IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-40572-2018

Date of Decision: 16.1.2019

Dera Baba Jodh Sachiar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. S.K. Mukhi, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has sought quashing of the notice dated 5.12.2018 (Annexure P-8) issued by respondent No.3 intending to make an addition of ₹ 62,95,300/- on account of credit in the Income and Expenditure Account of the petitioner Charitable-cum-Religious Institution under the Head 'Charity Box' (Gollak Box).

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner-Society was created on 17.9.1981. The petitioner being a charitable trust was registered under Section 12AA of the Income Tax Act, 1961 (in short “the Act”) vide certificate of registration dated 12.6.1998 (Annexure P-1) and its Memorandum of Association is dated 17.9.1981 (Annexure P-2). It is also registered with the Registrar of Firms and Societies, Haryana vide certificate of registration dated 24.4.1984 (Annexure P-3). The

Commissioner of Income Tax, Rohtak after registration of the petitioner as a Charitable Trust had approved exemption under Section 80G of the Act vide certificate dated 18.10.2010 for the period from 1.2.2000 to 31.3.2005 and thereafter upto 31.3.2010 in compliance with the directions issued by this Court vide certificate dated 30.3.2010 (Annexure P-4) which is valid upto perpetuity. While granting registration and also allowing exemption under Section 80G of the Act, respondent No.2 had duly verified the Memorandum of Association, aims and objections of the petitioner and also verified the books and accounts and other statutory records wherein the petitioner had submitted the list (Annexure P-5) of Executive Body Members. The petitioner also submitted the Income Tax Returns, receipt and expenditure accounts, audit report dated 31.3.2016 (Annexure P-6 Colly). The petitioner had been put to scrutiny for various assessment years vide assessment orders dated 16.7.2015 (Annexure P-7) under Section 143 (3) of the Act for the assessment years 2013-13 and others. The Assessing Officer issued notice dated 5.12.2018 (Annexure P-8) to the petitioner to make addition of ₹ 62,95,300/- credited in the income and expenditure account of the petitioner charitable-cum-religious institution under the head 'Charity Box' (Gollak box) being the donations made by various followers and devotees visiting the Gurudwara. The revenue also took an affidavit dated 4.7.2015 (Annexure P-9) from the petitioner that it is a religious-cum-charitable institution during the assessment proceedings for the assessment year 2013-14. Earlier also, the department had refused to the petitioner to renew the exemption granted under Section 80G of the Act against which the petitioner filed CWP-68-2006 and this Court vide order dated 22.2.2010 (Annexure P-10) directed respondent No.2 to reconsider the approval of the petitioner under Section 80G of the Act and the said approval was granted to the petitioner. Therefore, the petitioner being charitable-cum-religious institution is entitled for the exemptions and approvals as having been so allowed since its inception in view of the provisions of Section 115BBC(2)(b) of the Act. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that notice dated 5.12.2018 (Annexure P-8) issued by respondent No.3 is illegal, erroneous and perverse and had been issued against the provisions of the Act. It was further submitted that once the petitioner was held to be a charitable-cum-religious institution, respondent No.3 could not issue the notice, Annexure P-8, intending to make addition of ₹ 62,95,300/- credited in the income and expenditure account of the petitioner. In support of his contentions, learned counsel for the petitioner has placed reliance upon the judgment of the Apex Court in **Berger Paints India Ltd. v. Commissioner of Income-Tax, Calcutta, 2004(12) SCC 42** and the Delhi High Court in **Commissioner of Income Tax (Exemption) v. Bhagwan Shree Laxmi Naraindham Trust, ITA No. 269 of 2015** decided on 7.9.2015.

4. We have heard learned counsel for the petitioner.

5. Earlier the petitioner for the similar relief had approached this Court by way of CWP-37592-2018 and this Court vide order dated 19.12.2018 had passed the following order:-

> "1. The petitioner has approached this Court under Article 226 of the Constitution of India against the notice dated 05.12.2018 (Annexure P-8) issued by the Income Tax Officer (Exemptions) Ward Ambala, erroneously intending to make addition of Rs.62,95,300/- on account

of credit in the Income and Expenditure Account of petitioner Charitable-cum-Religious Institution under the Head "Charity Box" (Gollak Box).

2. After arguing for sometime, learned counsel for the petitioner prayed that he may be allowed to withdraw the present writ petition with liberty to the petitioner to file fresh one with better/improved facts, in accordance with law.

3. Dismissed as withdrawn.

4. The challenge in the writ petition is to notice issued under Section 142(1) of the Income Tax Act, 1961 (in short, 'the Act') and at present, no order adverse to the petitioner has been passed. In such circumstances, we find that the recourse to writ petition is not proper. Accordingly, no permission is granted to file writ petition with better/improved facts as prayed. However, it is clarified that in case any order adverse to the petitioner is passed by the Assessing Officer in pursuance to notice issued under Section Section 142(1) of the Act, it shall be open to the petitioner to take recourse to statutory remedies in accordance with law."

6. Accordingly, the present writ petition is not maintainable. Though the petitioner has sought liberty to file a fresh writ petition on the same cause of action with better particular but this Court held that no permission can be granted to the petitioner to file writ petition with better/improved facts as prayed as no order adverse to the petitioner was

passed and recourse to writ petition was not proper. Further, this Court had clarified to the petitioner that in case any order adverse to the petitioner is passed by the Assessing Officer in pursuance to the notice issued under Section 142(1) of the Act, it would be open to the petitioner to take recourse to statutory remedies in accordance with law.

7. In view of the above, the judgments relied upon by the learned counsel for the petitioner do not come to his rescue at this stage.

8. Since no adverse order was passed against the petitioner and the earlier writ petition was dismissed, the second writ petition would not be maintainable. However, it is again clarified that in case any adverse order is passed by the Assessing Officer against the petitioner in pursuance to notice issued under Section 142(1) of the Act, it shall be open to the petitioner to take recourse to statutory remedies in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

January 16, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**