IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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ITA No. 79 of 2017 (O&M)
Date of decision: 06.11.2019

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

Vs.

M/s O.P. Munjal Foundations, Ludhiana...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Mukul Gupta, Advocate, for the respondent.

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AJAY TEWARI, J. (Oral)

This appeal has been filed under Section 260-A of the Income Tax Act, 1961 (for short, 'the Act') by the Revenue against the order dated 18.07.2016 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal') in ITA No.76/Asr/2016, vide which it had set aside the order of the Commissioner of Income Tax (Exemptions) (for short, 'CIT(E)') rejecting an application under Section 80G of the Act filed by the assessee.

2. The facts which emerged are that assessee has set up Philanthropic Institution on 01.04.2015. On 13.05.2015, they moved two application, one application under Section 12AA and one under Section 80G of the Act. As per the record the application under Section 12AA of the Act was first processed while application under Section 80G of the Act was kept pending (to await the decision on the application under Section 12AA of the Act). On 30.11.2015, the application under Section 12AA of the Act was allowed. Thereafter, CIT(E) rejected the application under Section 80G by holding as follows:-

"3. The general interpretation of Rule 11AA is that society should have registration under Section 12AA and be in existence & active. It is also mandated that the society also maintains regular books of accounts of the receipt expenditure as per condition (iv) of sub-section (5) of 80G.

4. Sub-rule (4) of Rule 11AA further lays down that where the Commissionner is satisfied that all conditions laid down in clauses (i) to (v) of sub-section (5) of 80G are fulfilled by institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund.

5. Since the society is at nascent stage, it can not be ascertained as to whether the society is applying its funds or not on its proposed activities. I am of the view that the present application is premature and the activities of the trust, in the present, cannot be corroborated vis-a vis the conditions laid down in section 80G. The request for approval u/s 80G(5)(vi) by the trust is thus rejected."

3. The assessee carried the matter up in appeal. The Tribunal noticed that during the pendency of the application under Section 12AA of the Act, detailed investigation was conducted by the Income Tax Officer (Exemptions) into all factors as are required to be considered under Section 12AA and it was only after the assessee had satisfied all the conditions that the application under Section 12AA allowed. It is also not in dispute that the conditions numerated under Section 12AA are in parimeteria with the conditions as enumerated under Section 80G. The Tribunal rightly relied upon ***CIT Vs. Thangadagi Trust, 3 TMI 595 (Karnatka)*** and ***Vinayaka Vidyaniketan, Indiranaga Vs. CIT (Exemption), 2 TMI, 746 (Bang) (CLPB-4)*** and held that the CIT(E) had erred in not allowing the application under Section 80G.

4. In our opinion the reasoning of the Tribunal is apt.

5. We find that the Commissioner had taken an unduly harsh and pedantic view of the matter and once it is not disputed that the stringent conditions under Section 12AA have been satisfied, the further action can only be taken at the end of the financial year to determine whether any donation etc or other the conditions of Section 80G have or have not been fulfilled.

6. The appeal is dismissed, accordingly.

7. Since, the main case has been dismissed, pending application, if any, stands disposed of.

(AJAY TEWARI)
JUDGE

November 06, 2019 **(ALKA SARIN)**
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No