IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-488-2018

Date of Decision: 27.3.2019

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant.

Versus

M/s Ujjagar Singh Aulakh Memorial Trust

...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 12.4.2018 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 364/(Asr)/2017, 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 was correct in disregarding the fact that the activities of the trust were intricately linked with the hospital, which were being run separately on commercial basis and seemingly was a method for creating goodwill for the hospital run on commercial principles?

(iii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was correct in disregarding the fact that the receipts of the applicant trust were through donations from author and trustee and about 86% of the total receipt had been spent under the head "Ujjagar Singh Aulakh Hospital" apart from the other heads of expenditure of general nature?

(iv) Whether on the facts and circumstances of the case the Hon'ble ITAT was correct in disregarding the fact that the applicant society did not produced any evidence in support of reimbursement of visiting fees to the 'Ujjagar Singh Aulakh Hospital'?

(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. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. An application in Form 10A was filed before the Commissioner of Income Tax (Exemptions) [for brevity "the CIT(E)"] on 26.9.2016 for registration under Section 12AA of the Act. The CIT(E) vide order dated 28.3.2017 (Annexure A-1) rejected the said application holding that the immovable property of the hospital was owned by one of the trustees, namely, Shri Joginder Singh Aulakh and since the financial year 2013-14, Dr. Sukhmanpreet Kaur Aulakh, one of the trustees, is running clinic in Shri Ujjagar Singh Aulakh Hospital and the trust was created later on 1.4.2015 primarily to arrange funds for the payments to the specialist doctors visiting the hospital. Further, it was observed that all the thirty two letters were handwritten by the same person and were dated from 13.4.2016 to 10.2.2017 which had been framed to cover the queries raised on the relationship between the assessee-Trust and the hospital as no other evidence in support thereof was furnished. Similarly self-generated letters had been submitted by the trust for the year 2015-16 detailing list of patients who got treated in the hospital which had not been evidenced by further confirmations from the beneficiaries or the doctors. It was further held that there was an intricate link between the assessee and the hospital which was being run separately on commercial basis, admittedly not having any exemption and the evidence qua the fees given to the assessee and the free

treatments were self-generated and not confirmed by the beneficiaries of the trust or the doctors. The CIT(E) rejected the registration under Section 12AA of the Act that neither the objects have been pursued nor the activities of the trust got corroborated. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 12.4.2018 (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 had noticed that the poor patients were being treated at the hospital and the said fact was supported from the list of the patients and the CIT(E) was not required for further confirmation from the beneficiaries of the trust. During the financial year 2015-16, the trust was at nascent stage having received donations of ₹ 1,12,000/- only and maximum of ₹ 1,03,250/- which had already been utilized for the charitable purposes as was clear from the visiting fees paid to various doctors for giving free consultations/treatments which was not even controverted by the revenue. Further, the trust was created on 1.4.2015 and the application for registration under Section 12AA of the Act was filed on 26.9.2016. It was further noticed that the assessee does not have much funds at the initial stage to pursue its objects, however, some of the objects, i.e. treatment of poor and weaker sections of the society, irrespective of their caste or creed and religion, were undertaken by the assessee and the reasoning of the CIT (E) that neither the objects seemed to have been pursued nor the activities of the trust got corroborated cannot be considered as logical reasoning.

Accordingly, the Tribunal directed the CIT(E) to grant registration to the assessee under Section 12AA of the Act. The relevant findings recorded by the Tribunal read thus:-

> "5. We have heard the parties and perused the material on record, which includes details of visiting fees paid through cheques to different specialist doctors during the financial year 2015-16, which is not in controversy and list of the patient also supports the assessee case that the poor patients are being treated at the hospital, therefore, we have failed to understand as to what evidences, the Ld. CIT(E) required for further confirmation form the beneficiaries of the trust.
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> In the instant case, the objects of the trust are not in controversy which is first consideration for grant of registration u/s 12AA of the Act. Secondly, the trust is at nascent stage and during the Financial Year 2015-16 having received donation to the extent of ₹ 1,12,000/- only and maximum of ₹ 1,03,250/-, which has already been utilized for the charitable purposes as it reflects from the visiting fees paid to various doctors for giving free consultations/treatments, which even otherwise not refuted by the Revenue Department and aforesaid facts favours the pursing of objects. Considering the facts and circumstances that the applicant trust has been formed only first day of April, 2015 which certainly is at nascent stage and application for registration u/s 12AA was filed

on 26.9.2016 and the assessee trust do not have much funds at the initial stage to pursue its objects, however, from the records available in file, we do not have any hesitation to say that some of the stated objects vis-a-vis treatment for poor and weaker sections of the society, irrespective of their caste or creed and religion, have already been pursued by the applicant trust, therefore, the main reason for rejection of the registration as given by the Ld. CIT(E) that neither the objects are seems to have been pursued nor the activities of the trust got corroborated, have no substance and cannot be considered as logical reasoning. Hence the order impugned herein is perverse, improper and illogical and liable to be set aside.

On the aforesaid consideration and observation, we set aside the order passed by the Ld. CIT(E) and direct the Ld. CIT(E) to grant registration u/s 12AA of the Act to the appellant society, henceforth, however, the grant of registration can be subjected to condition, if any, which the Ld. CIT(E) deems fit and proper under the law."

5. In view of the above, no error 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. 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

March 27, 2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**