IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-141-2018

Date of Decision: 8.4.2019

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant.

Versus

M/s Khatu Ji Para Medical Technology Educational & Research Society

...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 31.8.2017 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 593(Asr)/2016, claiming the following substantial questions of law:-

I. Whether on the facts and circumstances of the case and in law, the ITAT has erred 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 inasmuch as there has to be satisfaction recorded by the Registering Authority which was lacking?

II. Whether by compromising on education by paying paltry salaries (and not in sync with University guidelines) the applicant's claims of being charitable do not get dismissed?

III. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in ignoring the contention that as per the scheme of the Act cases availing the benefits of Section 10(23C) (iiiad) historically and for a number of years should seek approval u/s 10(23C)(vi) and not registration u/s 12A, two being completely different codes in themselves one relying on income from property/voluntary donations and the other on receipts?

IV. Whether on the facts and circumstances of the case and in law, the order of the ITAT is not perverse in holding that an institution imparting education for the last 13 years without applying for grant of registration u/s 12A of the Act cannot be alleged to be an institute with a profit motive and is not a valid ground to deny registration u/s 12AA of the I.T. Act, 1961 when the CIT is fully empowered u/s 12AA(1)(a) to look into the genuineness of the activities that would necessary entail enquiries whether the activities are driven by profit motive or not?

V. Whether on the facts and in the circumstances of the case and in law, the ITAT has erred in ignoring that the findings of the CIT(E) that over the period of time the emphasis of the society was mainly on creation of assets rather than on redeployment of funds towards education?

VI. Whether on the facts and in the circumstances of the case and in law, 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 is an educational society registered on 19.9.2003 under the Societies Registration Act, 1860 and since 2003 has been running educational institutes for education. It filed an application dated 15.3.2016 in Form 10A for registration under Section 12AA of the Act. The Commissioner of Income Tax (Exemptions) [for brevity "the CIT(E)"] vide order dated 30.9.2016 (Annexure A-1) rejected the said application by observing as under:-

"8. XX XX XX

(i) Self confessedly the sole object of the society has been projected as providing education. In that context the applicant had all reasons to apply for exemption under the provision of section 10(23C)(vi) rather than 12AA. This issue gets corroborated when for the past numerous years the society has been filling returns and claiming exemption u/s 10(23C)(iiiad). In answer to a specific query seeking the rationale for application u/s 12AA it has been stated that since the receipts are below 1 crore the society is claiming exemption u/s 10(23C)(iiiad). This following the statutory provisions would have necessitated an application u/s 10(23C)(vi) as per the scheme of the I.T. Act, 1961. Is it the case that the moment receipts exceeded ₹ 1 crore the institution has ceased to be existing "Solely for educational purposes" and "not for profits".

(ii) Although the Judicial precedents have allowed alternative claims either for 12AA or 10(23C) but at the same time have not allowed shifting from one provision to the other when the applicant has consistently availed benefits for a number of years under section 10(23C)(iiiad). Natural progression entails and entitles the educational societies to go for 10(23C)(vi) in such cases. There are no fresh

> circumstances projected that would warrant examination of the eligibility of the institution under a different code with different conditionalities.
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> 9. Notwithstanding the same, the claim for registration u/s 12AA was examined. The Audited accounts reveals that over the period of time the emphasis of the society is mainly on creation of assets rather than on redeployment of funds towards education. The Income & Expenditure statements and Balance Sheets further indicate that during the F.Ys. 2014-15 and 2015-16 the emphasis of the society has been mainly on adding to their car, motorcycle, scooter."

3. Feeling aggrieved, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 31.8.2017 (Annexure A-2) allowed the appeal and directed the CIT(E) to grant registration under Section 12AA of the Act to the assessee. Hence, the present appeal.

4. We have heard learned counsel for the appellant and do not find any merit in the appeal.

5. The Tribunal has noticed that the CIT(E) was not correct to the extent that the assessee would have applied under Section 10(23C) of the Act instead of Section 12AA of the Act because the Apex Court as well as jurisdictional High Court had clearly held that where the assessee was running hospital or school and if both the options were available before it, i.e., either to apply for exemption under Section 10(23C) of the Act or claim exemption under Section 12AA of the Act, it was not justified to decline

exemption under Section 12AA that it should have claimed exemption under Section 10(23C) of the Act. For granting exemption under Section 12AA of the Act, the CIT(E) had to satisfied himself about the objects and the genuineness of the activities of the assessee and once the CIT(E) having accepted that the main aim of the society was running of college and educational institutions and made no adverse observation regarding genuineness of the objects or the activities carried on by the society, then the registration under Section 12AA of the Act could not have been denied holding that it was entitled to exemption under any other provision. With regard to the finding of the CIT(E) that the emphasize of the society was mainly creation of assets rather then redeployment of funds towards education, the Tribunal had noticed that during the financial year 2014-15 value of car, motorcycle and scooter were ₹ 2.17 lakhs and in 2015-16, it were ₹ 2.30 lakhs and the society surplus amount was @ 5.52% only, which cannot be termed as higher and certainly to run institute, the vehicles were required. Further, the apprehension and assumption of the CIT(E) that the society must be charging some funds, was based on the assumption and surmises and had no logical reasoning. Accordingly, the Tribunal has rightly directed the CIT(E) to grant registration under Section 12AA of the Act to the assessee. The findings recorded by the Tribunal read thus:-

> "6. We have gone thorough with the facts and circumstances of the case and rival submissions of the parties as well as documents available on record and order passed by the Ld. CIT(E). In the instant case, object of the assessee is not in doubt. The observation of the assessee CIT(E) is not correct to the extent that the

assessee would have applied u/s 10(23C) of the Act instead of Sec.12AA of the Act because the Apex Court as well as jurisdictional High Court clearly held that where the assessee trust running hospital or school and if both the options available before it i.e., either to apply for exemption u/s 10(23C) or claim exemption u/s 12AA of the Act therefore it is not justified to decline exemption u/s 12AA on the ground that it should have claimed exemption u/s 10(23C).

It is settled law that for the purpose of granting registration u/s 12AA, scope of powers of the Ld. CIT(E) is limited to be being satisfied about the objects and the genuineness of the activities of the assessee and once the CIT(E) having accepted that the main aim of the society is running of college and educational institutions and made no adverse observation regarding genuineness of the objects or the activities carried on by the society then registration u/s 12AA could not be denied on the ground that it was entitled exemption under any other provision. Further in the case of **CIT vs. Bosotto Brothers Limited [(1940) 8 ITR 0041(Mad)]**, Hon'ble Madras High Court held that if a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be taxed under that one which leaves him with a lighter burden. Meaning thereby, if, exemption is available to the assessee in two or more sections then the choice is for the assessee under which section exemption has to be claimed. With regard to the another objection of Ld. CIT(E), our attention was drawn by the Ld. AR to the audited balance sheet, where it is clearly shown that during the F.Y. 2015-16 value of car, motorcycle and scoter were 2.17 lakh and in 2015-16 it were 2.30 lakh and the society surplus amount was @ 5.52 % only. We are in agreement with the assessee that the surplus @ 5.52 % cannot be termed as higher and certainly to run an institute, the vehicles are required, therefore, the observation of the CIT(E) is not correct to the extent that the emphasized of the society has been mainly to add car, motorcycle and scooter. In fact total receipts had been shown at ₹ 182,76,252/- during the F.Y. 2015-16, however, the value of the car, motorcycles and scooter were 2.30 lakh only, therefore, we are of the considered opinion that observation of the CIT(E) was not correct.

Another observation of the CIT(E) was that the society is mainly emphasizing for creation of fixed assets rather than redeployment funds towards education. The Ld. AR drawn our attention regarding the receipts, the average annual fee for the F.Y. 2015-16 charged by the assessee was at ₹ 16,525 per student for IIT, B.Com students and ₹ 4,559 per student for B.CA Courses. Average annual fee for the F.Y. 2015-16 was ₹ 34,157 per student only and the fee being charged is quite reasonable and is less than the fees prescribed by the controlling Govt. Bodies. The Ld. AR also drew our attention that the Assessee's Institutes have also been approved/affiliated by/with Govt. Authorities on fulfillment of the norms and conditions and adherence thereto. On the aforesaid consideration, we are of the considered opinion, that the apprehension and assumption of the CIT(E) that society must be charging some funds, just based on the assumption and surmises and have no logical reasoning. Further observation with regard to salary structure and quality of education, we are of the view that lower salary cannot be made best to conclude that quality of education has been comprised and not in sync with the instruction issued by Maharaja Ranjit Singh State Technical University, Bathinda, while providing affiliation to an entity. On the aforesaid observation and conclusion, we are of the considered view that the assessee is entitled to get registration u/s 12AA of the Act and hence, we direct the Ld. CIT(E) to grant registration to the assessee society."

6. No illegality or perversity could be pointed out by learned counsel for the revenue in the aforesaid findings recorded by the Tribunal which may warrant interference by this Court. No substantial question of law arises in the appeal. Consequently, finding no merit in the appeal, the same is hereby dismissed. Needless to say, it shall be open for the revenue to initiate action under sub-section (3) to Section 12AA of the Act for

withdrawal/cancellation of the registration granted hereinabove, in case it comes to the notice of the revenue that the activities undertaken by the assessee are not genuine or are not being carried out in accordance with the objects of the trust or Institution or are not charitable in nature in terms of the provisions of the Act.

(AJAY KUMAR MITTAL)
JUDGE

April 8, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**