IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 429 of 2019
Date of decision: 20.1.2020

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

v.

M/s Sanatan Dharam Educational Charitable Society
.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Denesh Goyal, Senior Standing Counsel for the appellant.

...

AVNEESH JHINGAN, J.

The revenue has filed the appeal against the order dated 5.4.2019 passed by the Income Tax Appellate Tribunal, Camp Bench at Jalandhar (for short, 'the Tribunal') allowing the appeal of the respondent-society (hereinafter referred to as 'the society') and directing the Commissioner of Income Tax (Exemptions) (for short, 'the CIT') to grant registration under Section 12AA of the Income Tax Act, 1961 (for short, 'the Act'). Following substantial questions of law have been claimed:

> "I. Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in directing the approval to be accorded instead of reverting it back for re-examination following the spirit of judgment by the Hon'ble Allahabad High Court in appeal No. 112 of 2013 in the case of CIT v. A. R. Trust as per which the Hon'ble ITAT does not

have powers to direct registration even though the averred decision was in respect of 12AA matters?

II Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred on relying upon the case of CIT Vs. Surya Educational and Charitable Trust (2013) 355 ITR 280 where the fact of the present case was totally different. In the said case the trust was newly established where as in the present case the applicant has already conducted various activities.

III. Whether on the facts and circumstances of the case, the Hon'ble ITAT is right in disregarding the fact that the assessee society has received advance rent of Rs.13,87,000/- and the same is not shown in the income and expenditure account?

IV. Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in holding that whether the additional land was purchased for educational purpose or not is irrelevant.

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?"

On 28.3.2018, an application was filed by the society claiming registration under Section 12AA of the Act. The CIT rejected the same on 28.9.2018 taking into consideration following grounds:

(a) There was advance rent received by the society from

Shri Rajiv Jain and Shri Raj Kumar Nayyar in the financial year 2015-16 and the same should have been routed through income and expenditure account. Further that the advance rent received was not in comparison to the rental value.

(b) The Society had purchased additional land and it was not clear that what necessitated purchase of the said land.

(c) The advance fee received was not shown in income and expenditure account.

(d) The society was having surplus income over expenditure, ranging from 20% to 30% and the same was not reasonable.

Aggrieved of the order, an appeal was filed. The Tribunal accepted the appeal on 5.4.2019. It was held that while considering the application for claiming registration under Section 12AA of the Act, the scope will not be to consider that the income was being applied in conformity with the aims and objects. The stage would be when the return is filed and in case of any violation, recourse could be taken to sub-section (3) of Section 12AA of the Act. Further, the advance fees having been shown as current liabilities and not part of total income had no bearing on genuineness of the activities. The Tribunal observed that the security deposit received from the tenant was not to be part of total income. Vis-a-vis the additional land purchased by the society the same had no bearing on the genuineness of the activities of the society and in case of use of land for any other purpose, the same would entitle the CIT to exercise power under Section 12AA(3) of the Act. A specific finding was recorded that surplus which ranged from 15% to 23% was ploughed back by the society for furtherance of its object.

Aggrieved of the order, the present appeal is filed.

Learned counsel for the revenue argued that there was no comparison between the rent received and the security deposit. It is contended that it was not clear that the additional land purchased was for educational purposes. Further the challenge is that the surplus income generated was not reasonable.

The contentions raised by learned counsel for the revenue are rejected.

Section 12AA of the Act (at the relevant assessment year) is quoted below:

> **"12AA. Procedure for registration.-** (1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) [or clause (ab)] of sub-section (1)] of Section 12A, shall--
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> (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
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> (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he;--
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> (i) shall ass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a coy of such order shall be sent to the applicant:"

From a perusal of the provision quoted above, it is evident that the CIT while processing the application for registration has to look into the genuineness of the activities of the trust and satisfy himself about the genuineness of the activities. The issues raised with regard to the security deposit being not in comparison vis-a-vis the rent received will not have impact on the genuineness of the activities. It is an admitted case that the security received was duly reflected in the books of account. Similarly, the enrouting of advance fee is also an issue with regard to the accounting. These having been shown in the books can be dealt with in detail by the Assessing Officer while framing the assessment and allowing exemption under Section 11 of the Act. The present stage would not be appropriate for the same.

As regards the additional land purchased, the Tribunal rightly observed that CIT has a power under Section 12AA(3) of the Act in case of utilisation of the said land against the aims and objects of the society.

The grievance against the surplus income not being reasonable is baseless in absence of any challenge to the finding recorded by the Tribunal that excess income has been ploughed back by the society for furtherance of its object.

There is no illegality in the order of the Tribunal directing grant of registration to the society. However, it would be needless to state that in case the revenue subsequently comes to the conclusion that the activities of the society are not for charitable purposes, it would always be at liberty to initiate action in accordance with law including invoking of sub-section (3) of Section 12AA of the Act.

No substantial question of law arises in the present appeal. No interference is called for in the order of the Tribunal.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

20.1.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No