IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-276-2012

Date of Decision: 16.1.2019

Commissioner of Income Tax (Central), Gurgaon

....Appellant.

Versus

M/s Manav Rachna Educational Society, Faridabad

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Tajender K. Joshi, Sr. Standing Counsel for the appellant.

Mr. S.K. Mukhi, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of three appeals bearing ITA Nos.276, 277 and 286 of 2012 as according to learned counsel for the parties, identical questions of law and facts are involved therein. For brevity, the facts are being extracted from ITA-276-2012.

2. ITA-276-2012 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 25.5.2012 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 793/Del/2011. The appeals were admitted by this Court vide order dated 10.7.2014 for determination of the substantial questions of law as proposed in para 13 of the appeals which are as under:-

ITA-276-2012

(i) Whether the Tribunal has erred in interpretation of Section 12AA(3) of the Income Tax Act by holding that the cancellation of registration ordered by Commissioner is not sustainable when the addition made to returned income during any assessment year has been deleted in appeal?

(ii) Whether the Tribunal was justified in law in observing that when the additions made to returned income of trust has been deleted in the quantum of appeal, nothing survives which can be made basis of denial of registration, while the provisions of Section 12AA(3) empower cancellation of registration based on the analysis of the activities of the trust and not on sustainability of income?

(iii) Whether any activity(ies) on the basis of which an addition to the returned income was made which could not be sustained, still can be activity against the objects of trust warranting cancellation of registration under Section 12AA(3) of Income Tax Act?

ITA-277-2012

Whether in the facts and circumstances of the case the ITAT has not erred in extending consequential benefit of according approval u/s 80G of I.T. Act when the cancellation of Registration u/s 12AA of Income Tax Act was fully justified?

ITA-286-2012

Whether in the facts and circumstances of the case the

Tribunal has not erred in extending consequential benefit of exemption u/s 11 of the Act to the Corpus Fund of ₹ 7,89,96,478/- when the cancellation of registration u/s 12 AA(3) of IT Act was fully justified?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee was granted registration under Section 12AA of the Act on 27.3.2001 by the Commissioner of Income Tax, Rohtak. Vide order dated 31.5.2002, the Commissioner of Income Tax, Rohtak granted exemption to the assessee-Trust under Section 80G(5) of the Act which was valid from 1.4.2002 to 31.3.2007. On 4.8.2005, a search operation was conducted at the premises of the assessee as well as at the residence of the trustees. Further, vide order dated 30.1.2008, the registration granted to the assessee under Section 12AA of the Act was cancelled. A corrigendum was passed vide order dated 1.5.2008 by the Commissioner of Income Tax (C), Ludhiana to make the order under Section 12AA(3) of the Act effective from 1.10.2004. The assessee filed an appeal before the Tribunal against the cancellation of registration who vide order dated 15.2.2010 set aside the said order and remanded the matter back for fresh consideration. In pursuance thereto, the CIT(C), Ludhiana vide order dated 23.12.2010 (Annexure A-1) declined to restore back the registration granted to the assessee under Section 12AA of the Act and affirmed the order of cancellation under Section 12AA(3) dated 30.1.2008 effective from 1.10.2004. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 25.5.2012 (Annexure A-2) finding no ground for denial of registration to the assessee, allowed the appeal and while setting

aside the order of the CIT(C), Ludhiana directed to grant the exemption under Section 80G of the Act to the assessee. Hence, the present appeals by the revenue.

4. After hearing learned counsel for the parties, we do not find any merit in the appeals.

5. The assessee was granted registration on 27.3.2001. The said registration was cancelled by the CIT(C), Ludhiana vide order dated 30.1.2008 retrospectively from 1.10.2004 on the ground that the activities of the assessee were not genuine and charitable allegedly on account of additions made during the assessment proceedings for the assessment years 2005-06 and 2006-07. The Tribunal while allowing the appeal of the assessee had noticed that the first addition was in respect of unaccounted cash found and seized from the residence of the trustees of the assessee. In the quantum appeal, the revenue's appeal was dismissed by confirming the relief granted to the assessee. As far as unaccounted payment of ₹ 8 lakhs made to M/s R.K. Engineering Works is concerned, the same had been deleted and no appeal was filed against the deletion of the addition. The issue regarding unexplained cash transfer entry was also decided in favour of the assessee. Further, the assessee had been granted registration again on 30.11.2008 which was made effective from the assessment year 2008-09 finding the activities of the assessee as genuine and the objective being charitable. The relevant findings recorded by the Tribunal read thus:-

> "We have heard both the sides in detail. The registration of the assessee which was granted on 27.3.2001 was cancelled by the order dated 30.01.2008. This cancellation was based on the three additions made to the

income of the assessee for Assessment Year 2005-06 and 2006-07. The first addition was in respect of unaccounted cash found and seized from the residence of trustees of assessee. In the quantum appeal, we have dismissed the revenue's appeal by confirming the relief granted to assessee, therefore, this ground for cancellation no more survive before us. Secondly, the unaccounted payment of ₹ 8 lakhs made to M/s R.K. Engineering Works has also been deleted and no appeal has been filed against the deletion of the addition. Therefore, in our considered view, this ground also does not survive. The third ground of unexplained cash transfer entry has also been decided in favour of the assessee. Therefore, all the issue on which registration was cancelled did not survive. The assessee has been granted registration again on 30.11.2008 although it was made effective from Assessment Year 2008-09. The CIT has found the trust and its activities as genuine and the objectives have been found charitable. These objectives were found charitable at the time of initial registration. The additions made to the income of Trust have been deleted in the quantum appeal. Nothing survives which can be made basis for denial of registration. Therefore, in our considered view, there is nothing on record on which the assessee can be denied the continuation of the registration."

6. The Tribunal while allowing the appeal bearing ITA-1841/Del/2011 as impugned by the revenue in ITA-286-2012 has noticed as under:-

> "We have heard both the sides in detail. The addition was based on the cancellation of the assessee trust u/s 12AA and denying the exemption u/s 11 of the Act. Since we have allowed the appeal of the assessee for granting the registration, therefore, we set aside the orders of the authorities below."

7. Further, the Tribunal while allowing the appeal bearing ITA/972/Del/2011 of the assessee against the order of the CIT(C), Ludhiana for denying the approval of exemption under Section 80G of the Act against which the revenue has filed ITA-277-2012 before this Court, had observed as under:-

> "We have heard both the sides on the issue, The CIT, Central, Ludhiana declined the approval of the assessee for exemption u/s 80G on the basis of the cancellation of registration of the assessee trust u/s 12AA. Since we have allowed the assessee's appeal against the cancellation of registration, therefore, we allow the assessee's appeal on this ground also and set aside the order of the CIT and direct to grant the exemption u/s 80G."

8. No illegality or perversity could be pointed out by the learned counsel for the revenue in the aforesaid findings recorded by the Tribunal in all the three appeals which may warrant interference by this Court.

Accordingly, the substantial questions of law are answered against the revenue and in favour of the assessee. The appeals stand dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 16, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned	**Yes/No**
Whether Reportable	**Yes/No**