IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 47 of 2018
Date of decision: 15.5.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

……Appellant

Vs.

Seth Vinod Kumar Somani Charitable Trust, 14 New Shakti Nagar, Bathinda. (PAN No. AAOTS5900M).

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

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

Ajay Kumar Mittal,(ACJ)

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 11.08.2017, Annexure A.2, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No.570/Asr/2016, for the assessment year 2016-17, claiming following substantial questions of law:-

> "i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in directing the approval

to be accorded instead of reverting it back for re-examination in the light of its findings?

ii). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT without giving any findings on its own is right in treating a studied conclusion as flimsy?

iii). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in ignoring the CIT's finding that the main focus of the assessee society was merely on creation of land and building and one-off activities could not pass muster as systematic activities geared towards the objects?

iv). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in placing reliance on the fact of the assessee was having 12AA registration and by ignoring the statutory condition that 12AA registration is merely a pre-condition for approval u/s 80G(5)?

v). Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is contrary to the evidence and material on the record of the case and therefore, perverse?

vi). Whether on the facts and circumstances of the case, the order of the case, the order of the Appellate Tribunal is suffering from non-application of mind and is unreasonable and arbitrary?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. An application was filed by the respondent-assessee before Commissioner of Income Tax, (Exemptions) [CIT(E)] Chandigarh for grant of approval under Section 80G(5)(vi) of the Act on 30.3.2016. Vide order dated 29.9.2016, Annexure A.1, the said approval was denied by the CIT(E) inter alia holding that approximately 50% of donations was from the trustees themselves and the contention of the applicant that the same was corpus donation for land

building could not be accepted in the absence of documentary evidence. It was further observed that the main expenditure was on account of student fees amounting to ₹ 103275/- out of which a sum of ₹ 37,000/- was spent on single child i.e. Tania on different occasions such as payment of tuition fee to some Arora classes, payment at SSD Girls College, Bathinda. It was recorded that such acts did not qualify for charitable acts. Moreover, no evidence was provided as regards the identity of the students to whom help was being provided. It was also recorded that the main focus of the society was only on creation of land and building. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated 11.8.2017, Annexure A.2, the Tribunal allowed the appeal on the ground that once the registration under Section 12AA of the Act was in existence, the approval under Section 80G of the Act could not be denied on flimsy ground until and unless there was violation of the rules specified in that behalf. Hence the instant appeal by the appellant-revenue.

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

4. Learned counsel for the revenue relied upon judgment of this Court in ***CIT vs. Gulab Devi Memorial Hospital Trust,*** (2017) 391 ITR 73 to contend that registration under Section 12AA of the Act by itself is not automatic for granting approval under Section 80G of the Act.

5. It would be apt to examine the case reported in ***Gulab Devi Memorial Hospital Trust's*** case (supra), on which heavy reliance has been placed by learned counsel for the revenue. In the said case, the assessee claimed registration under Section 12AA of the Act, which was granted. Simultaneously, exemption under Section 80G of the Act was also approved. Thereafter, the exemption under Section 80G of the Act continued to be

granted year after year till the assessment year 2009-10. The assessee sought exemption for the assessment years 2010-11 to 2014-15 through an application to the CIT(E) which was rejected on the ground that the assessee was generating substantial surplus and was spending only a percentage for charitable purposes. It was recorded that the assessee therein had deviated from its charitable objects. After examining the relevant statutory provisions and the case law on the point, it was held by this Court that grant of exemption under Section 10(23C) and registration under Section 12AA of the Act in favour of an institution would be essential and persuasive factor for the grant of exemption under Section 80G of the Act though that by itself may not be sufficient to do so. The proposition of law as noticed is well recognized. However, the facts of each case would govern the decision in given set of circumstances.

6. In the present case, the assessee had applied for registration under Section 12AA of the Act which was granted vide registration No. 531 dated 30.11.2015 for the first time to the assessee. Thereafter, the assessee applied under Section 80G(5)(vi) of the Act seeking approval of CIT(E) on 30.03.2016. The assessee claimed that it was established for following aims and objects as recorded by CIT(E) in para 2 of the order dated 29.09.2016 declining the approval:-

> "2. The stated aims and objects of the trust are to run, maintain or assist school, colleges or boarding houses and any educational or other institution for coaching, guidance, counseling or vocational training or to grant individual scholarships for poor, deserving and needy students for elementary and higher education in India. The society also aims to run, maintain or assist any medical institution, nursing home or clinics or to grant assistance to needy and indigent persons

> for meeting the cost of medical treatment in India. The society further aims to give financial or other assistance in kind by way of distribution of books, notebooks, cloths, uniforms or meal for the poor and indigent and to the persons suffer due to natural calamities in India. The society also aims to acquire property for the sole use for public good by making it available for public purposes as for example, housing a library, reading room, clinic, creche and/or as community hall to be available for public use such as training classes, seminars, discussion and other public functions for benefits of the community in general including use as Dharamshalla or public park in India."

7. The CIT(E) declined the approval under Section 80(G)(5)(vi) of the Act to the respondent-assessee society vide order dated 29.09.2016 on the ground that the activities of the respondent-society were not for charitable purposes and 50% of the donations was from the trustees themselves in the absence of any documentary evidence. Further, the main focus of the respondent society was on creation of land and building. The said decision was upset by the Tribunal which has now been assailed by the revenue before us.

8. The facts have been discussed in extenso by CIT(E) in his order and are being taken therefrom. The assessee society was granted registration under Section 12AA of the Act by the CIT(E) on 30.11.2015, meaning thereby, the CIT(E) was satisfied that the aims and objects of the assessee were for charitable purposes. No action under Sub section (3) of Section 12AA of the Act had been initiated by the same Officer for cancellation of registration of the assesse-society. Further, the assessee-society in the year of its constitution had received 50% of the donations from the trustees themselves and had utilized the corpus donation for land and building. Ordinarily when an assessee-society is established in the initial years it may

be required to set up its place of office from where it would operate and also require building to carry on charitable activities therein. Purchase of land and building by itself would not be sufficient to conclude that the assessee is involved in non-charitable activities. CIT(E) before denying approval under Section 80G(5)(vi) of the Act was required to record a definite finding of fact that the funds utilised for land and building was being utilised for private purposes and not for charitable purposes. The action of the assessee-society in such circumstances cannot be held to be for non-charitable purposes. The CIT(E) had acted on mere suspicion and conjectures to deny approval to the assessee-society. Further as per the Income Expenditure Account for the financial year 2015-16, an amount of ₹ 1,03,275/- had been spent on account of student fees out of which ₹ 37,000/- had been spent on a single child on different occasions. This was held to be not qualifying for charitable acts done on a systematic regular basis. This is the result of suspicion alone. This being first year of operation after registration under Section 12AA of the Act which was accorded on 30.11.2015, the approach of CIT(E) declining approval under Section 80G(5)(vi) of the Act cannot be said to reasonable and legally sustainable. Needless to say, in case in subsequent years, the revenue is satisfied that the activities of the respondent-assessee are not qualified for charitable purposes, it shall be open for the department to initiate action for cancellation of registration under Section 12AA of the Act and also for passing appropriate orders regarding approval granted under Section 80G(5)(vi) of the Act in accordance with law.

9. After hearing learned counsel for the appellant-revenue and perusing the record, we do not find any ground to differ with the view taken by the Tribunal. Learned counsel for the appellant-revenue has not been able

to point out any error in the findings recorded by the Tribunal. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Acting Chief Justice

May 15, 2018 **(Tejinder Singh Dhindhsa)**
'gs' **Judge**

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