206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:136115-DB

ITA-385-2016 (O&M)
Date of Decision: 18.10.2024

Principal Commissioner of Income Tax (Central), Gurgaon …Appellant

Vs.

Prabhu Dayal Memorial Religious Educational Association, Village Sarai Aurangabad

…Respondent

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

Present Mr. Varun Issar, Sr. Standing Counsel for the appellant.
Mr. Sanjeev K. Sharma, Advocate for
Mr. Deepak Aggarwal, Advocate for the respondent.

***

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The issue raised in the present appeal is no more *res-integra*. The Commissioner of Income Tax (Central), Ludhiana, vide his order dated 28.05.2009, had cancelled the registration of the respondents w.e.f. 01.10.2004, by exercising the powers under Section 12AA(3) of the Income Tax Act, 1961.

2. The ITAT vide its order dated 07.04.2016, decided bunch of appeals holding that the power was not available with the Commissioner of Income Tax (Appeals), to cancel the registration w.e.f. 2004, as the amendment in Section 12AA of the Act, to cancel the registration granted under Section 12AA of the Act, were added w.e.f. 01.06.2010 by the Finance Act, 2010.

3. Learned counsel submits that as the power was available under Section 12A with the Commissioner, the amendment in Section 12AA by the Finance Act, 2010, is to be treated as clarificatory and retrospective from the date of introduction of the Section 12AA i.e. from 01.10.2004.

4. We are afraid and we do not agree with such proposal as Section 12A is independent to Section 12AA of the Act, and if the argument of the

counsel for the appellant is accepted, then the very purpose of making an amendment in Section 12AA w.e.f. 01.06.2010, would be purposeless. The scope of Section 12A and 12AA of the Act, have to be read and considered independently.

5. This Court in ITA-21-2021, titled as The Commissioner of Income Tax, Patiala vs. Young Scholar's Educational Society, Barnala, decided on 08.05.2024, by relying upon the decision of the Hon'ble Supreme Court in *Industrial Infrastructure Development Corporation (Gwalior) M.P. Limited vs Commissioner of Income-Tax, Gwalior (2018) 403 ITR 1 (SC)*, has held as under:-

> *"In view of the aforesaid interpretation, we find that the Commissioner was required to examine the aforesaid factors while granting approval of registration under Section 10 (23C) of the Act. In the opinion of this Court, the same factors would also be required to be considered for the cancellation of registration already granted to the educational institutions, while examining the case under Section 12AA of the Act, of course, taking into consideration the conditions provided therein also."*

6. In view thereto, we do not find any reason to change our view to that has already taken earlier. The appeal is accordingly dismissed.

7. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

18.10.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No