IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-119-2018

Date of Decision: 10.1.2019

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

M/s Adesh Welfare Society (Regd.), Muktsar

...Respondent.

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

PRESENT: Mr. Denesh Goyal, Senior Standing Counsel,
for the appellant.

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26.9.2017 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 102/(Asr)/2017, claiming the following substantial questions of law:-

I. Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in directing the registration 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 2012 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 averred decision was in respect of 12AA matters?

II. Whether on the facts and in the circumstances of the case the Hon'ble ITAT is not perverse in holding that the CIT has not given valid reasons while not granting approval to the applicant and thereby directing to grant approval u/s 80G to the applicant whereas the CIT had given clear findings about the real purpose that the applicant had consistently generated large scale surpluses and has accumulated large amounts of investible funds in the shape of FDRs and cash and therefore, there was no rationale for another source of income?

III. Whether on the facts and circumstances of the case the ITAT has erred in placing reliance on the fact of the assessee having 12AA registration and by ignoring the statutory condition that 12AA registration is merely a pre-condition for entities to be eligible for approval u/s 80G(5) and that the procedure involves examination of the real purpose as laid down by the Hon'ble Delhi High Court in the case of M/s Kirti Chand Tarawati Charitable Trust vs. Director of Income Tax (Exemption) and Ors. [(1999) 152 CTR (Del) 322]?

IV. Whether on the facts and circumstances of the case the Hon'ble ITAT has misinterpreted the term 'approval' as envisaged in Section 80G(5) and taken 'registration' to be conterminous with 'approval' by insisting on registration as the keyword in the entire text of its order?

V. 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 assessee-society is registered under Section 12AA of the Act and was set up to run various educational institutions. The assessee was granted approval under Section 80G of the Act vide order dated 1.9.2014. The said approval had lapsed on 31.3.2009. According to the assessee, as per Circular dated 27.10.2010, 'the existing approvals expiring on or after Ist October, 2008, shall be deemed to have been extended in perpetuity unless specifically withdrawn.' An application was filed for approval under Section 80G(5)(vi) of the Act on 28.7.2016. The Commissioner of Income Tax (E), Chandigarh vide order dated 31.1.2017 (Annexure A-1) rejected the application of the assessee for grant of approval under Section 80G of the Act. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 26.9.2017 (Annexure A-2) allowed the appeal and directed the CIT(E) to allow the registration under Section 80G of the Act to the assessee from the date of application. Hence, the present appeal by the revenue.

3. After hearing learned counsel for the revenue, we do not find

any merit in the appeal.

4. The assessee was registered under Section 12AA of the Act which still continues. It was granted registration under Section 80G of the Act on 1.9.2004 and the said registration had not been withdrawn. The said registration had expired on 31.3.2009. Thereafter, the assessee filed an application for grant of approval under Section 80G(5)(vi) of the Act on 28.7.2016. The Tribunal had noticed that the assessment of the assessee for the assessment year 2012-13 was completed under Section 143(3)of the Act wherein the benefit under Section 11 of the Act was allowed to the assessee. The assessee had filed its return of income for the assessment year 2016-17 on 8.10.2016 declaring its income as 'Nil' by claiming exemption under Section 11 of the Act for whole of the income. There was no violation on the part of the assessee which could lead to the withdrawal of registration under Section 12AA of the Act. Further, once the assessee was established as charitable institution by the revenue authorities at the time of granting registration under Section 80G of the Act, it cannot be denied registration under Section 80G of the Act. It was recorded by the Tribunal that as per Circular dated 27.10.2010, the registration was deemed to have been extended in perpetuity had the registration expired on or after 1.10.2009, but due to technical reason, the registration under Section 80G of the Act was not deemed to have been extended. Accordingly, the Tribunal vide order dated 26.9.2017 (Annexure A-2) directed the CIT(E) to allow the assessee registration under Section 80G of the Act from the date of application.

5. No illegality or perversity could be pointed out by learned counsel for the revenue in the findings recorded by the Tribunal which may warrant interference by this Court. No question of law, much less,

substantial question of law arise in the appeal.

6. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 10, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**