IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-269-2018

Date of Decision: 5.4.2019

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant.

Versus

M/s Beant College of Engineering & Technology, Bariar, Gurdaspur

...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 5.12.2017 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 592/(Asr)/2016, claiming the following substantial questions of law:-

(i) Whether on the facts and circumstances of the case, 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 on the facts and circumstances of the case, the Hon'ble ITAT has erred in ignoring the finding that the applicant society has consistently availed benefit u/s 10(23C)(iiiad) of the Act and that the natural progression entails and entitles the educational societies to go for 10(23C)(vi)?

(iii) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in allowing that the applicant is free to change exemption codes in between even as the alternatives available are to be exercised in the beginning as intended by the legislature?

(iv) Whether the provisions of the Act allow for availing exemption u/s 10(23C)(iiiab) for a substantial number of years and then abruptly seeking registration u/s 12AA instead of approval u/s 10(23C)(vi)?

(v) Whether on the facts and circumstances of the case, the Hon'ble ITAT has disregarded the facts that the applicant society after being declared as an autonomous body by the Technical Education department, should have revised its MoA/Bye-law and should have filed the same with the Registrar of Firms and Societies?

(vi) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in not upholding the facts that the applicant society had not adduced any evidence in regards to its changed MoA/Bye-laws?

(vii) 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, not perverse?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed an application dated 23.3.2016 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. Feeling aggrieved, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 5.12.2017 (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.

3. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

4. The Tribunal while dealing with the objection of the CIT(E) that the assessee had been claiming exemption under Section 10(23C)(iiiad) of the Act and, therefore, should not have filed the application under Section 12AA of the Act, had noticed that the assessee was free to avail

registration under any alternative provision if more than one alternatives were available and the assessee was eligible for registration under Section 12AA of the Act for which it had applied. Regarding the second objection that the assessee when declared as autonomous body should have changed the objects and memorandum of Association, has no force as the facts and circumstances of society and constitution of members remained the same and objects of the society also remained the same and the only purpose of declaring the society as autonomous body was that it should be run as an autonomous body with the rules laid down by the All India Council of Technical Education. The amendment in the byelaws of the society had nothing to do with the objects of the society which undoubtedly were charitable in nature. The Tribunal while dealing with the objection of the CIT(E) that the assessee was running a school which has not been reflected in the byelaws, had mentioned that the objects of the society as contained in the Memorandum of Association is to provide for instruction and research in such branches of Engineering and Technology as the college may think fit and for the advancement of learning and dissemination of knowledge in such branches. Even the Government of Punjab vide notification dated 12.2.2009 had accorded its sanction to establish new multi disciplinary academy and such academies were also required to provide 10+2 course to the students and, therefore, the school was also set up to provide education upto 10+2 level in accordance with the instructions of the Punjab Government and such school was also registered with Punjab School Education Board. Non-mentioning of all schools and colleges in the Memorandum of Association does not disentitle the assessee for getting registration under Section 12AA of the Act. Further, at the time of registration of a society under Section 12AA of the Act, the only requirement was that the CIT(E) should be satisfied about the objects and genuineness of the activities of the society. In the present case, the CIT(E) has not doubted the objects and genuineness of the activities of the society which were charitable in nature. The findings recorded by the Tribunal read thus:-

> "6. We have heard the rival parties and have gone though the material placed on record. We find that the objections raised by Ld. CIT(E) for refusing to register the society u/s 12AA of the Act are not relevant for considering the registration under that section. The objections of Ld. CIT(E) that assessee had been claiming exemption u/s 10(23)(iiiab) and therefore he should not have filed the application u/s 12AA of the Act has no force as the assessee is free to avail registration under any alternative provisions if more than one alternatives are available and if in accordance with the provisions of law, the assessee is eligible for registration u/s 12AA of the Act which it had applied, the Ld. CIT(E) should not have raised this objection and should have examined the contentions for grant of registration. The second objection of Ld. CIT(E) that assessee when declared as autonomous body should have changed the objects and Memorandum of Association also do not have any force as the facts and circumstances of society and constitutions of members remained same and objects of

the society also remained same and the only purpose of declaring the society as autonomous body was that it should be run as an autonomous body in line with the rules laid down by All India Council of Technical Education. The amendment in the byelaws of society has nothing to do with the objects of society which undoubtedly are charitable in nature. The objects of the society as contained in the original Memorandum of Association as placed in P.B. page 6 and as contained in amended Memorandum of Association as placed in P.B. page 113 are similar except the fact that society had enlarged its operations to include education up to 10+2 level also. Moreover the assessee has already amended its byelaws to match with the rules and regulations laid down by All India Council of Technical Education and copy of amended byelaws is placed in P.B. page 112 to 128.

As regards the objection of Ld. CIT(E) that assessee was running a school which has not been mentioned in the byelaws, we find that the objects of the society as contained in the Memorandum of Association placed at P.B. page 6 to 10 are to provide for instruction and research in such branches of Engineering and Technology as the College may think fit and for the advancement of learning and dissemination of knowledge in such branches. The object clause noted above is for providing education which includes running of school also. In fact in accordance with the instructions of Director of Technical Education and Industrial Training, Govt. of Punjab vide notification dated 12.02.2009 had accorded its sanction to establish new multi disciplinary academy and such multi disciplinary academies were also required to provide 10+2 course to the students also and therefore in accordance with the instructions of Punjab Government, the school was also set up to provide education up to 10+2 level and such school was also registered with Punjab School Education Board. Mere non mentioning of all schools and colleges in the Memorandum of Association does not disentitle the assessee for getting registration u/s 12AA of the Act. The copy of the notification as placed in P.B. page 132 has been made part of this order.

The above said notification list includes the assessee also which is indicated at column no. 1 and therefore the objections of Ld. CIT(E) is not relevant. Moreover we find that under similar facts and circumstances, another assessee at Ferozepur by the name of SBS College of Engineering and Technology has been granted registration vide order dated 19.09.2016 placed at P.B. page 156 to 157. The name of said assessee is appearing at column no. 2. Therefore under same facts and circumstances the Ld. CIT(E) should have granted registration to the society.

It has been held by various courts including by Hon'ble Supreme Court of India that at the time of registration of a society u/s 12AA of the Act, the only requirement is that Ld. CIT(E) should be satisfied about the objects of society and should be satisfied with the genuineness of activities of the society with respect to objects of the society. In the present case the Ld. CIT(E) has not doubted the objects of the society which undoubtedly are charitable in nature and genuineness of activities of the society has also not been doubted."

5. In view of the above, 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 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 5, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes**
Whether Reportable **Yes**