IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 54 of 2019
Date of decision: 20.1.2020

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

v.

M/s Shri Panchayati Gaushala 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.

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AVNEESH JHINGAN, J.

The revenue has filed this appeal against the order dated 9.4.2018 passed by the Income Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal'). The appeal of the respondent-society (hereinafter referred to as 'the society') was allowed and Commissioner of Income Tax (Exemptions) (for short, 'the CIT') was directed to grant approval to the respondent-society under Section 80G 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 was correct in disregarding the fact that the main emphasis of the applicant society was generating the income and accumulating surpluses in shape of FDRs?
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> (ii) Whether on the facts and circumstances of the case, the

Hon'ble ITAT was correct in disregarding the fact that the major emphasis of the society appeared to be accumulation of asset in the form of FDRs and earning interest on the same rather than utilization the same for expansion?

(iii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct ignoring the fact that the society diverted from its objects and got involved in commercial activity?

(iv) Whether on the facts and circumstances of the case the ITAT has erred in placing reliance on the fact of the assessee having 12AA registration and by ignoring the statutory condition that 12AA registration is merely a pre-condition for entities to be eligible for approval u/s 80G(5) and that the procedure involves examination of the real purpose as laid down by the Hon'ble Delhi High Court in the case of M/s Kirti Chand Tarawati Charitable Trust vs. Director of Income Tax (Exemption) and others. [(1999) 152 CTR (Delhi 322]?

(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?"

Relevant facts are that the society was established on 16.5.1956 with the following aims and objects:

"2...... keep and protect useless and old cows and cattle; to keep and maintain milk cows and useful bulls; to purchase cows and bulls in order to augment the Income of Gaushala to meet the expenses and make the Gaushala sustainable; to protect the breed of cattle; to sell the surplus milk if any (after feeding calves) in order to meet day to day expenses; to make arrangements for fodder and shelters for keeping the cattle and accordingly make arrangements for purchase; to make arrangements for cultivation for agricultural lands available with Gaushala to collect funds for the above objects, and to control/supervise investment and expenditure."

The society is duly registered under Section 12AA of the Act. An application was made on 16.12.2016 for approval under Section 80G of the Act. The CIT rejected the same vide order dated 29.6.2017 mainly on the ground that the society was generating certain income and as a result, the amount of FDRs was being enhanced over the year. The conclusion was that the society had diverted from the object of serving old, ill and lame cows and got involved in commercial activities.

In an appeal preferred by the society, the Tribunal on 9.4.2018 allowed the appeal holding that there was nothing on record to substantiate that the funds were utilised by the society elsewhere and not for its aims and objects. It was also considered that registration under Section 12AA of the Act was continuing. The order of the CIT was set aside and it was directed to grant registration under Section 80G of the Act.

Aggrieved of the order of the Tribunal, the present appeal is filed.

Learned counsel for the revenue argued that the Tribunal erred in allowing the appeal, inspite of the fact that there was substantial amount in the FDRs of the society and it was involved in commercial activities. The challenge posed is that the Tribunal erred in holding that registration under Section 12AA of the Act was itself enough for approval under Section 80G of the Act.

Section 12AA(1) and Section 80G(5)(vi) of the Act (for the relevant assessment year) read as under:-

> **"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 pass an order in writing registering the trust or institution;
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> (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:
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> **Section 80G(5)(vi) : Deduction in respect of donations to**

certain funds, charitable institutions, etc. In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this Section:-

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(5) This Section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfills the following conditions, namely :

XX XX XX

(vi) in relation to donations made after the 31st day of March 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules "made in this behalf."

Section 12A of the Act provides conditions for applicability of Sections 11 and 12 of the Act. Section 12AA of the Act provides for procedure of registration for availing the benefits under Section 12A of the Act. Under Section 12AA(1)(a) of the Act the Principal Commissioner or the Commissioner in order to satisfy himself about the genuineness of the activities of the trust or institution can call for such document or information as he deems necessary. If satisfied about genuineness of object, he passes the order registering the trust or institution, otherwise rejects the application.

Under Section 80G of the Act recognition is given to trust or institution for the purpose that assessee giving donations to such institution becomes entitled to claim deduction of the amount donated. Sub-section 5 of Section 80G of the Act stipulates the conditions for application of Section 80G of the Act to the donations made to any institution or fund referred to in sub clause (iv) of Clause (a) of Sub Section (2).

The contentions raised by the appellant-revenue lack merit. From the averment of the society before the CIT, it was evident that out of total 350 cows, only 20-30 cows were milking. The doubt raised by the CIT was as to how 20-30 cows could produce milk worth ₹16,54,634/-. The said doubt was baseless as the CIT was swayed by the figure. If the figure is roughly worked out to the daily amount and if an average price per litre milk is taken as ₹40/-, the production would come to 114 litres of milk a day.

The objection that the amount in FDRs had enhanced will not enhance the case of the revenue. There is not even an iota of evidence to establish that the amount was not being utilised for the aims and objects of the society but for some other purpose. The amount only gives a protection to the society for daily needs, if the occasion so arises that there is scarcity of funds as the society has almost 350 cows to take care and to feed. It cannot be ruled out that such a cushion may be required considering the nature of the work done by the society.

The contention that the society had diverted itself into commercial activities is belied from the ratio of milking and non-milking cows. Out of 350 cows, only 20 to 30 cows were milk yielding. The ratio would be 32:3. The said ratio is a pointer against the plea of revenue. There cannot be any objection if a society while achieving its aims and objects is able to generate some funds so that its daily expenses can be met of its own.

There is no quibble on the proposition that registration under

Section 12AA of the Act itself would not be enough for approval under Section 80G of the Act. The Tribunal has only considered that aims and objects of the society have been found genuine while granting registration under Section 12AA of the Act and for granting approval under Section 80G of the Act, the reasons have been recorded and the denial of approval not sustained. Learned counsel for the revenue has neither been able to show that the view taken by the Tribunal is erroneous nor any material on record is shown to hold that the order of the Tribunal is legally unsustainable.

No substantial question of law arises.

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