IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 339 of 2018
Date of decision: 20.1.2020

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

v.

M/s Mandir Shree Mahakali Sabha Mandir Complex
.. 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 is in appeal against the order dated 11.10.2017 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 to grant registration instead of reverting it back for re-examination in the light of judgment of the Hon'ble Allahabad High Court in

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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 fact that the assessee did not produce evidence that the Government had bestowed the rights for the use of the aland and complex upon the assessee society, that had claimed carrying out development and maintenance for public at large?

III. Whether on the facts and circumstances of the case, the Hon'ble ITAT, even when according to the ffinding that the property (land and buildings) is not owned by the trust, has erred by holding the same as property held by the trust?

IV. Whether on the facts and circumstances of the case the Hon'ble ITAT has ignored the facts that the applicant society had not produced any evidence with regard to the activities having actually been carried out?

V. Whether on the facts and circumstances of the case the Hon'ble ITAT has erred in directing to grant of registration u/s 12AA ignoring the fact that the

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memorandum of society was designed in a manner that was devoid of dissolution clause, beneficiary clause, and utilization clause and to that extent capable of giving undue advantage to the members of the society and that in an event of dissolution of the society the possibility of the funds being mis-utilized was high?

VI. 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?"

Facts in brief are that the respondent-society came into operation since 10.5.1995 with the following aims and objects:

"(a) to maintain, manage, improve, furnish, reshape, restructure, reconstruct amend alter or add in the existing Buildings, facilities and area so that these could be used in better way by Mahakali Devi devotees, worshipers, saints and visitors to the Mahakali Devi Mandir for religious, charitable and social purposes;

(b) to construct more building in Mahakali Devi complex and develop the entire complex for better use by the devotees, worshipers, saints and public in general for religious, charitable, educational and socital purposes;

(c) to propagate Hindu Religion, teaching of Sanatam Dharam and brotherhood amongst the public in general and Sangrur citizens in particular;

(d) to arrange and celebrate Hindu festivals, religious

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occasions, and to propagate and inculcate the religious feelings brother-hood and nationalism amongst the public in general and Hindus in particular;

(e) to develop and inculcate sound, moral, religious and national character in younger generation;

(f) to help the needy and poor children for their education;

(g) to open and run charitable dispensaries and hospitals for public in general and propagate and inculcate the habit of keeping good health;

(h) to open library and reading room for public in general and provide books particular relating to religion, history and culture;

(i) to arrange religious discourses, teachings, satsang lecture to propagate Hindu religion, brotherhood, nationalism, general uplift of mankind, to build moral fibre and develop healthy society and harmony amongst public in general;

(j) to create atmosphere and impart teachings to help the younger general to develop and become successful citizens of sound health, character, nationality and following of Hindu religion in its tradition and culture;

(k) to arrange to provide help in cash and kind to the public in general in the event of natural calamities;

(l) to run free Bhandaras, to help poor widows, orphans ages persons and sufferers of natural and national calamities;

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(m) to establish and run educational and vocational instructions, children recreations art and senior citizens home;

(n) any other work of charitable nature for public in general."

An application was filed by the society claiming registration under Section 12AA of the Act. The CIT rejected the application vide order dated 29.4.2016, considering that the land and complex whose maintenance was one of the aim and object of the society belonged to the government; further that for constructing the building hall, the focus was on religion and not on charity. The CIT considered that liability of ₹12,99,527/- shown on 31.3.2013 was not shown in succeeding years and no payment was shown to be made.

Aggrieved of the rejection, an appeal was preferred, the Tribunal vide order dated 11.10.2017 allowed the same. The Tribunal concluded that there was no pre-requisite in the provisions of the Act that assets should be owned by the society. The Tribunal considered the averment of the society that though the land belonged to the Government but the property developed was held under the trust. It was noted that the Mandir complex was visited by public at large and by the work done by the society, the devotees were benefitted. No dispute was raised by the department that the society had constructed community hall etc. and the property though not owned by the society but the income was applied for religious and charitable purposes. The hall constructed was not for particular section of the society and the same was opened to all for utilisation.

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The Tribunal concluded that in case there was any discrepancy in the accounts, the same is not to be considered at the time of granting registration under Section 12AA of the Act but the same could be taken care of while framing assessment and allowing exemption under Section 11 of the Act, hence the present appeal.

Learned counsel for the revenue argued that ownership of the land and the temple was not of the society and there was no right for the society to use the said property.

The contention raised is beyond the provisions of the Act. Under Section 12AA of the Act, the CIT has to satisfy himself with regard to the genuineness of the activities of the trust and compliance of requirements of other laws for the time being in force.

Section 12A of the Act lays down the conditions of applicability of Sections 11 and 12 of the Act. Title of Section 11 of the Act is as under:

> **"Income' from property held for charitable or religious purposes"**

The Section states that subject to the provisions of sections 60 to 63 of the Act, the income mentioned in it shall not be included in the total income of previous year. The section nowhere provides that the property should be owned by the trust. The requirement is "held for charitable purpose". In the present case, the land though belonged to the government but the construction made on it was held under the trust and it is for the income from such property that application for registration under Section 12AA of the Act was moved.

Section 12 of the Act gives a deeming fiction that voluntary

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contribution received by the trust created for charitable or religious purposes shall be deemed for the purpose of Section 11 of the Act to be income derived from the property held by the trust for charitable and religious purposes.

In view of the above discussion, the objection that the property was not owned by the society cannot be sustained.

In the present case, there is no dispute raised that the work of the society was for general public and the work done by it, including raising of the construction on the land that belonged to the Government was for community at large, for charitable and religious purposes. Further that from the record it is established that various functions were being organised by social organisations for blood donation, 'Akandh Path', conference, function for welfare of differently-abled persons and that use of community hall in the temple complex was not limited to any particular limb of the society but was utilised for social, charitable and religious organisations.

The explanation of the society to the effect that the liability shown as on 31.3.2013 was discharged in the subsequent year was accepted. Needless to add at this stage that the said aspect can be looked into by the Assessing Officer at the time of framing of assessment and allowing exemption under Section 11 of the Act.

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

The appeal is dismissed.

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

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accordance with law including invoking of sub-section (3) of Section 12AA of the Act.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

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

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