**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP No. 8383 of 2022 (O&M)**
**Date of decision: 31.01.2023**

**Prem Chand Markanda SD College for Women**
**...........Petitioner**

**Versus**

**Assistant Commissioner of Income Tax (Exemptions) and another**
**..........Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**
**HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms. Radhika Suri, Senior Advocate,
with Mr. Ishan Aggarwal, Advocate,
for the petitioner.

Mr. Varun Issar, Junior Standing Counsel,
for the respondents.

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**Ritu Bahri, J.**

Petitioner is seeking a writ in the nature of certiorari for quashing the notices dated 16.03.2022, 29.03.2022 (Annexures P-3 and P-6) issued under clause (b) of Section 148A and Section 148 of the Income Tax Act, 1961 along with order dated 29.03.2022 (Annexure P-5) passed under clause (d) of Section 148A of the Act, being without jurisdiction and against the 3rd proviso to Section 12A(2) of the Act.

The petitioner-assessee is a society registered under the Registrar of Societies, Punjab, vide certificate dated 21.06.1993. The assessee is running a college exclusively for girls since 1973 and further a school for plus one and plus two for girls students separate from college, which is an integral part of the college as well. Petitioner-assessee is getting substantial aid from the State Government in the shape of reimbursement of staff salary and therefore, prior to assessment year 2016-17, it was entitled to blanket exemption from income tax in terms of clause (iiiab) of section 10 (23C) of the Act.

The petitioner applied for registration under Section 12AA of the Act in Form No.10A on 28.03.2016 before the competent authority. This step was taken keeping in view the insertion of Rule 2BBB by the Income Tax 13th amendment Rules 2014 w.e.f. 12.12.2014, which prescribed the percentage of Government Grant for considering an institution as substantially financed to be not less than 50% of its total receipts. Apprehending that it may not invariably fulfill this condition, the above said application for registration under Section 12AA of the Act was made. As per order dated 30.09.2016 (Annexure P-1), applicable from the assessment year 2016-17 onwards, the petitioner became a registered society under Section 12AA of the Act. **This registration was applicable for the assessment year 2016-17 and onwards until withdrawn by CIT (Exemptions), Chandigarh**. The petitioner again applied for fresh registration as per clause 12AB of the Act and vide order dated 15.10.2021 (Annexure P-2), the petitioner-society was again registered for a period of five years from assessment year 2022-23 to 2023-27.

The petitioner received a notice dated 16.03.2022 (Annexure P-3) under Section 148(b) of the Act, for the assessment year 2015-16, along with Annexure A, containing details of information suggesting escapement of income on account of bank interest and cash deposits in two of its bank accounts. On receiving the said notice, petitioner uploaded its reply on 22.03.2022 (Annexure P-4) taking a plea that as per 3rd proviso to Section 12A(2) of the Act, there was a bar to take any action under Section 147 for any preceding year, in which the registration was granted. However, the objections given by the petitioner were dismissed vide order dated

29.03.2022 (Annexure P-5). Thereafter, notice under Section 148 of the Act has been issued to the petitioner.

Upon notice of the petition, respondents have filed their reply and contested the claim of the petitioner. Reference has been made to the judgment passed by the Allahabad High Court (Lucknow Bench) in ***Commissioner of Income-Tax (Exemptions) vs. Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan,*** (2020) 422 ITR 468 (All) (Annexure R-1) and by this Court in ***Gian Castings Private Limited vs. Central Board of Direct Taxes and others,*** CWP-9142-2022 (decided on 02.06.2022) (Annexure R-2) and order passed by Hon'ble the Supreme Court in SLP (C) No.10762 of 2022 (Annexure R-3). Further reference has been made to the judgments passed by Hon'ble the Supreme Court in ***Phool Chand Bajrang Lal vs. ITO,*** 2003 ITR 456 (SC); ***Raymond Woolen Mills Ltd. vs. ITO,*** 236 ITR 34 (SC) and ***Shri Krishna Pvt. Ltd. vs. ITO,*** 221 ITR 538 (SC) (16.07.1996), whereby consistently, it has been held that re-assessment can be carried out or initiated where the assessee had failed to disclose the material facts, which were necessary for assessment. The taxpayer cannot be permitted to abandon the machinery and invoke the jurisdiction of the High Court under Article 226 of the Constitution when adequate remedy open to him is by way of appeal to the Commissioner (Appeals).

Learned counsel for the petitioner, at the outset, referred to the 3rd proviso to Section 12A(2) of the Act, which strictly prohibits issuance of notice under Section 148 of the Act in the case of a trust for any year preceding the assessment year, in which registration under Section 12AA had been granted. She has argued that no action under Section 147 can be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year, only on the ground of non-registration of such trust. Further reference has been made to a recent judgment passed by the High Court of Karnataka in ***Commissioner of Income Tax (Exemptions) & another vs. Karnataka State Students Welfare Fund,*** (2022) 444 ITR 436 (Kar). In that case, the registration to the trust was granted for the assessment year 2014-15. For the financial year 2013-14, the surplus income of earlier years was sought to be taxed by the Assessing Officer without extending the benefit of Sections 11 and 12 of the Act. The only reason for re-opening the assessment was that there was reference of registration under Section 12-A of the Act and by referring to the proviso to Section 12A (2), the CIT (Appeals) held that re-assessment could not be opened under Section 147 of the Act with respect to the preceding assessment year, for which, the registration had been given. She has finally, argued that the judgments (Annexures R-1 and R-2) relied upon by the respondents had not examined proviso to Section 12A(2) of the Act. Hence, the said judgments cannot be made applicable to the facts of the present case.

Heard, learned counsel for the parties.

At the outset, reference can be made to the judgment passed in ***Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan's*** case (supra), whereby the Allahabad High Court was examining the case of a trust, which had made application under Section 12AA of the Act on 15.12.2014 and the registration was given on 08.06.2015. The Tribunal allowed retrospective coverage to the assessee on the basis of the proviso to sub-section (2) of Section 12A. While allowing the appeal filed by the department, the Allahabad High Court had observed as under:-

> "21. Accordingly, the judgment of the Gujarat High Court in CIT v. Mayur Foundation (supra), would not apply. The view expressed therein cannot be applied to the facts of this case, otherwise

> an anomalous situation may emerge in a given case where for one or the other reason assessment proceedings before the Tribunal remain pending for years together or on a remand or for any other reason it comes before the Assessing Officer and in such cases also subsequent application for registration and acceptance would result to extend the benefit of sections 11 and 12 creating an anomalous position if not meant for. This was not the object sought to be achieved by the Legislature. If for one or the other reason, the proceedings in reference to the assessment years 1988-99 remains pending and the application for registration under Section 12AA of the Act, 1961 is filed in the year 2014-15 followed by registration, if the proviso is applied, then the benefit of sections 11 and 12 of the Act, 1961 would be given to the trust or the institution even for the year 1998-99, though the Legislatures have not provided such arrangement or to extend the benefit in such cases. The provision is candid to govern only those cases where the application for registration is submitted followed by registration, to extend the benefit to the assessee from the following financial year of the date of application. Taking the aforesaid into mind, we find reasons to allow the appeal preferred by the Revenue and the substantial questions of law framed hereinabove are answered in favour of the Revenue and thereby we set aside the order passed by the Tribunal."

***Gian Castings Private Limited's*** case (supra) (Annexure R-2), this Court was examining the provisions of Amending Act, 2021, whereby provisions contained in Sections 147 and 148 of the Act had undergone change. Section 148A of the Act was added for conducting enquiry, providing opportunity before issuance of notice under Section 148. The said petition was dismissed by observing that proceedings had not even been concluded by a statutory authority. Even in this judgment, 3rd proviso to Section 12A(2) has not been examined.

Question for consideration, now is, whether 3rd proviso to Section 12A(2) of the Act can be ignored by the authorities by issuing a notice under Section 147.

The petitioner has referred CBDT circular No.01/2015 dated 21.01.2015, which reads as under:-

"Para 8- applicability of registration granted to a trust or institution to earlier years
8.2 non-application of registration for the period prior to the year of registration cost genuine hardship to charitable organizations. Due to absence of registration, tax liability is fastened and even though they may otherwise be eligible for exemption and fulfil other substantive conditions however the power of condonation of delay in seeking registration was not available."

This circular clearly provides that non application of registration for the period prior to the year of registration can genuinely cost hardship to the charitable organizations. **Section 12A lays down certain conditions for applicability of Sections 11 and 12**;

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of section 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

**Provided** that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which, assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:-

**Provided further** that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid

> assessment year only for non-registration of such trust or institution for the said assessment year:
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> **Provided also** that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.

The 3rd proviso was never examined by the Allahabad High Court in ***Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan's*** case (supra) (Annexure R-1).

Another fact, which requires consideration, is that in the present case, after issuance of notice dated 16.03.2022 (Annexure P-3) under Section 148A(b), objections were filed by the petitioner on 22.03.2022 (Annexure P-4). However, respondent No.1, vide order dated 29.03.2022 (Annexure P-5) dismissed the same and issued a notice under Section 148 of the Act to the petitioner. While doing, no reference was made to the 3rd proviso to Section 12A of the Act. In the present case, once reply filed by the petitioner pursuant to the notice dated 16.03.2022 (Annexure P-3) had been rejected vide order dated 29.03.2022 (Annexure P-5) without examining the 3rd proviso to Section 12A(2), relegating the petitioner to take alternative remedy would not be appropriate.

Registration of the petitioner-trust was granted on 30.09.2016 (Annexure P-1), which was applicable from the assessment year 2016-17. As such, said registration was valid for claiming the benefit under Sections 11 and 12 of the Act.

In view of the above discussion, in the present case, as per the ratio of the judgment passed by the Karnataka High Court in ***Karnataka State Students Welfare Fund's*** case (supra), no proceedings under Section

147 can be initiated for the assessment year 2015-16. Hence, impugned notices 16.03.2022, 29.03.2022 (Annexures P-3 and P-6) and the consequent order dated 29.03.2022 (Annexure P-5) passed under Section 148A(d) of the Act being contrary to the 3rd proviso to Section 12A(2) of the Act, are set aside.

Petition stands allowed accordingly.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

31.01.2023
ajp

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