IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 83 of 2018

Date of Decision: 19.09.2018

The Commissioner of Income Tax (Exemptions), Chandigarh
.......Appellant

Versus

M/s Ajit Educational and Public Welfare Society, Patiala Road, Sunam, District Sangrur.

......Respondent

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

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

AVNEESH JHINGAN, J.

The revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') against the order dated 25.04.2017 passed by The Income Tax Appellate Tribunal, Chandigarh, (for short 'the Tribunal') in ITA No. 874/CHD/2015.

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

> **(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 said decision was in respect of 12AA matters?
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> **(ii)** Whether on the facts and circumstances of the case the ITAT has erred in directing the grant of approval u/s 10(23C)(vi) ignoring the fact that the dissolution clause of the society is designed in a manner to give undue advantage to the Chairman, President and

Secretary of the society and that in the event of dissolution of the society the possibility of its fund being mis-utilized was high?

(iii) 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?

3. The respondent in the present appeal is a Society and set up with the objective of providing education in the field of medicine, health care, engineering and technical education alongwith primary and secondary education to the students and for providing medical services. The Society is also running a Nursing College. The respondent-society applied for grant of exemption under Section 10(23C)(vi) of the Act in the assessment year 2014-15. The application was made on 24.09.2014. The Chief Commissioner of Income Tax, Ludhiana (for short 'CCIT') issued a notice dated 09.09.2015. During the pendency, an objection was raised that in the Memorandum of Association of society, there is no dissolution clause and the only clause therein deals with dissolution of the managing committee and not of the trust.

4. The respondent-society filed the reply wherein it was stated that there is a dissolution clause at point No.18 of the Rules and Regulations of the Society.

5. For ready reference, the same is extracted below:

> "The Managing Committee will be dissolved at any time by resolution to this purpose passed in a meeting of the General Body at the society with majority passed in a meeting of the strength. In case of dissolution all the movable and immovable properties of the society shall remain with the Chairman, President and Secretary jointly till some regular constituted body takes over the charge of the Managing Committee."

6. As per the clause, on dissolution of the Managing Committee, the movable and immovable properties of the society will remain with the Chairman, President and Secretary jointly till the regular constituted body takes over the charge of the Managing Committee.

7. The CCIT disagreed with the contention raised by the society and denied the approval. It was held that because of clause-18 of the Rules of the Society, the Chairman, President and Secretary would be benefitted on dissolution of the Managing Committee and there is a lacuna and the funds could be mis-utilized in the event of dissolution.

8. The application for exemption was rejected vide order dated 30.09.2015.

Relevant portion of the order of CCIT is reproduced below:

> "The contention of the applicant is not acceptable. In the event of dissolution all the movable and immovable properties of the applicant shall remain with the Chairman, President and Secretary jointly till some regular constituted body takes over the charge of Managing Committee. All the property would be managed by these three persons without any check on usage of property, thus benefitting these persons. These persons are persons mentioned in Section 13(3) of the I.T. Act. No clause is available as to how new Managing Committee would be formed. Therefore in the event of dissolution of Managing Committee these three persons who are covered under Section 13(3) would benefit from the trust. Moreover, no dissolution clause on how the applicant's property/lunas would be utilized in the event of dissolution has been specified. Thus, there is possibility of funds/properties of applicant being mis-utilized in the event of dissolution. In the absence of any dissolution clause the trust cannot be considered charitable. Since section 10(23C)(vi) is applicable only to charitable institution, the applicant is not eligible for approval."

9. Being aggrieved of the order passed by the CCIT, the respondent-society preferred an appeal before the Tribunal. The Tribunal vide order dated 25.04.2017 allowed the appeal, set aside the order of CCIT and directed that the respondent-society be granted approval under Section 10(23C)(vi) of the Act. Hence, the present appeal.

10. Learned counsel for the appellant argued that the Tribunal erred in allowing the appeal. There is no valid dissolution clause in the

Memorandum of Association of the society. In case of dissolution of the Managing Committee all the movable and immovable property shall be managed by the Chairman, President and Secretary of the Society and in that event the benefit accruing from the trust to these three persons would be covered under Section 13(3) of the Act. Reliance has been placed upon the Division Bench decision of this Court in Commissioner of Income Tax Vs. IILM Foundation Academy (2016) 389 ITR 148.

11. The contention raised by learned counsel for the appellant deserves rejection.

12. Before proceeding further, it would be appropriate to reproduce Section 10(23C)(vi) of the Act and second proviso thereto.

> "**10. Incomes not included in total income-**
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> In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—
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> xx xx xx xx
>
> (23C) any income received by any person on behalf of-
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> xx xx xx xx
>
> "(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority: or
>
> xx xx xx xx
>
> (Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems

necessary in this behalf:) ...*emphasis supplied*."

13. As per Clause (vi) of Section 10(23C), any university or educational institution existing solely for the purpose of education and not for profit purpose and approved by the prescribed authority is duly covered for claiming approval/exemption.

14. As per the second proviso to Section 10(23C) of the Act, the prescribed authority before according any approval may call for the documents or information in order to satisfy itself only about the genuineness of the activities of such trust or institution etc. Thus, the scope of second proviso is limited.

15. In the case in hand, the CCIT in its order has not taken any adverse view with regard to the genuineness of the activities of the respondent-society. The objects of the society as noticed above brings it within the ambit of clause (vi) of Section 10(23C) of the Act. The society is also running a nursing college. The same is affiliated with Indian Nursing Council, New Delhi. The only basis for rejection was that in the absence of the dissolution clause of the trust, there is a lacuna which may be misutilized in the event of dissolution of the managing committee.

16. The Tribunal while allowing the appeal has taken into consideration the aims and objectives of the society and that there is no dispute regarding genuineness of the activities of the society. The reliance was placed upon the assessment order passed under Section 143 (3) of the Act for the assessment year 2012-13. There were categorical findings by the Assessing Officer that the object of the society was educational and it was existing only for educational purposes.

17. The Tribunal has rightly held that the reason for rejection by the CCIT cannot be sustained as the benefit which may or may not accrue under

Section 13(3) of the Act, does not have any effect on the genuineness of the activities of the trust. The eventuality relied upon by the CCIT is based on surmises without there being any definite basis that any misutilisation would occur for sure in future.

18. The relevant portion of the order of the Tribunal is reproduced below:

> "11. We find that based on the above inquiry conducted by the ld. Chief CIT and the documents placed before him, no adverse view regarding either the objects or the activities of the assessee society not being wholly for the purpose of education, which is a sine qua non for the purpose of claiming exemption u/s 10(23C)(vi), has been taken by him. Therefore, it is evident that Ld. Chief CIT was satisfied that the assessee society was formed and existed solely for educational purposes. Further, undisputedly, in the assessment order passed for the A.Y. 2012-13 the Assessing Officer had categorically found and stated that the assessee society was existing solely for educational purpose and running an educational institution and was thus eligible to claim exemption under section 10(23C) (iiiad) of the Income Tax Act. Ld. Chief CIT, we find, has not brought any fact on record pointing towards any change in the fact situation since A.Y. 2012-13 so as to hold that the assessee society was not existing wholly for the purpose of education. Since the scope of the powers of the Ld. Chief CIT, for the purpose of granting approval u/s 10(23C)(vi) was only with regard to examining whether the activities of the assessee society were genuine or not and no adverse view having been taken in this regard by ld. Chief CIT, we find that there was no reason at all with the ld. Chief Commissioner to have denied approval to the assessee society under section 10(23C) (vi) of the Act.
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> xx xx xx xx
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> 13. We find no merit in this contention of the ld. Chief CIT. Firstly, the provisions of Section 13(3) of the Act are not relevant for the purpose of granting approval under section 10(23C) (vi) of Income Tax Act. As stated above, the only issue to be examined is the genuineness of the activities of the Trust. The benefit accruing to persons specified under section 13(3) cast no reflection on the genuineness of the activities of the Trust. Even otherwise Section 13 of Income Tax Act is relevant only for the purpose of exemption

> granted under Section 11 of the Act and is not relevant for the purposes of exemption granted u/s 10(23C)(vi) of the Act at all."

19. Reliance of learned counsel for the revenue on IILM Foundation Academy's (supra) does not enhance his case. The issue before the Court was that if the primary purpose of the institution is charitable, the other objects which were merely ancillary or incidental and may not be charitable, would make the institution non-charitable. The said issue is not involved in the present case.

20. No error can be found in the findings recorded by the Tribunal. The order passed is in consonance with provisions of Section 10(23C)(vi) of the Act. No interference is called for in the order of the Tribunal by this Court.

21. No substantial question of law arises.

22. The appeal is, accordingly, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

19.09.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No