IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-291-2014

Date of Decision: 16.1.2019

Commissioner of Income Tax (Central), Gurgaon

....Appellant.

Versus

M/s M.R. Education 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.291, 411 and 429 of 2014 as according to learned counsel for the parties, similar and connected issues are involved therein. For brevity, the facts are being extracted from ITA-291-2014.

2. ITA-291-2014 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 30.4.2013 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 5075/Del/2012. The appeals were admitted by this Court vide order dated 13.5.2015 for determination of the substantial

questions of law as raised in para 15 of the appeals which are as under:-

ITA-291-2014

(i) Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in allowing the exemption under Section 11 of the Act which was disallowed by the AO as the assessee had not applied 85% of additional income of ₹ 80,01,470/- to charitable or religious purpose in relevant previous year and that further appeal is also filed on the addition of ₹ 80,01,470/-?

(ii) Whether in the facts and circumstances of the case the impugned order dated 30.04.2013 (Annexure A-3) passed by ITAT affirming the order dated 24.07.2012 (Annexure A-2) passed by CIT(A) deleting the additions of ₹ 40,50,850/- of corpus donation and disallowance of ₹ 39,50,621/- on account of excess of income over expenditure are not perverse and unsustainable in all regards?

ITA-411-2014

Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in allowing the exemption under Section 11 of the Act which was disallowed by the AO as the assessee had not applied 85% of additional income of ₹ 1,78,01,645/- to charitable or religious purpose in relevant previous year and that further appeal is also filed on the addition of

₹ 1,78,01,645/-?

ITA-429-2014

Whether on the facts and in the circumstances of the case, the learned ITAT was right in deleting the penalty imposed by the A.O. under Section 271(1)(c) of the I.T. Act on account of exemption under Section 11(2) being denied to the assessee due to the fact that the assessee had received voluntary contribution and not shown as income earned by the assessee considering the provision of Section 2(24) of the Act when registration under Section 12AA was cancelled by the CIT(C), Ludhiana?

3. A few essential facts in ITA-291-2014 as narrated therein may be noticed. The assessee was granted registration under Section 12AA of the Act by the Commissioner of Income Tax, Faridabad. A search and seizure operation under Section 132 of the Act was conducted at the official premises of the assessee as well as the residential premises of the trustees on 4.8.2005. During the course of search, unexplained assets as well as incriminating documents were seized. The proceedings under Section 12AA(3) of the Act were initiated. The Commissioner of Income Tax (Central), Ludhiana [in short "the CIT(C)"] vide order dated 30.1.2008 cancelled the registration granted to the assessee under Section 12AA of the Act. A corrigendum was issued vide order dated 1.5.2008 by the CIT (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. During the

scrutiny of the income tax return for the assessment year 2005-06 of the assessee, the Assessing Officer found that the assessee had received donations amounting to ₹ 40,50,000/- and had not included the said amount in its declared income. Thereafter, the case of the assessee was reopened under Section 147 of the Act and a notice dated 9.7.2009 under Section 148 of the Act was issued to the assessee. In response thereto, the assessee filed its return of income on 7.8.2009 declaring the income as 'nil'. A notice dated 23.9.2009 under Section 143(2) of the Act was issued to the assessee. The Assessing Officer vide order dated 23.12.2010 (Annexure A-2) held that the assessee had declared in its income and expenditure account, income over expenditure amounting to ₹ 39,50,621/- which was also liable to be taxed as the assessee had not been granted registration by the CIT(C), Ludhiana. The Commissioner of Income Tax (Appeals) [CIT(A)] deleted the addition which order had been upheld by the Tribunal. ITA-411-2014 relates to quantum addition made for the assessment year 2006-07 whereas ITA-429-2014 seeks restoration of penalty imposed under Section 271(1)(c) of the Act which had been deleted by the CIT(A) and the Tribunal. Hence, the present appeals by the revenue.

4. We have heard learned counsel for the parties.

5. The Tribunal while allowing the appeal bearing ITA No. 5075/Del/2012 as impugned by the revenue in ITA-291-2014 had noticed that since the assessee had been granted registration under Section 12AA of the Act, therefore, its income had to be computed by giving benefit of Sections 11 and 12 of the Act. The assessee had fulfilled the conditions as provided in Sections 11 and 12 of the Act. In the regular assessment, the income of the assessee was determined at nil. The relevant findings

recorded by the Tribunal read thus:-

> "On due consideration of the facts and circumstances, we are of the opinion that assessee has been granted registration U/S 12AA, therefore, its income has to be computed by giving benefit of Section 11 and 12. Section 11 of the Income Tax Act provides that subject to Section 60 to 63 the income derived from property held under trust wholly for charitable or religious purpose, to the extent to which such income is applied to such purpose in India; and where any such income is accumulated or set apart for application to such purpose in India to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property; shall not be included in the total income of the previous year of the person who received such income. The assessee has fulfilled the conditions provided in Section 11 and 12 of the Income Tax Act. There was no dispute about these proposition even by the Assessing Officer, the grievance of the Assessing Officer was that once registration was withdrawn, it cannot claim the benefit of Section 11 and 12, otherwise in the regular assessment also the income of the assessee was determined at nil."

6. In ITA-411-2014, the Tribunal while upholding the order of the CIT(A) in ITA No. 5076/Del/2012 while deleting the addition of ₹ 1,78,01,645/- had observed that the registration of the assessee was

cancelled vide order dated 23.12.2010 under Section 12AA(3) of the Act by restoring the earlier order dated 31.1.2008 made effective from 1.10.2004. Further, it was held that nothing was produced on the record on the basis of which the continuation of registration could be denied to the assessee as the additions made by the Assessing Officer were deleted. The CIT, Central, Ludhiana, vide order dated 30.11.2008 after considering the activities of the assessee as genuine and the objectives as charitable had granted the registration w.e.f. assessment year 2008-09. The Tribunal following the decision of the Tribunal for the assessment year 2005-06 had allowed the appeal by noticing as under:-

> "The registration of the assessee trust was cancelled vide order u/s 12AA(3) dated 23.12.2010, restoring the earlier order dated 31.1.2008 made effective from 1.10.2004. Now the Hon'ble ITAT has held that there was nothing on record on the basis of which the registration could be continued to be denied to the assessee-trust as the impugned additions made stood deleted. Reference has been drawn to order dated 30.11.2008 of CIT, Central Ludhiana had afterwards considered the activities of the trust as genuine and the objectives as charitable while granting the registration w.e.f. A.Y. 2008-09. A copy of the said order is placed on record, from which it is evident that the date of order of the CIT(C) Ludhiana granting the registration is dated 12.6.2008, and not 30.11.2008 as mentioned in the order of the Hon'ble ITAT. Therefore, respectfully following the decision of

the Hon'ble ITAT, the appeal of the assessee in Ground No.4 and 5 is allowed."

7. ITA-429-2014 arising out of ITA No. 5077/Del/2012 relates to imposition of penalty under Section 271(1)(c) of the Act for the assessment year 2007-08. The Tribunal while affirming the order of the CIT(A) deleting the penalty, had recorded as under:-

> "The penalty has been deleted on the ground that quantum addition stands deleted. Sub Section (iii) of Section 271(1)(c) provides the computation of penalty. It contemplate that in cases referred to in clause (c) in addition to tax, if any payable by an assessee, a sum which shall not be less than but while shall not exceed three times, the amount of tax sought to be evaded by reason of concealment of particular of his income. Thus, what an assessee has to pay by way of penalty is an amount equivalent to the tax sought to be evaded or 3 times of the tax sought to be evaded. Once additions are deleted, then there is no amount on which assessee can be said to have evaded the tax and, therefore, there cannot be any penalty. Ld. CIT(A) has observed that additions are deleted, the penalty cannot prevail. We do not find any reason to interfere in the order of Ld. CIT (A)..."

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**

Whether Reportable **Yes**