IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-533-2017 (O&M)

Date of Decision: 22.10.2018

M/s The Improvement Trust Khanna

....Appellant.

Versus

Commissioner of Income Tax, Ludhiana-II and another

...Respondents.

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

PRESENT: Mr. Sanjay Ghalawat, Advocate for
Mr. Rohit Sud, Advocate for the appellant.

Mr. Denesh Goyal, Sr. Standing Counsel for the respondents.

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AJAY KUMAR MITTAL, J.

1. Delay of 979 days in filing the appeal is condoned.

2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26.11.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 406/Chd/2013 for the assessment year 2009-10, claiming the following substantial questions of law:-

i) Whether in the facts and circumstances of the present case, the respondent could have cancelled the registration already granted to the trust when no condition under Section 12AA(3) of the Act had been satisfied?

ii) Whether in the facts and circumstances of the present case, the respondent could have cancelled the registration without recording any specific finding that the activities of the trust or institution are not genuine?

iii) Whether in facts and circumstances of the present case, after the grant of registration under Section 12A of the Act can the Assessing Officer go into the objects and hold them to be non-charitable. If know, whether the learned Tribunal was justified to hold that the activities done by the appellant trust does not qualify for exemption?

iv) Whether in facts and circumstances of the present case, the impugned orders are liable to be set aside that on one hand it is observed that the case laws relied upon by the CIT were relating to granting registration under Section 12A of the Act and not relating to the exemption provided under Sections 11 and 12 of the Act and on the other hand the Ld. ITAT has itself heavily placed reliance on the judgment of PUDA Vs. CIT which was relating to the grant of registration under Section 12A of the Act making it contradictory?

v) Whether in facts and circumstances of the present case, the action of the authorities below, the impugned orders Annexures A-1 and A-2 are legally sustainable in the eyes of law?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee was granted registration under Section 12AA of the Act vide order dated 13.11.2009 (Annexure A-1) by the Commissioner of Income Tax-respondent No.1. The said registration was withdrawn by respondent No.1 vide order dated 7.2.2013 (Annexure A-2) on the ground that the assessee-Trust was not charitable in nature within the meaning of Proviso to Section 2(15) of the Act. Feeling aggrieved, the assessee filed an appeal before the Tribunal who vide order dated 26.11.2014 (Annexure A-3) dismissed the appeal by relying upon the order dated 27.3.2014 passed in **ITA No. 380/Chd/2013 (Improvement Trust Malerkotla v. Commissioner of Income Tax)** wherein identical issues were considered. Against the order dated 27.3.2014, the assessee filed ITA-236-2015 in this Court and this Court vide order dated 16.3.2017 (Annexure A-4) set aside the order of the Tribunal and remanded back the matter to the Tribunal. Hence, the present appeal by the assessee.

4. We have heard learned counsel for the parties.

5. It is not disputed that similar issues came up before this Court in **ITA-236-2015 (M/s The Improvement Trust, Malerkotla v. Commissioner of Income Tax, Ludhiana-II and another)** wherein this Court vide order dated 16.3.2017 (Annexure A-4) while setting aside the order of the Tribunal, had remanded the matter back to the Tribunal to decide afresh in the light of submissions made by the learned counsel for the parties therein after affording an opportunity of hearing to the parties in accordance with law.

6. Accordingly, the present appeal is allowed, order dated 26.11.2014 (Annexure A-3) passed by the Tribunal is set aside and the matter is remanded back to the Tribunal to decide afresh in terms of order dated 16.3.2017 (Annexure A-4).

(AJAY KUMAR MITTAL)
JUDGE

October 22, 2018
gbs

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No