Education while providing affiliation to an entity; and that the assessee had faltered on statutory requirements of filing returns of income despite receipts in excess of ₹ 2 crores every year. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 7.3.2017 (Annexure A-2) allowed the appeal and directed the CIT(E) to grant registration to the appellant-society forthwith, i.e. from the date of application. Hence, the present appeal by the revenue.

3. After hearing learned counsel for the parties, we do not find any merit in the appeal.

4. The Tribunal has noticed that the assets of the assessee, i.e., its land and building etc. had been created out of the donations received for the setting up of the school of the society and the objection of the CIT(E) that the assessee had amassed capital funds to the tune of ₹ 5.59 crores and fixed assets to the extent of ₹ 5.85 crores neither impinged on the objects nor the genuineness of the activities of the assessee. The object of the society is 'To Promote the Quality and Scope of Education in Rural Area and Manage the affairs of Sadhu Singh Rural Public School, Mukand Pur.' Therefore, the

contention of the assessee that the corpus got created from such donations as received for the setting up of the school, had not been rebutted by producing any material to the contrary on record. Regarding creation of assets, the Tribunal had recorded nothing had been brought on record to show that the assets of the assessee were meant for any purposes other than its aims and objects which included managing the affairs of the school and that as per the balance sheets, the entire expenditure incurred by it had been for the purposes of school only. Further, at the time of considering the grant of registration, only the objects and genuineness of the activities of the assessee were to be got verified. Accordingly, the Tribunal directed the CIT (E) to grant registration to the respondent. The relevant findings recorded by the Tribunal in paras 6 to 8 of the order read thus:-

> "6. While refusing registration to the assessee society, the Objection raised by the ld. CIT(E) is that the applicant has amassed capital funds to the tune of ₹ 5.59 crore and fixed assets to the extent of ₹ 5.85 crore. This observation, it is seen, impinges on neither the objects of the applicant, nor the genuineness of its activities. It has been submitted before us that the assets of the applicant, i.e., its land and building etc., have been created out of donations received for the setting up of the school of the society. As per Object (APB-1), as set out in the Memorandum of Association of the applicant society, the applicant is "To Promote the Quality and Scope of Education in Rural Area and Managed the Affairs of Sadhu Singh Rural Public School, Mukand Pur". In its

reply (APB 23-29) (Dated 12.08.2016) to the Questionnaire (APB 21-22) (Dated 04.08.2016) the applicant stated that the details of donations received were being Annexed. The contention that the corpus got created from such donations received for the setting up of the school, has not been rebutted based on anything to the contrary on record. And be that as it may, the fact remains that the observation in this regard in the impugned order fails to carry out the statutory mandate of satisfaction regarding the objects and genuineness of activities of the applicant. It is, therefore, superfluous and not detrimental to the applicant's claim for registration.

7. So far as regards, the observation that the fee receipts of the applicant have consistently been in excess of ₹ 2 crore, again, this objection does not pertain either to the objects or to the genuineness of the activities of the applicant. The contention that the fees received have been spent on the running of the school has not been controverted with any material on record. Moreover, to reiterate, examination of application of income can be undertaken only at the time of assessment.

8. Likewise, the Objection regarding the emphasis of the applicant allegedly being on creation of assets, rather than, on deployment of funds for education, does not render the claim for registration untenable, inasmuch as,

even if this observation is taken, for the sake of argument to be correct, despite there being no basis for it spelt out in the order, nothing has been brought on record that the assets of the applicant are meant for any purposes other than its avowed aims and objects, which include managing the affairs of the school. Too it has not been refuted that as seen from the three balance sheets filed by the applicant, the entire expenditure incurred by it, has been for the purposes of the school only. Then, the assets of the applicant have also not been shown to be existing, much less utilized, for any purposes other than that of the school. Further, once again, as to how the question of application of income is germane to the grant of registration, is not evincible from the order.

5. In view of the above, no illegality or perversity could be pointed out by the learned counsel for the appellant-revenue which may warrant interference by this Court. No question of law, much less, the substantial question of law arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 22, 2018 **(AVNEESH JHINGAN)**
gbs **JUDGE**

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