

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No.336 of 2013 (O&M)

Reserved on:23.04.2015

Date of decision:05.05.2015

Commissioner of Income Tax-I Chandigarh

....Appellant

Versus

Sri Guru Gorakh Nath Charitable Educational Society, Ropar

.....Respondent

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Ms.Urvashi Dhugga, Advocate, for the appellant.

Ms.Radhika Suri, Sr.Advocate
with Ms.Rinku Dahiya, Advocate, for the respondent.

G.S.Sandhawalialia J.

The appeal, filed under Section 260A of the Income Tax Act, 1961 (for short, the 'Act') is directed against the order of the Income Tax Appellate Tribunal, Chandigarh (for short, the 'Tribunal'), passed in ITA No.1121/Chd/2012 dated 19.02.2013 (Annexure A-2). Vide the said order, the appeal of the respondent-Society has been allowed by the Tribunal and a direction has been issued to the Commissioner to grant registration to the Society under Section 12AA of the Act.

2. The two questions of law, on which the appeal is admitted, read as under:

“1. Whether on facts and in the circumstances of the case and in law the learned ITAT was correct in allowing the appeal of the assessee especially when the family run trust did not submit details

of assets and properties that they possessed as well as the treatment given to the assets of an old school being taken over by them.

2. Whether the ITAT was right in not upholding the findings of CIT u/s 12AA (1)(b)(ii) considering that assessee had failed to comply with provision u/s 12AA(1)(a) in as much as document and information called for was not submitted.”

3. The factual matrix of the case in hand is that the respondent-Society was registered with the Registrar of the Societies on 19.04.2005. It applied for registration under Section 12AA of the Act, in form No.10A on 16.03.2012. The Commissioner, vide order dated 28.09.2012 (Annexure A-1), rejected the application by coming to the conclusion that the Society had not proved its case whether the activities were being run in a charitable manner and that the Society was not created wholly and exclusively for charitable purposes. The reasons which prevailed with the Commissioner was that fresh evidence had not been furnished to prove that there was any provision for free subsidized education for poor and whether there was any element of public benefit. It was further found that the land and building on lease had been taken from the daughter of the General Secretary of the Society and the power of attorney had been signed by the father, namely, Amarjeet Singh Saini who was also the husband of Mrs.Madhuri Saini, the General Secretary. The complete details of land and the extent of the building like the number and measurement of rooms constructed on the land etc., had not been furnished. The terms of the lease was also taken into consideration pertaining to the annual lease and the fact that the Society had also taken name of another school namely, St. Carmel School, Giani Zail Singh Nagar, Ropar, along with students, furniture and fixtures. It was noticed that the building details were not furnished as such of the liability created and the expenditure incurred on the creation of such assets. The factum of the Society filing its returns since the year 2005-06 and claiming exemption under Section

10(23C) on the fact that the receipts were below ₹1 crore, was taken into consideration. It was further noticed that the amount of income is likely to exceed ₹1 crore in the financial year 2012-13 and the details of the office bearers and the members of the general body had not been furnished along with the identity of the office bearers. Accordingly, by holding that the Society was earning profits and had nothing to do with charity and had no visible plans and having not been satisfied with the objects and genuineness of the society and keeping in view the definition of charitable purpose under Section 2(15), registration was denied. As noticed, the Tribunal, vide the impugned order dated 19.02.2013, has allowed the appeal and directed that registration be granted to the Society.

4. Counsel for the Revenue has, accordingly, contended that once relevant materials have not been furnished, the Commissioner was well justified in denying the registration and the Tribunal was not justified in directing registration and even otherwise, the matter should have been remanded for a fresh enquiry on the basis of some directions laid down and it was not appropriate for the Tribunal, in such circumstances, to allow the appeal, in view the right of the Commissioner to go into the issue to satisfy itself of the objects and the genuineness of its activities.

5. Counsel for the assessee, on the other hand, vehemently assailed the order of the Commissioner and submitted that the order was based on the judgment of the Supreme Court in *MCD Vs. Children Book Trust 1992 (3) SCC 390*. In a later judgment of the Supreme Court in *M/s Queen's Educational Society Vs. Commissioner of Income Tax 2015 (3) TMI 619*, it had been specifically held that the earlier judgment of the Apex Court was dealing with the property tax provisions and therefore, could not have been relied upon and even the judgment of the Uttarakhand High Court had been reversed. Accordingly, the

reasoning given by the Tribunal was projected to be correct.

6. After hearing counsel for the parties, we are of the opinion that the Tribunal was not justified in allowing the appeal and issuing necessary direction and should have sent the matter back to the Commissioner for fresh enquiry. Admittedly, the factum of the additional information being asked for was never denied by the respondent-Society. In appeal, the assessee had only raised the issue as to whether the order of the Commissioner is arbitrary and unjustified and whether the activities of the Society did not qualify in the nature of charity and the finding had been based on suspicion and conjectures. The additional information being asked for, as such, was never controverted. It was not contended that the information had been supplied but was not taken into consideration. Under Section 12AA, the procedure for registration is prescribed, which reads as under:

“Procedure for registration.

12AA. (1) The [*Principal Commissioner*] or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a)[or clause (aa) of sub-section (1)] of [section 12A](#), shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

[(1A) All applications, pending before the [*Principal Chief*

Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the [*Principal Commissioner or*] Commissioner and the [*Principal Commissioner or*] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) of sub-section (1)] of [section 12A](#).]

[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under [section 12A](#) [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] and subsequently the [*Principal Commissioner or*] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]”

7. A perusal of the above section would go on to show that the Commissioner has to satisfy himself of the objects of the trust and the genuineness of the activities and after giving an opportunity of being heard to the trust or the institution, a refusal can be made to register the trust. Thus, the section gives power to the Commissioner to look into the genuineness of the activities of the trust and to satisfy himself about its activities. Under Section 12A, the provisions of Sections 11 & 12 shall not apply in relation to the income of any trust or institution unless various conditions are fulfilled. The said sections provide that income from property held for charitable purposes shall not be included in the total income of the previous year of the person in receipt of the income.

8. The provisions of Section 12AA, thus, also give the power under sub-section(3) to cancel the registration of the activities of the trust if it is not carried out in accordance with the objects but the Commissioner has to keep in mind that it is not to act as an Assessing Authority while deciding the application under Section 12AA and the enquiry regarding the genuineness of the activities of imparting education with a charitable purpose is to be kept in mind. The objects of the trust, thus, have to be taken into consideration. Section 2(15) defines charitable purpose and the same includes relief in education and advancement of any other object of general public utility. In case the utility is carried out in the nature of trade, commerce, business, the proviso provides that the same will not be a charitable purpose. Sub-section 2(15) reads as under:

“Sub-section 2 (15) - "charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:]

[Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [twenty-five lakh rupees] or less in the previous year;]”

9. These aspects have not been taken into consideration by the Tribunal which has placed heavy reliance upon the judgment of this Court in **Pinegrove International Charitable Trust Vs. Union of India & others [2010] 327 ITR 73**, which has now been upheld by the Apex Court in the case of **M/s Queen's Educational Society** (supra). However, it is also to be noted that a Division

Bench of this Court in *Commissioner of Income Tax Vs. Surya Educational & Charitable Trust [2013] 355 ITR 280*, subsequently, held that the principles laid down for excluding income under Section 10(23C) are not applicable while considering the application for registration under Section 12AA. It was also further held that the genuineness of the objects of the trust are to be taken into consideration. Relevant observations read as under:

“On the other hand, Section 10(23C) of the Act are the provisions of the Act in substitution of the earlier provisions of Section 10(22) of the Act as to which income shall not be included in computing the total income of any person. Therefore, the provisions of Sections 11, 12 or Section 10(23C) of the Act, deal with the income of a Trust or of the Institution and the circumstances as to when such income is to be excluded for computing the total income, but the basis of such benefit is the registration under Section 12AA of the Act. Unless a Trust or Institution is registered under Section 12AA of the Act, such Trust or Institution shall not be entitled to exclude from its total income, deductions or contributions or from other sources. Therefore, the principles laid down for excluding the income from consideration under Section 10(22) now 10(23)(C) or Sections 11 and 12 are not applicable while considering the application for registration under Section 12AA of the Act. The application for registration is required to be made within one year of the creation of the Trust. Section 12AA of the Act, requires satisfaction in respect of the genuineness of the activities of the Trust, which includes the activities which the Trust is undertaking at present and also which it may contemplate to undertake. The insertion of sub-section (3) to Section 12AA of the Act, clarifies the said fact, when it empowers the Commissioner to cancel the registration if the activities of the Trust are not carried out in accordance with such objects.

Therefore, the object of Section 12AA of the Act, is to examine the genuineness of the objects of the Trust, but not the income of the Trust for charitable or religious purposes. The stage for application of income is yet to arrive i.e. when such Trust or Institution files its return. Therefore, we find that the judgments referred to by the learned counsel for the appellant are not applicable to the facts of the present case arising out of the question of registration of the Trust and not of assessment.”

10. In such circumstances, the heavy reliance by the counsel for the assessee upon the judgment of the Division Bench in the case of **Pinegrove International Charitable Trust** (supra), as has been done by the Tribunal, also, would be without any basis. The power of the Commissioner to look into the objects of the Society and the genuineness of the same cannot be doubted when the basis is of non-supply of information. In such circumstances, it would be appropriate that the Commissioner undertakes the exercise afresh, on the basis of the application which has already been filed, keeping in view the material which can be produced by the respondent-assessee.

11. Accordingly, the order of the Tribunal dated 19.02.2013 is set aside with a direction to the Commissioner to decide the application, filed under Section 12AA, afresh. Since the application was filed more than 3 years ago, it would be appropriate that the same is decided expeditiously.

With the above observations, the present appeal stands allowed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

05.05.2015
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