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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-591-2008 (O&M)
Date of Decision: 22.07.2024

THE COMMISSIONER OF INCOME TAX, PANCHKULA

…….Appellant

V/s.

HARYANA RURAL DEVELOPMENT FUND ADMINISTRATION BOARD, PANCHKULA

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Amanpreet (A.P.) Singh, Senior Standing Counsel, for the appellant.

Mr. Viraj Gandhi, Advocate for the respondent.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. This Income Tax Appeal is preferred by the appellant-revenue assailing the order dated 28.02.2008 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereafter referred to as "the ITAT") whereby it allowed the Appeal filed by the respondent-Board and set aside order dated 11.08.2006 passed by the Commissioner of Income Tax, Panchkula under Section 12 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") whereby it had cancelled the Registration of the respondent-Board.

2. Learned counsel for the appellant-revenue submits that in light of the recent judgment passed by the larger Bench of the Hon'ble Supreme Court, in the case of ***Assistant Commissioner of Income Tax (Exemptions)*** Vs. ***Ahmedabad Urban Development Authority***; *(2022) 449 ITR 1,* order dated 28.02.2008 passed by the ITAT deserves to be set aside and the matter should be remanded back to the ITAT for re-examination. It is his submission that respondent-Board will have to satisfy that it did not carry out any other commercial activities.

3. Learned counsel appearing for the respondent-Board supports the impugned order passed by the ITAT and submits that the ITAT has considered all the aspects and the two essential requirements for grant of Registration under Section 12-AA of the Act.

4. We have considered the submissions of learned counsel for both the parties.

5. Section 2(15) of the Act defines charitable purpose and the essential feature that the concerned organization must be carrying out the activities for general public utility. It is only such society, Court or a statutory authority which could be entitled for Registration under Section 12-AA of the Act.

6. The larger Bench of the apex Court, after having considered the entire law, has summed up its conclusions with regard to the interpretation of the changed definition of the "charitable purpose" which has brought w.e.f. 01.04.2009 in Section 2(15) of the Act. Apart from laying down the general tax under Section 2(15), it also proceeded to examine the scope of Registration for authorities, Corporations or Bodies established by the statute and whether they were entitled to exemption under Section 10 (23-C) of the Act.

7. It would be apposite to quote observations and conclusion in the case of *Assistant Commissioner of Income Tax (Exemptions)* **(Supra)**

for the purpose of adjudication of the present case. The same are reproduced as under:-

> ***"IV. Summation of conclusions***
>
> *253. In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of "charitable purpose" (w.e.f. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act.*
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> ***A. General Test Under Section 2(15)***
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> *A.1 XXXX*
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> *A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected ("actual carrying out..." inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);*
>
> *A.3 XXX*
>
> *A.4 Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has not been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.*
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> ***B. Authorities, corporations, or bodies established by statute***

B.1. The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the state government or central governments, for achieving what are essentially 'public functions/services' (such as housing, industrial development, supply of water, sewage management, supply of food grain, development and town planning, etc.) may resemble trade, commercial, or business activities. However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are prima facie to be excluded from the mischief of business or commercial receipts. This is in line with the larger bench judgments of this court in Ramtanu Cooperative Housing Society and NDMC (supra).

B.2. However, at the same time, in every case, the assessing authorities would have to apply their minds and scrutinize the records, to determine if, and to what extent, the consideration or amounts charged are significantly higher than the cost and a nominal mark-up. If such is the case, then the receipts would indicate that the activities are in fact in the nature of "trade, commerce or business" and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to Section 2(15) of the IT Act.

B.3. In clause (b) of Section 10(46) of the IT Act, "commercial" has the same meaning as "trade, commerce, business" in Section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity". However, in the case of such notified bodies, there is no quantified limit in Section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under Section 10(46).

B.4. For the period 01.04.2003 to 01.04.2011, a statutory corporation could claim the benefit of Section 2(15) having regard to the judgment of this Court in the Gujarat Maritime Board case *(supra). Likewise, the denial of benefit under Section 10(46) after 01.04.2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable purpose and seeking exemption under Section 10 (23C) or other provisions of the Act."*

8. In the said case of *Assistant Commissioner of Income Tax (Exemptions)* **(Supra)**, the apex Court has reiterated the view taken earlier in the case of ***Commissioner of Income Tax*** Vs. ***Gujarat Maritime Board;*** *2007(12) SCR 962.*

9. In view of the aforesaid, we find that the ITAT has considered the objects for enactment of the Haryana Rural Development Act, 1986. The Board was constituted in terms of the said Act with the purpose of augmenting agricultural production and improving market sales. The activities have been enumerated to improve development of roads, establishment of dispensaries, water supply & sanitation and other public facilities, conversion of notified market areas falling in rural areas by utilizing technical know-how, construction of godowns and storage places for agricultural produce, construction of rest houses for the visitors in the market area. The Board earnings are the fee prescribed under the Haryana Rural Development Act, 1986 to be made as a per centum of the sale proceeds of the agricultural produce.

10. It has, on the said basis, reached to the conclusion that the said Board is carrying out activities of general public utility in terms of the new definition of Section 2(20) of the Act. Upon reaching the factual findings as above, it proceeded to observe that the Commissioner was not justified in denying the Registration to the assessee.

11. We do not find any error in the judgment passed by the ITAT. No substantial question of law can be said to be made out keeping in view the observations of the Supreme Court (Supra). We do not find any reason to interfere with the judgment and order dated 28.02.2008 passed by the ITAT. Accordingly, the present Appeal is ***dismissed***.

12. Consequences shall follow.

13. All pending applications filed in this case shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

July 22, 2024 **[SANJAY VASHISTH]**
Ess Kay **JUDGE**

Whether speaking / reasoned : Yes / No
Whether Reportable : Yes / No