IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 51 of 2018
Date of decision: 16.05.2018

The Commissioner of Income Tax(Exemptions), Chandigarh

……Appellant

Vs.

M/s Managing Committee, Arya High School, Arya Samaj Gali, Mansa (Punjab). (PAN No. AABTM4291N).

…..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 I.T.A. No.469(Asr)/2016, claiming following substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in directing the grant of exemption u/s 10(23C)(vi) instead of reverting it back for re-examination in the light of its findings?

(ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in directing the grant of registration u/s 10(23C)(vi) despite the fact that the applicant failed to adduce evidences in support of its claim?

(iii) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in not following the tenet laid down by the Jurisdiction Hon'ble High Court of Punjab & Haryana in the case of ***Pinegrove International Charitable Trust***, wherein it was held that an educational institution which is registered as a society, would continue to retain its character as such and would be eligible to apply for exemption under section 10(23C)(vi) of the Act in the light of the fact that there was no evidence in the papers evidencing the formation that the school has been registered as a society?

(iv) 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?

(v) Whether on the facts and circumstances 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 for grant of registration under Section 10 (23C)(vi) of the Act on 13.08.2015 in the office of the Commissioner of Income Tax (E), Chandigarh, [CIT(E)] who, while passing an order under Section 10 (23C)(vi) of the Act denied approval vide order dated 31.08.2016, Annexure A.1. It was inter alia recorded that Section 10 (23C)(vi) of the Act was clearly applicable to any "university" or "other educational institution". A society or a trust could not claim to be either of them if the school was not registered as such. The assessee filed an appeal before the

Tribunal. Vide order dated 11.08.2017, Annexure A.2, the Tribunal allowed the appeal. Hence the instant appeal by the appellant-revenue.

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

4. Admittedly, the application for grant of registration under Section 10(23C)(vi) of the Act was filed by the respondent-assessee on 13.08.2015, claiming exemption up to the financial year 2014-15 relevant to the assessment year 2015-16 as during that financial year, the gross receipt of the society exceeded ₹ 1 crore. The CIT(E) declined to grant registration under Section 10(23C)(vi) of the Act by holding that no evidence of accumulation of income after following the due process had been adduced. It has been categorically recorded by the Tribunal after examining the record that during the assessment years 2012-13 to 2015-16, the amount of receipt had been exceeded more than ₹ 1 crore, and therefore, the assessee preferred the registration under Section 10(23C)(vi) of the Act. In the previous year, the assessee utilised the amount for the purchase of land for further extension of the school building etc which showed that the same was being utilised for the educational purposes only. Thus, the assessee was held to be covered within the provisions of Section 10(23C)(vi) of the Act for grant of registration. Consequently, the Tribunal directed CIT(E) to grant exemption under Section 10(23C)(vi) of the Act from the date of application. The relevant observations recorded by the Tribunal in this regard read thus:-

> "Now, coming to the instant case, as it reflects from the details of four assessment years i.e. 2012-13, 2013-14, 2014-15 & 2015-16, that the amount of receipt has been exceeded more than ₹ 1 crore, therefore, the assessee preferred the registration u/s 10(23C)(vi) and in the previous year as it reflects from the balance sheet, the assessee utilised the amount for the purchase

> of land for further extension of the School Building etc. that certainly goes to prove that the same is being utilised for the educational purposes only because the Ld. CIT(E) failed to bring on record any contrary material to the fact. Further as discussed above, the assessee is also covered within the provisions of Sec.10(23C)(vi) of the Act for grant of registration because of the Act, the institution has not been categorized and it has to be given a general meaning as specified in the dictionary as observed by the ITAT, Bench at Madras(supra). In overall consideration of the facts and material and judgments relied upon by the parties, we also found support by the judgments passed by the Hon'ble Jurisdictional High Court as relied upon by the Ld. DR because excess accumulation in the instant case has certainly applied for the objects of the society itself, therefore, we do not find any hesitation to allow the registration to the assessee society u/s 10(23C)(vi) of the Act.
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> Hence, we direct the Ld. CIT(E) to grant exemption u/s 10(23C)(vi) of the Act from the date of application."

Further it has been authoritatively held that excess accumulation has to be applied for the objects of the society and if the percentage of income applied for educational purpose is less than the limit prescribed under Clause (a) of third proviso to Section 10(23C) of the Act, then the exemption can be declined. In the present case, the amount of receipt during the assessment years in question exceeded more than ₹ 1 crore. The assessee utilized the amount for purchase of land for further extension of school building, which was for educational purpose only. Thus, the exemption under Section 10(23C)(vi) of the Act was rightly granted to the assessee.

5. No informity and illegality has been pointed out by learned counsel for the appellant-revenue 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 16, 2018 **(Tejinder Singh Dhindsa)**
'gs' **Judge**

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