IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1217-2021 (O&M)
Reserved on: 24.01.2023
Date of Decision: 10.02.2023

Mukat Educational Trust ......Appellant

Vs.

State of Punjab and others ....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. R.S. Rai, Senior Advocate, with
Ms. Rubina Vermani, Advocate, for the appellant.

Ms. Deepali Puri, Addl. A.G., Punjab.

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HARPREET KAUR JEEWAN, J.

The present appeal has been directed against the judgment dated 20.08.2019, passed by the learned Single Judge in CWP-23272-2018, challenging the dismissal of the writ petition whereby the appellant sought quashing of the communication dated 25.04.2018 (Annexure P-2) issued by respondent No. 4 (Sub-Registrar, Rajpura, District Patiala), vide which the prayer made by the appellant for refund of excess stamp duty and registration charges paid by the appellant on the sale deeds (Annexures P-5 to P-9), was declined.

2. It is pleaded that the appellant "Mukat Educational Trust" is a Charitable Trust registered since 30.12.1994 and has also been registered with the Income Tax Authorities under Section 12-A of the Income Tax Act, 1962 (hereinafter referred to as the Act of 1962). The appellant Trust is running an Educational Institution in the name and style of 'Mukat Public School' since 1996 and has been imparting quality education to the

residents of the area of Rajpura and its peripheral villages with the cooperation of SGPC, Amritsar. In order to provide more educational facilities and development infrastructure for running the said educational institution, the appellant purchased additional land, vide registered sale deeds dated 11.07.2014, 25.07.2014, 30.07.2014, 05.09.2014 and 10.07.2017 (Annexures P-5 to P-9). It is further alleged that the appellant being a Charitable Trust is entitled for exemption of stamp duty and registration charge in terms of the notification dated 20.02.1981 (Annexure P-4), issued by the Government of Punjab. The appellant approached respondent No. 4 for refund of the stamp duty and registration fee by way of submitting an application dated 12.07.2017 (Annexure P-10). Subsequently, a reminder dated 25.10.2017 (Annexure P-11) was also sent by the appellant. Respondent No. 4 directed the appellant to submit a trust certificate, vide communication dated 11.12.2017 (Annexure P-12), the same was submitted by the appellant, vide communication dated 05.01.2018 (Annexure P-13). However, respondent No. 4 had rejected the request of the appellant, vide letter dated 25.04.2018 (Annexure P-2) and refused to refund the amount on the ground that at the time of registration of the sale deeds, no approval from the Registrar, Patiala, with regard to exemption from payment of stamp duty was taken for the transfer of the land in favour of the appellant Trust.

3. The learned Single Bench dismissed the writ petition by placing reliance upon a Memo dated 29.08.2014 (Annexure P-16), issued by the Department of Rehabilitation and Disaster, Government of Punjab, whereby Sub-Registrar/Joint Sub-Registrar has been authorized to consider such request for grant of exemption to Charitable Institutions, on the basis

of the guidelines issued in the said letter which also *inter alia* includes that institution seeking exemption should have been established at least 03 years out of which at least, for a period of 02 years, charitable activities should be in operation till the time exemption is being sought; and 1/4th share of the income of the institution should be spent on charitable activities. The objection raised by the State was also taken into consideration by the learned Single Bench that neither the appellant has mentioned any charitable activities in the Memorandum and Article of Association (MOA), nor any such activity has been proved and nor has it come on record that 1/3rd of the total income was spent on the charitable activities. It was also observed that out of the five sale deeds, four sale deeds were registered in the year 2014 and one of the sale deed was got registered on 10.07.2017 and only after execution of these sale deeds, for the first time, the appellant had approached the authorities for refund of the stamp duty and registration charges on 12.07.2017. It was further observed that a specific order was required to be passed by the Sub-Registrar/Joint Sub-Registrar, in view of the Memo dated 29.08.2014 (Annexure P-16) for granting such an exemption, since the appellant has not produced any document showing fulfillment of the conditions of the Memo dated 29.08.2014 (Annexure P-16), the appellant is not entitled to the exemption sought for.

4. The learned counsel for the appellant has submitted that the appellant is a Charitable Trust and has been registered with the Income Tax Authorities under Section 12-A of the Act of 1962, and as such, the appellant is entitled to the statutory exemption of payment of stamp duty in pursuance to the instructions dated 20.02.1981 (Annexure P-4) and

the instructions dated 29.08.2014 (Annexure P-16). However, the learned Single Bench has ignored this aspect of the matter that the appellant is a Charitable Trust and rendering charitable services in the area by way of providing education to children. Some concession in the education fee is also being provided to various children. In view of the instructions by the State Government (Annexure P-4 and Annexure P-16), the appellant is entitled for refund of stamp duty which was fixed on the sale deeds Annexures P-5 to P-9 and the order passed by the Sub-Registrar, dated 25.04.2018 (Annexure P-2) is liable to be set aside.

5. On the other hand, learned counsel for the State submitted that the appellant was not found performing any charitable work and therefore, rightly held not entitled to the exemption from payment of the stamp duty in pursuance to the State Government's instructions dated 29.08.2014 (Annexure P-16). Hence, the writ petition has been rightly dismissed by the learned Single Bench.

6. The appellant has relied upon the instructions dated 20.02.1981 (Annexure P-4) seeking exemption from payment of the stamp duty, on the ground that the appellant is a Charitable Institution. The said instructions were issued under Sections 78 and 79 of the Registration Act, 1908, by the State Government whereby Table of Registration fee was amended. The relevant portion thereof reads as under:-

> "*Provided further that no registration fee shall be chargeable on the following instruments of transfer of land:-*
>
> *(1) Instrument of sale or of gift executed by or on behalf of or in favour of a Gram Panchayat or a Municipal Committee.*

(2) Instrument of a sale or of gift executed in favour of a charitable institution;

(3) Instrument of sale executed by Government: and

(4) Instrument of exchange executed by the Gram Panchayat with any person,

for the purpose of construction of roads or buildings of schools, colleges, hospitals and dispensaries on such land.

Note:- *Charitable institutions means institution established for charitable purpose within the meaning of the Charitable Endowment Act, 1890 (Central Act of 1890)".*

7. Three sale deeds dated 11.07.2014, 25.07.2014 and 30.07.2014 (Annexures P-5 to P-7) were executed when the instructions dated 20.02.1981 (Annexure P-4) were in operation. The appellant has established that it a Charitable Trust which has been registered on 30.12.1994. Trust Deed has been placed on record as Annexure P-3, perusal of which would go on to show that one of the object of the Trust is to open, run and continue the educational and vocational institutions in healthy surroundings; and at the time of registration of the Trust, it was decided to purchase or take on lease a land to run a school under the name and style of "Mukat International Public School" and a college for girls under the name of "Mukat College for girls" at Rajpura. The said objective reads as under:-

OBJECTS OF THE TRUST

"To open run, continue educational and vocational

Institutions in healthy surroundings to run under the name and style of MUKAT EDUCATIONAL TRUST. At present they will purchase or take on lease a land to run a school (Mukat International Public School) and a college for girls (Mukat College for Girls) at Rajpura and they will first construct the property according to the needs and requirements of school and college for education of students."

xxxx xxxx xxxx xxxx xxxx

8. As per the instructions issued by the Government dated 20.02.1981 (Annexure P-4), a "Charitable Institution" has also been defined as such institution which has been established for charitable purpose within the meaning of the Charitable Endowments Act, 1890. As per the provisions contained in Section 2 of the Charitable Endowments Act, 1890 "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. The said Section reads as under:-

*"2. **Definition.---** In this Act, "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship."*

9. Since the appellant is a Trust registered with one of the objective as running educational and vocational institutions, i.e. to provide education, therefore, falls within the definition of charitable purpose under the Charitable Endowments Act, 1890. Hence, *prima facie* the appellant being a Charitable Institution would be entitled to claim exemption of

stamp duty on the sale deeds dated 11.07.2014 (Annexure P-5), 25.07.2014 (Annexure P-6) and 30.07.2014 (Annexure P-7), in pursuance to the Government notification dated 20.02.1981 (Annexure P-4). The stamp duty having wrongly received contrary to the said government instructions, the appellant would be entitled for the refund of the same. This fact was not brought to the notice of the learned Single Bench who accordingly missed this aspect, hence, decision of the Single Bench to this effect is not legally sustainable.

10. The factum that there was non-application of mind on the merits of the case by the competent authority would also be clear since a non-speaking order has been passed whereby the request for the said benefit was denied solely on the ground that refund was being asked for and had not been claimed at the relevant point of time. The order passed by the Registrar reads as under:

> *"In reference to the subject cited above and in relation to your request under reference, you are hereby informed that vasika No. 1364, dated 15.07.2014, vasika No. 1532, dated 25.07.2014, vasika No. 1909, dated 05.09.2014, vasika No. 1567, dated 30.07.2014 and vasika No. 1467 had been got registered on 10.07.2017. At that point of time, you had not obtained approval from Hon'ble Registrar (D.C.), Patiala, with regard to exemption from payment of stamp duty on instruments for transfer in favour of charitable institutions and neither any such document had been appended from where it could be clarified that the said vasikas were pertaining to charitable trust. As such, refund of stamp duty affixed on registered vasikas is beyond our ambit."*

11. No doubt the appellant, at that point of time, had not claimed the said benefit but nothing has been brought to our notice that if the entitlement was there and not claimed at that point of time, is there was any bar to claim the refund. This aspect has never been considered in the true perspective by the authorities and for that reason, we are of the considered opinion that the matter would need a re-look as to whether the case of the appellant was never admissible under the earlier instructions dated 20.02.1981? It was also for the authorities to examine as firstly that whether the appellant was a charitable institution as defined under the Charitable Endowments Act, 1890 and was doing any charitable work as now claimed and that education would fall within the ambit of the same. The said exercise was thus to be conducted at the first level which has apparently not been done while rejecting the case on the ground that the claim had not been made.

12. Similar would be case of the sale deed dated 05.09.2014 (Annexure P-8) and 10.07.2017 (Annexure P-9) as these sale deeds were executed after 29.08.2014, i.e. after the issuance of the subsequent instructions by the State Government dated 29.08.2014 (Annexure P-16). A perusal of the said instructions indicate that the Department of Revenue, Rehabilitation and Disaster Management (Stamp and Registry Branch), Government of Punjab, issued instructions regarding grant of exemptions in payment of stamp duty and registration fee for transfers in favour of Charitable Institution by way of gift and sale deeds. The relevant portion of the said instructions reads as under:-

> "*In reference to the letter referred above with*

regard to subject cited above, as per directions issued, decision with regard to exemptions which are being sought by Charitable Institutions for the gift/sale deeds being executed in favour of Charitable Institutions/Trust/Society/decision is to be taken by the Collector at his own level. However, it has been seen that some Registrar/Joint Sub-Registrar after ignoring these directions have been registering the gift/sale deeds in favour of Charitable Institutions/Trust/Society at their own level and in order to cover up their wrong doings they make a reference under Section 47-A of the Indian Stamp Act to Collector after impounding the instrument. This practice is totally wrong.

2. Apart from this, it has also been seen that different officers for giving exemptions to these institutions have been following different practices. No specific directions or instructions in this regard, have also been issued by the Government to the Officers.

3. After this, matter was considered seriously and it was decided that <u>in future for the purpose of giving exemptions to charitable institutions, power would vest with Sub-Registrar/Joint Sub-Registrar</u>. The above mentioned instructions issued by the Government on 12.02.2014 and directions bearing No. 8/27/03-HKSB-2/5784, dated 04.08.2009 be considered superseded to this extent. However, it be ensured that <u>while exercising these powers, Sub-Registrar/Joint Sub-Registrar follow the below mentioned</u>

<u>guidelines for taking decision/action</u>:-

1. In the memorandum and Articles of Association of the Trust, Charitable activities should be included and

2. Institution should have been established at least for a period of three years, out of which at least for a period of two years, Charitable activities should have been done and

3. This charitable activity should be in operation till the time exemption is being sought, and

4. One-fourth share of the income of the institution should be spent on charitable activities. In this regard, no specific limit can be affixed, however, it is felt that at least 1/3rd share should be spent on these activities.

4. Charitable Institutions have been defined under Charitable Endowments Act, 1890. It is clarified that whichever institution seeks exemption from stamp duty, it shall be necessary to produce above said facts along with documents. In these documentary proof, balance sheet of the institution, annual report, certificate from Chartered Accountant, Certificate of Exemption under Section 12-A of the Income Tax Act, etc. can be included. At the time of grant of exemption, a specific order shall be required to be passed by Sub-Registrar/Joint Sub-Registrar showing on what basis, exemption is being granted."

13. As per the aforesaid instructions, a Charitable Institution/Trust is not entitled to exemption from payment of the stamp duty merely on

account of having registration of an Institution as a Trust or society by giving a nomenclature as 'Charitable Institution', but the Collector has been empowered to take a decision for the purpose of granting such exemption on the basis of the guidelines provided in the said instructions. The Collector has to give an opinion and take a decision on all the points which has been mentioned in the said instructions as guidelines which includes that the charitable activities should be mentioned in the Memorandum and Article of Association of the Trust; and institution should have been established at least for a period of three years and out of which charitable activity should have been done for a period of two years. Apart from this, the 'charitable activity' should be in operation at the time of seeking the exemption. In addition to this, the 'Charitable Institution' has to establish that 1/4th share of the income of the institution has been spent on charitable activities. In order to take a decision regarding the 4th guideline, i.e. as to whether 1/4th share of the income of the institution has been spent for charitable activity, the Collector is required to take into the factual aspect on the basis of documents, which are required to be placed on record by the party who is seeking exemption.

14. Thus, regarding the sale deeds dated 05.09.2014 and 10.07.2017 (Annexures P-8 & P-9), similar exercise was to be carried out by the Sub-Registrar whether the same would fall within the purview of the subsequent instructions and whether the appellant was carrying out a charitable activity as claimed. The said issue would require a reasoned order to be passed after asking the appellant to supply all the necessary material to bring their case within the ambit of the said instructions. Therefore, the decision of the Sub-Registrar to reject the case on the

ground that since the sale deeds had already been executed and therefore, it did not have the jurisdiction to refund the stamp duty which was already paid cannot be sustained. Once a legal right is provided under the relevant instructions, we do not see any reason why the appellant should be denied the benefit of even consideration of the refund of the stamp duty once its case falls within the four corners of the relevant instructions. It is pertinent to notice that for the said deeds, it has been alleged that a sum of Rs.22,14,840/- was paid and therefore, in the absence of any bar which is shown to us, we do not see any reason as to why the refund of the stamp duty should not be granted if warranted in the facts and circumstances. Resultantly, we are of the considered opinion that the order of the learned Single Judge dated 20.08.2019 is not liable to be upheld as contended by the State and similar would be the position of the speaking order dated 25.04.2018 (Annexure P-2).

15. Accordingly, the present appeal is allowed and both the orders are set aside. The appellant is given an opportunity to approach respondent No.4 for fresh consideration of seeking refund of stamp duty on its sale deeds, keeping in view the observations made above and by producing the relevant material in support of its claim. The competent authority shall then pass a reasoned order on the same.

Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

February 10, 2023

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Whether Speaking	Yes
Whether Reportable	Yes