IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-534-2017 (O&M)

Date of Decision: 28.3.2019

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant.

Versus

M/s M.R. Educational 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.

Mr. Brij Mohan Monga, Advocate and
Mr. Rohit Kaura, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. Delay of 117 days in filing the appeal is condoned.

2. 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 23.5.2016 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 841/Chd/2014, for the assessment year 2011-12, claiming the following substantial questions of law:-

I. Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in directing the registration to be accorded instead of reverting it back for re-examination without itself commenting upon the genuineness of activities and their co-relation with the objects of the assessee-society?

II. Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in holding that the CIT had not doubted the objects and genuineness of the activity of the trust whereas the CIT in her order had expressly concluded that she was not satisfied about the genuineness of activities towards its objects?

III. Whether on the facts and circumstances of the case, Hon'ble ITAT was right in holding that compliance with RTE Act is not a relevant factor for the grant of registration whereas the CIT was fully empowered by the provisions of Section 12AA to call for any 'information' before granting such registration and examine whether infraction of relevant laws impinges on the claims of advancing education?

IV. Whether on the facts and circumstances of the case the Hon'ble ITAT was right in ignoring CIT's findings about the restrictive composition of the society and the lack of dissolution clause both severely impinging on the character of an entity claiming to be amenable for public charity?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee moved an

application in Form 10A seeking registration under Section 12AA of the Act in the office of Commissioner of Income Tax, Panchkula (for brevity "the CIT") on 27.3.2014. The CIT rejected the application of the assessee for grant of approval under Section 12AA of the Act vide order dated 11.8.2014 (Annexure A-1), with the following objections:-

a) That the trust deed had not provided for dissolution clause for use of net assets of the trust for its objects in case of dissolution and bar on reversion of net assets to founder, members, directors etc.;

b) That the School is run by one family headed by father as 'Settlor'-cum-President and two sons as trustees. Having regard to the surplus as per receipt expenditure statement for the years ending on 31.3.2011, 31.3.2012 and 31.3.2013, profit was the main motive of the trust;

c) That the assessee trust was not registered under the New Haryana Registration & Regulation of Societies Registration Act, 2012; and

e) That the Right to Education Act, 2010 was not implemented by the School.

4. Feeling aggrieved by the order, Annexure P-1, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 23.5.2016 (Annexure A-2) allowed the appeal and directed the CIT to grant registration to the assessee under Section 12AA of the Act. Hence, the present appeal by the revenue.

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

6. The Tribunal while dealing with objection (a) put by the CIT, had noticed that as per clause 14 of the Trust Deed, the mandate of the said clause was to transfer the remaining assets and liabilities of the assessee to a similar trust at the time of dissolution. There was no intention of giving benefit to a specific person out of whatever remains in the hands of the assessee. Regarding objection (b), the Tribunal had recorded that even if a trust was run by only one family, there was no bar on such trust to be registered under Section 12AA of the Act. The CIT had only to see that the objects of the trust were charitable in nature and the activities of the same were genuine at the time of granting registration. Regarding the fact that the benefit directly or indirectly diverted to one family, can be taken care of by the Assessing Officer at the time of making the assessment and granting exemption under Section 11 of the Act. While dealing with objection (c), the Tribunal had observed that the assessee is a trust formed under the Indian Trust Act, 1882 and had been duly registered with the Sub Registrar, Bilaspur. There was no bar under the Act to give registration under Section 12AA of the Act to a trust and that no provision provided that only societies can be registered under Section 12AA of the Act. The Tribunal while meeting out objection (d) regarding Right to Education Act, 2010 (in short "2010 Act") had concluded that the issue was covered by the order of the Tribunal in the case of **Kids-R-Kids International Educational & Social Welfare Trust,** wherein it was held that the issue of school complying with the provisions of 2010 Act was not a relevant consideration to be taken care of by the CIT at the time of granting registration under Section 12AA of the

Act. It may be mentioned that this decision of the Tribunal was affirmed in **ITA No. 6 of 2017 [Commissioner of Income Tax (Exemptions), Chandigarh v. M/s Kids-R-Kids International Education and Social Welfare Trust, Chandigarh]** dated July 14, 2017. Even Special Leave Petition No. 22665 of 2018 was dismissed by the Apex Court on 23.07.2018. The Tribunal while holding that the CIT had not doubted about the charitable nature of the objects of the Trust as well as the genuineness of the activity, directed the CIT to grant registration to the assessee under Section 12AA of the Act.

7. No error could be pointed out by learned counsel for the revenue in the findings recorded by the Tribunal warranting interference by this Court. In view of the above, accordingly, 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

March 28, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

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