IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 355 of 2018
Date of decision: 13.1.2020

The Commissioner of Income Tax (Exemptions), Chandigarh

.. Appellant

v.

M/s Brahmanand Shiksha Prasar Samiti

.. Respondent

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

Present: Mr. Denesh Goyal, Advocate for the appellant.

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AVNEESH JHINGAN, J.

The revenue is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 12.10.2017 passed by the Income Tax Appellate Tribunal, Delhi Bench “A', New Delhi (for short, 'the Tribunal') claiming following substantial questions of law:

“(i) 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 apeal No. 112 of 2013 in the case of CIT, Meerut v. 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 disregarded the facts that Smt. Sunita and Smt. Sangeeta, being members of the trust, were shown as houses wife in MOA, whereas they were receiving salary as teachers?

(iii) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in not upholding the facts that the activities of the assessee society were not in accordance with the objects as per its aims and objectives in the Memorandum of Association, merely by stating that it would be seen at the time of assessment?

(iv) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in holding that the provisions of Section 13(1)(c) comes into play at the time of granting exemption u/s 11 whereas section 12AA(4) empowers the CIT to cancel registration u/s 12AA(4) where violation of section 13(1)(c) is noticed?

(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?"

The facts relevant for decision of the controversy involved are that the assessee is a society registered under the Haryana Registration & Regulation of Societies Act, 2012. On 20.1.2014, the assessee filed an application for registration under Section 12AA of the Act. The Commissioner of Income Tax, Karnal (for short, 'the CIT') during the proceedings asked for certain information which was provided by the assessee. On analysing the information received, the CIT opined that the salary paid to the members working as Teachers was higher vis-a-vis the prevalent rate. The objection was that Smt. Sunita and Smt. Sangeeta were shown as housewives in Memorandum of Association, however they were being paid salary as Teachers, hence there is violation of Section 13(1)(c) of the Act.

A report was asked for from the Assessing Officer, who observed that there were payments made to single party in cash and Section 40A(3) of the Act was violated. Further, for the assessment year 2011-12, the income claimed as exempted under Section 11 of the Act was treated as business and professional income. Lastly that the assessee had claimed corpus fund donations of ₹3,41,000/- for construction of building, whereas the donations were regular donations. Accepting the report, CIT vide order dated 27.10.2014 refused registration under Section 12AA of the Act.

Aggrieved of the order, appeal was preferred. The Tribunal recorded a specific finding that salary paid to Smt. Sunita and Smt. Sangeeta was much less than the salary fixed by the Government for PGT Teachers. It was further held that Smt. Sunita was M.Com., B.Ed. and Smt. Sangeeta was M.A. in Hindi and B.Ed. The Tribunal allowed the appeal on 12.10.2017 holding that the issue with regard to violation of Section 40A(3) of the Act and with regard to donations being regular donations and not corpus donations can be taken care of at the time of assessment, the same cannot be ground for refusal to register under Section 12AA of the Act.

Learned counsel for the revenue argued that the Tribunal erred in allowing the appeal and setting aside the order of rejection of registration under Section 12AA of the Act. It is submitted that by paying salary to Smt. Sunita and Smt. Sangeeta, a direct or indirect benefit was being given to the members of the assessee. It is contended that both the ladies were shown as housewives at the time of registration but subsequently they were being paid as Teachers.

The contentions raised by learned counsel for the revenue are not well-founded.

The relevant provisions of Sections 12AA and 13(1)(c) of the Act are quoted below:

> "**12AA.** (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) 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 pass 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 copy of such order shall be sent to the applicant:

xx xx xx

13. (1) Nothing contained in section 11 or Section 12 shall operate so as to exclude from the total income of the previous year of the erson in receipt thereof--

xx xx xx

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof--

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3)."

The finding recorded by the Tribunal that Smt. Sunita and Smt. Sangeeta were possessing qualifications for being Teachers has not been controverted. There is no challenge to the fact that during the relevant time as per the circular issued by the Government, salary of PGT Teacher was fixed as ₹31,240/-, whereas both the teachers were receiving salary of ₹20,000/- and ₹18,000/- respectively. In such circumstances, there is no violation of Section 13(1)(c) of the Act. It is pertinent to mention here that the salary paid is much less than the prevailing salary. There is no direct or indirect benefit given to the members, rather they were being paid consideration for the services rendered.

The scope at the time of processing the application under Section 12AA of the Act is to satisfy with regard to the objects of the trust or the institution and the genuineness of its activities. Apart from the objections mentioned above, the CIT had not recorded any dissatisfaction with regard to the objects of the assessee or with regard to the genuineness of its activities. The Tribunal rightly concluded that the issue with regard to violation of Section 40A(3) of the Act and the nature of donations received can be duly considered while finalising the assessment for the relevant period. There is no illegality or error in the view taken by the Tribunal. However, we may hasten to add that subsequently if the revenue is satisfied that the activities of the assessee are not for charitable purpose, it can always initiate action for cancellation of registration under sub-section (3) of Section 12AA of the Act.

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

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

13.1.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No