Gurbax Singh
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 74 of 2018
Date of decision: 11.07.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

……Appellant

Vs.

M/s Patiala Improvement Trust Chhoti Baradari, Patiala (PAN AAAJI0034L)

…..Respondent

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

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

Ajay Kumar Mittal,J.

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 13.07.2017, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (in short, “the Tribunal”) in I.T.A. No.120/CHD/2017, for the assessment year 2012-13, claiming following substantial questions of law:-

> “(i) Whether the Hon’ble ITAT has erred in law by not considering the scope of proviso of Section 2(15), as it had been directed by Hon’ble High Court, while adjudicating the matter afresh?
>
> (ii) Whether the Hon’ble ITAT was wrong in law in drawing a corollary from circular No. 11 of 2008 of CBDT where the said

circular while clarifying the issue had expressly indicated that entities claiming charity under Section 2(15) should eschew any activity in the nature of trade, commerce or business?

(iii) Whether the Hon'ble ITAT is right by ignoring the ratio laid down in the cases of Punjab Urban Development Authority and Jammu Development Authority by Hon'ble ITAT Chandigarh and Hon'ble ITAT Amritsar respectively (to the extent improvement trusts carry out land development in a similar manner as Development Authorities do)?

(iv)Whether the Hon'ble ITAT was wrong in not acknowledging that performing statutory functions does not absolve a government created authority from paying taxes?

(v) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was wrong in law in totally ignoring the ratio laid down in the case of PUDA Vs. CIT reported as (2006) 103 TTJ CHD 988 in which the Hon'ble Tribunal has held that the activities of the PUDA are of commercial nature and thus not entitled to exemption. The Hon'ble ITAT has failed to take note that both PUDA and the assessee are engaged in identical activities?

(vi) Whether on the facts and in the circumstances of the case, the order of the Appellant Tribunal is contrary to the evidence and material on the record of the case and therefore, perverse?

(vii) Whether on the facts and in the circumstances of the case, the order of the Hon'ble ITAT 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. The respondent-assessee trust is an authority formed by the Government of Punjab for the purpose of planning, development and improvement of District Patiala. It filed its return of income declaring nil income after claiming exemption under Section 11

of the Act. The case was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer observed that the assessee was carrying on business of sale and purchase of residential plots and commercial properties by auction and earned huge net profit of ₹ 24,65,05,026/- during the year under consideration, which was in the nature of trade, commerce and business and did not fall within the meaning of words "the advancement of any other object of general public utility" under Section 2(15) of the Act. The Assessing Officer completed assessment under Section 143(3) of the Act for the assessment year 2012-13 and assessed the total income of the assessee at ₹ 24,65,05,026/- and exemption under Section 11 of the Act was denied by holding that the activities carried out by the assessee during the year in question were clearly hit by the first proviso to Section 2(15) of the Act read with Section 13(8) of the Act and the assessee was not entitled to exemption under Section 11 of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), [CIT(A)]. Vide order dated 06.10.2016, Annexure A.2, the CIT(A) allowed the appeal relying upon the orders passed by the Tribunal dated 13.06.2016 and 17.06.2016 for the assessment year 2011-12 in the assessee's own case. The appellant-revenue challenged the order dated 6.10.2016 before the Tribunal relying upon the judgment passed by this Court dated 23.12.2016 in ***CIT (Exemption) Vs. M/s Improvement Trust, Moga*** in ITA No.147 of 2016. Vide order dated 13.07.2017, Annexure A.3, the Tribunal dismissed the appeal filed by the revenue. Hence the instant appeal by the appellant-revenue.

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

4. At the outset, learned counsel for the appellant-revenue did not dispute that the issues raised in this appeal are covered by the decision of

this Court in ***The Tribune Trust Vs. Commissioner of Income Tax and another and Commissioner of Income Tax (Exemption) Vs. Improvement Trust, Moga*** [2017] 390 ITR 547 where the similar issues have been decided against the revenue and in favour of the assessee.

5. Accordingly, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 11, 2018
'gs'

(Avneesh Jhingan)
Judge

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