IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 322 of 2018
Date of decision: 20.1.2020

The Commissioner of Income Tax (Exemptions), Chandigarh

.. Appellant

v.

M/s Markandeshwar Educational 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 15.11.2017 passed by the Income Tax Appellate Tribunal, Chandigarh (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:

> "1. 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 in as much 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 has erred in ignoring the finding that the applicant society has consistently availed benefit u/s 10 (23C)(iiiad) of the Act and that the natural progression entails and entitles the educational societies to go for 10(23C)(vi) and not rebutted the CIT's contention in this regard?

III. Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in not adjudicating on the issue of change in track from section 10(23C)(iiiad) to sections 11 and 12 of the Act by the society particularly when the same has been claimed for substantial number of years?

IV. Whether on the facts and circumstances of the case, the Hon'ble ITAT is right in ignoring the fact that the main emphasis of the society is adding to its fleet of vehicles and thereby generation of another source of income?

V. Whether on the facts and circumstances of the case the

Hon'ble ITAT has erred in ignoring the CIT's finding that the main focus of the assessee society was creation of assets rather than on redeployment of funds towards education and one-off activities could not pass muster as systematic activities geared towards the objections?

VI. Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in ignoring the CIT's findings that salary and fee structure of the society was not in sync with the instructions issued by the CBSE while providing affiliation and this infraction of regulations governing education has motives of profiteering for the same?

VII. Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in ignoring the CIT's findings that no evidence was provided vis-a-vis land owned by the society except a reference in the balance sheet and the fact of possession of land with the society remained unverifiable?

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 perverse?"

Necessary facts are that the society came into existence on 13.3.2003 and for number of years it availed benefit under Section 10(23C) of the Act. The aims and objects of the society were to educate the children of surrounding villages of Kurukshetra and other places; to educate the rural children with the latest and modern techniques of education and to prepare the coming generation to become good and worthy citizens. The society aimed to make an all around development of personalities of rural children and to bring children of the poor and weaker section of the society at par with the children of upper strata of the society and further to open schools and institutions in urban areas. An application was moved before the CIT for registration under Section 12AA of the Act, the application was rejected vide order dated 31.8.2016. The CIT while rejecting the application took into consideration that earlier the society was registered under Section 10(23C) of the Act and has now moved an application for registration under Section 12AA of the Act. Further that the society had made expenditure for adding to the fleet of their vehicles, thereby creating assets and that transportation was not one of the object of the society. It was noted that the salaries paid to the staff were not in synchronization with the instructions issued by CBSE, rather salaries paid were on the lower side.

Aggrieved of the order, an appeal was filed, the Tribunal vide order dated 15.11.2017 allowed the appeal. The Tribunal considered that rejection was mainly on suspicion. There was no creation of assets, rather the vehicles added to the fleet were school buses. It was further held that lesser payment of salary to the trained teachers nowhere demonstrates compromise with quality of education. Present appeal is against the order of the Tribunal.

Learned counsel for the revenue raised the grievance that the society was indulging in adding number of vehicles, even though transportation was never the object of the society.

The contention raised is not well-founded. The finding recorded by the Tribunal is not disputed that the vehicles added were school buses. Even if transportation was not specifically mentioned in the aims and objects of the society, the same will not make any difference. Carrying children to the schools and back home is an essential for running schools especially if the schools are in rural areas. The safety of students is of utmost importance.

There is another aspect of the matter that purchase of school buses will not amount to amassing assets, rather it is in furtherance of the object of the society to provide quality education. The funds were utilised for education purposes. There is no challenge to the finding of the Tribunal that lower salary paid was not at the cost of quality of education, moreover this itself cannot be a consideration for refusing registration under Section 12AA of the Act. At this juncture, it would be pertinent to note that merely the fact that the society was earlier registered under Section 10(23C) of the Act cannot be taken as an adverse ground for consideration of the application for registration under Section 12AA of the Act. It is for the society to take prudent decision for itself as to which section would be more beneficial.

The objects of the society were not doubted by the CIT except for the objections raised above. The denial was merely on surmises and conjectures. There is no error 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