IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.63 of 2018
Decided on : 08.10.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

.... Appellant

Versus

M/s Uddan Ek Meetha Sapna Society, Gurgaon ...... Respondent

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

Present : Mr. Denesh Goyal, Senior Standing Counsel for the appellant.

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AVNEESH JHINGAN, J.

The revenue has filed the present appeal under Section 260A of Income Tax Act, 1961 (for brevity, 'the Act') against the order dated 24.07.2017 of Income Tax Appellate Tribunal, New Delhi (hereinafter referred to as 'ITAT') passed in ITA No.1081/DEL/2015, allowing the appeal of the assessee-society.

2. As per the appellant, following substantial questions of law arise for consideration in the present appeal:-

i) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in directing the approval to be accorded instead of reverting it back for re-examination following the spirit of judgment by the Hon'ble Allahabad High Court in appeal No.112 of 2013 in the case of CIT Vs. A.R. Trust as per which the Hon'ble ITAT does not have powers to direct registration even though the averred decision was in respect of 12AA matters?

ii) Whether on the facts and in the circumstances of the case the Hon'ble ITAT is not perverse in holding that the CIT has not given valid reasons while not granting approval to the applicant and thereby directing to grant approval u/s 80G to the applicant whereas the CIT had given clear findings that the applicant had utilised its generic objects to focus mainly on organizing fund raising events via sale of art work purely on commercial principles and further that the applicant has been accepting donations on the pretext of sale of paintings?

iii) Whether on the facts and in the circumstances of the case the Hon'ble ITAT has erred in placing reliance on the fact of the assessee having 12AA registration and by ignoring the statutory condition that 12AA registration is merely a pre-condition for entities to be eligible for approval u/s 80G(5)?

iv) Whether on the facts and in the 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?

3. The assessee-society was duly registered under Section 12AA of the Act. The assessee-society apart from other objects was engaged in providing training of art and painting to under privileged children. An application under Section 80G(5)(vi) of the Act was made on 25.06.2014. The Commissioner of Income Tax (Exemption), Chandigarh (for brevity, the 'CIT(E)') rejected the application vide order dated 19.12.2014. The grounds of rejection were that the assessee-society was engaged in sale of art work

and the same cannot be treated as charity. Moreover, the receipt books maintained by the society shows receipts of donations but no address of donors had been mentioned. Further, the donations and amount received from sale of art have been intermingled to give it a colour of charity.

4. Aggrieved of the order of CIT(E), the assessee-society preferred an appeal before the Tribunal. The Tribunal allowed the appeal vide order dated 24.07.2017 and directed CIT(E) to grant approval under Section 80G (5)(vi) of the Act. Hence the present appeal filed by the revenue.

5. Section 12AA(1) and Section 80G(5)(vi) of the Act read as under:-

> **12AA. Procedure for registration.**—(1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) [or clause (ab)] of sub-section (1)] of section 12A, shall—
>
> *(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*
>
> *(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he;—*
>
> *(i) shall pass an order in writing registering the trust or institution;*
>
> *(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant:*

> ***<u>Section 80G(5)(vi)</u>*** *:* ***Deduction in respect of donations to certain funds, charitable institutions, etc.*** *In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this Section:-*
>
> *XX XX XX*
>
> *(5) This Section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfills the following conditions, namely :*
>
> *XX XX XX*
>
> *(vi) in relation to donations made after the 31st day of March 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules "made in this behalf.*

6. Section 12A of the Act provides conditions for applicability of Sections 11 and 12 of the Act. Section 12AA of the Act provides for procedure of registration for availing the benefits under Section 12A of the Act. Under Section 12AA(1)(a) of the Act the Principal Commissioner or the Commissioner in order to satisfy himself about the genuineness of the activities of the trust or institution can call for such document or information as he deems necessary. If satisfied about genuineness of object, he passes the order registering the trust or institution, otherwise rejects the application. Under Section 80G of the Act recognition is given to trust or institution for the purpose that assessee giving donations to such institution becomes entitled to claim deduction of the amount donated. Sub Section 5 of Section 80G of the Act stipulates the conditions for application of Section 80G of the Act to the donations made to any institution or fund referred to in sub clause

(iv) of Clause (a) of Sub Section (2).

8. The Tribunal while allowing the appeal of the assessee recorded the findings of fact that the representative of assessee-society appeared before CIT(E) with complete books of account and donation receipts etc. It was further held that the assessee submitted a list of donors containing their names and addresses.

9. The Tribunal took into consideration the fact that the assessee-society has already been granted registration under Section 12AA of the Act and its activities have been found to be charitable. It is pertinent to note that while granting registration under Section 12AA of the Act, Commissioner of Income Tax, Faridabad considered the fact that the assessee-society was engaged in providing training of art and painting to under privileged children. It was further held that raising of funds from sale of art work was only incidental to main activity of the appellant. The Tribunal noted the fact that CIT(E) had not raised any question regarding the genuineness of the activity of the assessee-society. The relevant findings recorded by the Tribunal are extracted below:-

> *"We have heard both the parties and perused the relevant records available with us, especially the impugned order and the paper book filed by the Assessee. We find that the assessee's AR appeared before the Ld. CIT(E), Chandigarh along with the complete books of accounts, donation receipt book, bill/vouchers for expenses, list of donors besides other documents requisitioned by Ld. C.I.T. (Exemptions) Chandigarh. We further find that Ld. C.I.T. (Exemptions) Chandigarh in para 3 of his impugned order has stated that the donations are anonymous whereas assessee has*

submitted the list of donors containing their names and addresses. We note that how the donations can be anonymous when list of donors has been submitted, however, the same was not demanded by him. It is noted that rejection of application of assessee by Ld. C.I.T. (Exemptions) Chandigarh is without any valid reason. We also noted that the second reason for rejection of application u/s. 80G of assessee as cited by Ld. C.I.T. (Exemptions) Chandigarh in para 3 of his impugned order is regarding the activities of the assessee. Ld. C.I.T. (Exemptions) Chandigarh was of the view that appellant is into business of selling art work and rejected the application of appellant u/s. 80G(5)(vi) and did not understand that appellant has been granted registration u/s. 12AA by Ld. C.I.T. Faridabad on 30.06.2014. Ld. CIT(A) also failed to note that while granting the registration u/s 12AA detailed scrutiny of activities of assessee were done by Ld. C.I.T. Faridabad which were of charitable in nature. If the activities of appellant would not have been charitable, registration u/s 12AA should be denied to the appellant. On the same financial statements and Activity Report Ld. C.I.T. Faridabad granted registration u/s 12AA after being satisfied that activities of appellant are charitable in nature and for advancement of any other object of general public utility. Only difference is that Ld. C.I.T. Faridabad made a detailed scrutiny even asked for details of charitable schools where appellant carry on drawing classes for under privileged children whereas Ld. C.I.T. (Exemptions) Chandigarh did

> *not find time to see the activity report, the name of charitable institutions etc. It is further noted that no question with respect to activities of appellant was raised by Ld. C.I.T. (Exemptions) Chandigarh and failed to understand the fact thatg since appellant is engaged in training in the art of painting to under privileged children, some art work i.e. Painting is bound to be generated. Appellant used to organise awareness camps etc. to spread message among society and there such art work is being displayed. Raising of funds from sale of art work is only incidental to the main activity of appellant."*

10. No doubt registration under Section 12AA of the Act by itself would not entitle the assessee for approval under Section 80G of the Act but in the absence of any dispute regarding the aim and objects of the assessee Society, denial of approval under Section 80G of the Act cannot be sustained.

11. Learned counsel for the appellant has neither been able to show that the view taken by the Tribunal is erroneous nor produce any material on record to show that the view taken by the Tribunal is legally unsustainable. No substantial question of law arises.

12. Consequently, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 08, 2018
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No