IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 *2023:PHHC:158008-DB*

ITA Nos.297 and 298 of 2019
Date of Decision: 04.12.2023

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

Versus

M/s. Punjab Heritage & Tourism Promotion Board, Chandigarh
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Varun Issar, Advocate,
for the appellant (in both the cases).

G.S.SANDHAWALIA, J. (Oral)

1. The present judgment shall dispose of two appeals i.e. ITA Nos.297 an 298 of 2019, which have been filed under Section 260A of the Income Tax Act, 1961 (in short 'the Act'), as both the appeals arise out of same order dated 07.09.2018 (Annexure A-6 in both the cases) passed by the Income Tax Appellate Tribunal, Chandigarh in ITA No. 158/Chd/2015 for the assessment year 2008-09 and in ITA No.159/Chd/2015 for the assessment year 2009-10. It is pertinent to mention that ITA No.299 of 2019 has been dismissed as not maintainable vide order of even date on account of low tax element and in view of Circular No.3/2018 dated 11.07.2018 and Circular No.17/2019 dated 08.08.2019.

2. Reference is being made to ***ITA-297-2019, The Commissioner of Income Tax (Exemptions), Chandigarh vs. M/s. Punjab Heritage & Tourism Promotion Board, Chandigarh*** for the assessment year 2008-09.

3. The following substantial questions of law as such are sought to

be raised before this Court for consideration:-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in deleting penalty u/s 271(1)(C) by accepting the plea of the assessee that it was under a bonafide belief that it would be allowed registration u/s 12AA for A.Ys 2007-08 and 2008-09 ignoring the decision of the Hon'ble Supreme Court in the case of UOI vs. Dharmendra Textile processors 306 ITR 277 (SC) wherein it was held that penalty proceedings u/s 271(1)(c) is a civil liability and mens-rea is not relevant?*
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> *(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in deleting penalty u/s 271(1)(c) ignoring the decision of the Hon'ble Delhi High Court in the case of CIT vs. Zoom communications Pvt. Ltd. 327 ITR 510 (Del) when the claims of the assessee with respect to exemption u/s 11 for the AY 2007-08 and 2008-09 were untenable in law since the assessee did not have registration u/s 12AA?*
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> *(iii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in deleting penalty u/s 271(1)(C) by accepting the plea of the assessee on merits on the issue of disallowance of interest income on FDR when the ITAT had itself dismissed the appeals of the assessee on quantum addition vide its earlier orders in ITA No.257, 258, 1094 & 1095/Chd/2011 for the A.Ys. 2007-08 and 2008-09 and ITA No. 1031/Chd/2012 for the AY 2009-10?*
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> *(iv) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in deleting penalty u/s 271(1)(C) on the issue of disallowance of interest income on FDR when it is not debatable issue that the interest earned is a revenue receipt and should have been included in the income of the assessee?*

(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 further suffering from non-application of mind and is unreasonable and arbitrary and therefore, perverse."

4. A perusal of the order of the Tribunal (Annexure A-6) would go on to show that the reasons which weighed with the Tribunal while allowing the appeal as such are that it was not a fit case for levy of penalty under Section 271(1)(c) of the Act on account of the fact that the assessee had claimed exemption under Section 11 of the Act vide the application dated 18.12.2006. The registration to the assessee as a charitable institution had been granted from the assessment year 2009-10 and on account of the fact that the assessee was under a *bona fide* belief that its application for registration was likely to be allowed, it had been mentioned in the relevant column that registration is applied for. The plea was also noticed that since the assessee was liable to remit the amount of interest to the government and it was shown as liability and was not shown as receipt in the income and expenditure account which was a *bona fide* exercise. Similar plea had been taken regarding interest expenditure earned by the assessee. Resultantly, a finding had been recorded that it is not a case of furnishing of inaccurate particulars of income and concealment of income on the part of the assessee warranting penalty under Section 271(1)(c) of the Act while allowing the appeals.

5. Counsel for the Revenue has argued that on 30.06.2008/02.07.2008, the benefit of exemption was granted in the application filed under Section 11 w.e.f. 2009-10 and the return was filed for the assessment year 2008-09 on 21.01.2009 and, therefore, the assessee was

well aware of the fact that the benefit of exemption has not been granted. It is submitted that the assessment proceedings otherwise have been upheld till this Court in ***ITA Nos.147 to 150 of 2014, M/s. Punjab Heritage and Tourism Promotion Board, Chandigarh vs. Commissioner of Income Tax, Chandigarh*** decided on 28.07.2014 since the appeals were time barred. Accordingly the assessment order has been already upheld in the appeals filed against the order of the Tribunal by the assessee which had been decided on 22.08.2012 (Annexure A-3).

6. We have perused the paper book. It is not disputed that against the order dated 30.06.2008/02.07.2008 whereby exemption was granted under Section 12AA of the Act, the assessee had filed a rectification application. The rectification application was dismissed on 04.12.2009 by the Commissioner of Income Tax. The said order reads thus:-

> *"ORDER U/S 154 OF THE INCOME TAX ACT, 1961*
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> *The assessee, Punjab Heritage and Tourism Promotion Board, Sector 38, Chandigarh vide its letter dated 30.11.2009 has stated that order u/s 12AA of Income-tax Act, 1961 passed by this office on 30.6.2008 granting registration to it w.e.f. the A.Y 2009-10 is not correct. Registration was required to be allowed to it from the AY 2007-08.*
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> *The assessee's submission was considered in the light of the facts of the case and the provisions of law applicable. The assessee society filed an application with this office on 18.12.2006 in the prescribed proforma requesting for grant of registration u/s 12A of the Income-tax Act, 1961 enclosing therewith a copy of bye-laws and Income and Expenditure" statement. On*

perusal of clause 26 of the bye-laws, it was noticed, that the dissolution' clause was inconsistent and improper and was not in accordance with the provisions of the Societies Registration Act, 1860. The application of the assessee was thus filed on 22.6.2007 informing the society that its case can be considered only on amendment of this clause and receipt of amended Rules and Regulations.

A fresh application alongwith a copy of amended 'dissolution' clause was filed by the assessee on 15.4.2008. As the fresh application was filed by the assessee during the Financial Year 2008-09, an order u/s 12AA of Income-tax Act, 1961 was passed by the undersigned on 30.6.2008 granting registration to the society from the A.Y 2009-10 as per the provisions of section 12A(2) of Income-tax Act, 1961. In the Act, there is no provision for granting registration retrospectively. As there was filing of fresh & correct application on 15.4.2008 i.e. FY 2008-09, the assessee was entitled for registration from A.Y 2009-10 only and registration u/s 12AA of the Income tax Act, 1961 was rightly granted to it from the A.Y 2009-10 as per provisions of section 12A (2) of Income-tax Act. There is no mistake apparent from record. The assessee's application for rectification of the above said order is thus rejected.

Sd/-
Commissioner of Income Tax-II
Chandigarh"

7. A perusal of the said order would go on to show that the assessee was always wanting its applications to be considered from the date he had filed which was 18.12.2006 and his case for registration was to be allowed for the year 2007-08. Once the issue was pending before the authorities, it is in

such circumstances, the assessee in his return filed had mentioned that the matter was pending. Thereafter, it was followed up by filing an application for rectification asking for exemption from the date the application was filed.

8. Thus, we are of the considered opinion that the Tribunal has rightly come to the conclusion that the assessee was under a *bona fide* belief that his application for registration was likely to be allowed. The co-ordinate Bench while deciding ***ITA No. 147 of 2014*** has noticed these facts also while upholding the orders of the Tribunal on an earlier occasion while dismissing the appeals on the ground of limitation. Once the matter was pending consideration before the authorities and under the provisions of the Act, the application has to be decided within a period of six months. Accordingly, we are of the considered opinion that the Tribunal has arrived at a correct finding to the extent that there was *bona fide* belief in the mind of the assessee that the rectification application was liable to be allowed. In such circumstances, it cannot be said that the view of the Tribunal in setting aside the penalty proceedings is perverse.

9. In ***CIT vs. Raj Overseas, 2011 (336) ITR 261,*** the assessee being a manufacturer, had derived income from exports and claimed deduction under Section 80-IB of the Act in respect of the income from duty drawback which was disallowed. Resultantly, penalty was also levied. This Court came to the opinion that the order of the Tribunal that it is a debatable issue whether penalty was not liable to be levied was accordingly upheld as the deduction claimed by the assessee did not lack any *bona fides* and the penalty under Section 271(1)(c) of the Act was not attracted. Reliance was placed upon the judgment of the Apex Court in ***CIT vs. Reliance Petro-products P. Ltd. (2010) 322 ITR 158 (SC)*** and it was held that the view taken by the

Tribunal is a possible view.

10. Accordingly, we are of the considered opinion that the facts and circumstances herein also are identical to that extent and, therefore, we do not feel that any question of law is arising for consideration before this Court which is to be considered.

11. Accordingly, both the appeals stand dismissed.

(G.S. SANDHAWALIA)
JUDGE

04.12.2023
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes