IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-342-2018

Date of Decision: 3.4.2019

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

Versus

M/s Vishwayatan Yogashram
...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 13.12.2017 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 428/(Asr)/2016, 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 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 and in law, the Hon'ble ITAT is right in disregarding the fact that the applicant society did not show any expenditure attributable to propagation of Yoga in the financial statement which had clearly established that no effect had been made in the field of yoga?

(iii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was correct in extrapolating uncorroborative expenses (on salary, bhandara, gaushala etc.) as being incurred for yoga?

(iv) Whether on the facts and circumstances of the case, the order of the ITAT is not perverse in holding that non filing of return of income for A.Y. 2013-14 and not furnishing of evidences in support of claims made for the A.Y. 2013-14 to 2015-16 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 call for such documents to satisfy himself about the geunineness of the activities of the applicant?

(v) Whether on the facts and circumstances of the case and in law, the ITAT is not perverse in holding that no charitable activity is not a valid ground to deny registration u/s 12AA of the I.T.Act, 1961 when the CIT(E) is fully empowered to satisfy himself about the genuineness of the activities of the applicant which was formed in 1997?

(vi) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in ignoring the facts that the non-disclosure of land in the balance sheet has a bearing on 'income from property' that is sought to be exempt not getting clarified by the applicant and to that extent getting precluded from distribution to other societies/trusts in the event of dissolution?

(vii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has ignored the facts that as per the statute both objects and genuineness of activities need to be examined the latter cannot be done in the absence of ascertaining the activities?

(viii) 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. Put shortly, the facts necessary for adjudication of the instant

appeal as narrated therein may be noticed. The assessee is a society created on 21.4.1997 and is registered with the Registrar of Societies, J&K Government. The assessee filed an application 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 30.7.2016 (Annexure A-1) rejected the said application. It was held by the CIT(E) that there were no expenses attributable to propagation of Yoga in financial statements, no return relating to the assessment year 2013-14 had been filed, details regarding ownership of land was not provided and that the said property was not reflected by the assessee in the balance sheet. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 13.12.2017 (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. Admittedly, the assessee is registered under the Societies Act and the aims and objections are charitable in nature. Finance Act, 2015 (in short "the 2015 Act") with effect from 01.04.2016 had amended Section 2 (15) of the Act and Yoga has been included in the definition of charitable purposes. The CIT(E) on receipt of an application for registration of trust or institution under Section 12AA of the Act is required to call for such documents or information as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution and to satisfy himself about the objects of the trust or institution and if he is satisfied with the objects and genuineness of the activities of the trust or

institution, he passes an order in writing registering the said trust or institution. Examining the finding of the CIT(E) that there were no expenses attributable to propagation of Yoga in financial statements, it may be noticed that the salary to main Yoga Teachers was not paid as they were rendering the services without any salary as depicted in the details of salary paid. The salaries mentioned against the names of Swami Suryana, Swami Yogana and Swami Kumari in the three years was NIL whereas salary had been shown to be paid to the Assistant Yoga Teacher Sandeep Sharma in the financial year 2014-15. The plea of the revenue that kitchen expenses were incurred for Bhandara for public would show that the activities of the trust were not genuine. In this regard, it is recorded that the said expenses were incurred for all students or teachers of the Society and sometimes for public which was a plausible explanation and it cannot be brushed aside to hold that the activities of the assessee were not genuine. The holding of Bhandara cannot be a ground to reject the registration unless it was proved that it was for any non-charitable activity or was exorbitant.

5. So far as non-filing of return for the assessment year 2013-14 was concerned, we find that in this year, the assessee had incurred a loss of ₹ 5 lakhs and if the assessee had not filed the return for the said assessment year being loss, it could not be inferred that the activities of the assessee were not genuine. Further, the issue relating to the details of ownership of land, the assessee had filed a copy of judgment in which High Court of Jammu and Kashmir had held that the assessee was the owner of the land and was imparting education in yoga and spiritualism which was a public purpose. Even the CIT(E) had held that the assessee was owner of the land measuring 51 kanals and the rest of the land was in the name of other

persons. The said land was sufficient for imparting Yoga training. The Tribunal had held that while considering registration under Section 12AA of the Act, the CIT(E) was required only to determine the objects of the society which undoubtedly were charitable in nature. Still further, the assessee during the proceedings had filed sufficient evidence regarding Yoga activities being carried out and had filed supporting evidence vide letter dated 14.7.2016 but the CIT(E) had failed to appreciate the same. Accordingly, the Tribunal had rightly directed the CIT(E) to grant exemption under Section 12AA of the Act to the assessee.

6. No error could be pointed out by learned counsel for the revenue in the findings recorded by the Tribunal warranting interference by this Court. No question of law, much less, 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 3, 2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**