IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105 **ITA-150-2019**
Date of Decision :10.12 2019

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

Versus

M/s S.D. Educational Society ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE VIVEK PURI
***

Present : Mr. Denesh Goyal, Advocate
for the appellant.

***

AJAY TEWARI, J. (Oral)

1. This appeal has been filed under Section 260A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 5.9.2018 of the Income Tax Appellate Tribunal, Chandigarh Benches 'B' Chandigarh in ITA No. 1676/CHD/2017 reversing that of the Commissioner and thereby allowing an application under Section 12AA of the Act. The appellant has raised the following substantial questions of law :-

> *"1. Whether on the facts and circumstances of the case and in case, the Hon'ble ITAT is correct in directing the registration to be accorded instead of reverting it back for re-examination in the light of judgment of The Hon'ble Allahabad High Court in appeal No. 112 of 2013 in the case of CIT, Meerut Vs. M/s. A.R.Trust,Meerut, wherein it was held that the Tribunal could have ordered for setting aside the order of Registering Authority refusing registration but it*

could not have directed for registration straight away in as much as there has to be satisfaction recorded by the Registering Authority which was lacking ?

2. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in not adjudicating the method adopted by the assessee by which it has shown the receipts under different heads in receipt and payment account in way to reduce the actual receipts ?

3. Whether on the facts and circumstances of the case, the Hon'ble ITAT is right in merely stating that the over a period of time claiming benefit u/s 10(23C)(iiiad) does not deter the assessee from making application for registration u/s 12A whereas ignoring the fact that no rational was provided for the change in track too by the society ?

4. Whether on the facts and circumstances of the case, the Hon'ble ITAT is correct in upholding the submissions of the AR that this case has been dismissed arbitrarily on the grounds of suspicious and presumptions by CIT, whereas the CIT clearly established the fact that the assessee used a netting method to reduce the actual receipt ?

5. Whether on the facts and circumstances of the case and in law,the Hon'ble is right in placing the reliance of the case of ***CIT Vs. Appejay Education Society*** *wherein the core issue was related to the misuse of income derived by charitable institution from its charitable activities whereas in this case the issue is related to genuineness of activities as the assessee produced incorrect accounts wherein using netting method with a intention to reduce the actual receipts under different heads in receipt and payment account ?*

6. 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 ?"

2. A few facts necessary for adjudication of the instant appeal

as narrated therein may be noticed. The respondent was registered in the year 2004. It started the present school with effect from 1.4.2006 up to Class- Vth which was affiliated by the Central Board of Secondary Education (CBSE) for Class 10th on 28.3.2008 and upgraded to Senior Secondary level on 25.3.2010. It had appointed total number of 26 staff members and had 266 students. It had collected a sum of Rs. 51.33 lakhs and had paid salaries of Rs. 52.48 lakhs. It had given all the details of fee which had been collected by it for different classes.

3. The Commissioner however held that while getting the benefit of Section 10(23C)(iiiad) of the Act, the respondent had shown its net receipts from the use of school van Rs.3.20 lakhs but actually what had transpired was it had received a sum of Rs.20 lakhs odd on account of school bus charges and had spent a sum of Rs.17 lakhs odd on its running and had instead of reflecting this correctly, had reflected only Rs. 3.20 lakhs. On this basis, the Commissioner held that the activities of respondent were not genuine. The Tribunal found that even if this anomaly was there in accounting yet this could be easily corrected and that the provision of Section 10(23C)(iiiad) and 12AA of the Act operate in different fields as held by this Court in the case of ***CIT vs. Appejay Education Society 127 DTR 121***. The Tribunal further held that the Commissioner had wrongly noticed that the no details of fee being charged have been supplied whereas all the details have been supplied. The Tribunal also faulted the Commission for coming to the conclusion that the salary structure which was put in place by the respondent was not as per the salary structure of CBSE and at such low salaries good education could not be given. The Tribunal correctly held that this was

not the job of the Commissioner to comment on the quality of education and found that in the kind of area where the school was located, and the kind of fee it could generate, and the salaries which were paid, were proportionate. We have also noticed that apart from this anomaly in the accounting of the money, the Commissioner has not held that the respondent was either diverting any money or was generating any cash income (beyond that which has been prescribed in the prospectus) or any other thing which would impinge on its character as a charitable institution.

4. In view of the above, no fault can be found with the findings of the Tribunal.

5. Consequently, the appeal is dismissed.

6. Since the main case has been dismissed, the pending application, if any, also stands dispose of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

10.12.2019
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No