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

CWP-23889-2011
Date of decision: February 01, 2016

Param Hans Swami Uma Bharti Mission
...Petitioner

Versus

Chief Commissioner of Income Tax, Panchkula and anr

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

Mr. Denesh Goyal, Advocate
for the respondent.

RAJIVE BHALLA, J.(ORAL)

The petitioner prays for issuance of a writ in the nature of certiorari, setting aside orders dated 15th September, 2011 and 13th October, 2011, passed by the Chief Commissioner of Income Tax, Haryana, Panchkula, whereby applications dated 30th March, 2008 and 11th October, 2010, filed by the petitioner have been dismissed, being barred by time.

Counsel for the petitioner submits that the petitioner is a society, duly registered under the Societies Registration Act, 1860 and for the purposes of Section 10 (23 C) (vi), was granted exemption from payment of tax for, assessment year 2007-08, vide order dated 22nd February, 2008 (Annexure P-4), passed by Chief Commissioner of

Income Tax, Haryana, Panchkula. The petitioner filed an application on 30th March, 2008 seeking exemption for assessment year 2008-09 but instead of receiving a decision in that regard the petitioner was served with a notice under Section 147 of the Act, seeking to assess the petitioner to tax for assessment years 2008-09, on the premise that no order has been passed under Section 10 (23C) (vi). The Assessing Officer, however, dropped assessment proceedings, when it was brought to his notice that the Central Board of Direct Taxes (hereinafter referred to as the 'CBDT') has issued Circular No.7/10, dated 27.10.2010 clarifying that approval issued under Section 10 (23 C) (vi) shall be a one time approval valid till it is withdrawn, provided it is granted on or after 1st December, 2006. The petitioner filed an application to withdraw applications dated 30th March, 2009 and 11th June, 2010, but the Chief Commissioner ignored the circular and dismissed the applications as barred by time and held that the applicant is not entitled to exemption for assessment years 2008-09 and 2009-10.

Counsel for the petitioner further submits that though the circular was notified on 27th October, 2010, but as Clause (4) makes it applicable to exemption orders passed on or after 1st December, 2006, the exemption granted to the petitioner in the year 2007-08 would remain in force as it has not been withdrawn.

Counsel for the revenue on the other hand submits that contentions raised by the petitioner are not only misconceived but contrary to the circular. The circular was issued on 27th October, 2010 and does not operate retrospectively. The applications were, therefore, rightly declined**.** In support of his argument, counsel for the revenue refers to Clause (5) of the circular and states that as the amendment takes effect from the first day of October, 2009, only approvals existing on or granted after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. Counsel for the revenue further submits that a perusal of the impugned order reveals that as the application for exemption was filed, beyond the period of limitation, the application was rightly rejected.

We have heard counsel for the parties, appraised the paper-book and duly considered the arguments. The dispute in the present case is whether in view of CBDT circular dated 27th of October, 2010, the petitioner was required, to file an application for exemption and if not, whether the Chief Commissioner could have rejected the application, for exemption?

We need not burden the order with irrelevant facts as our opinion would depend upon Clause (4) and (5) of the CBDT circular which, read as follows:-

(4) Approvals under sub-clauses (vi) and (via) of section 10 (23C) are governed by the procedure contained in rule 2CA. Rule 2CA was amended with effect from 1-12-2006, inter alia by substitution of the existing sub-rule 3 by a new provision which is reproduced below:

"(3) The approval of the Central Board of Direct Taxes or Chief Commissioner or Director General, as the case may be, granted before the 1st day of December, 2006 shall at any one time have effect for a period not exceeding three assessment years".

Read in isolation, without any further guidance as was given by way of explanatory notes to Finance Act, 2006 in respect of *amendment of sub-clauses (iv) and (v) of Section 10(23 C), the above amendment leaves some scope for doubt about the period of validity of the approval under Section 10(23C) (vi) and (via) on or after 1-12-2006. For the removal of doubts if any in this regard, it is clarified that as in the case of approvals under sub-clauses (iv) and (v) of Section 10(23C), any approval issued on or after 1-12-2006 under sub-clause (vi) or (via) of that sub-section would also be a one time approval which would be valid till it is withdrawn.*

(5) "Therefore, it is proposed to omit the proviso to clause (vi) of sub-section (5) of section 80G to provide that the approval once granted shall continue to be valid in perpetuity. Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund. This amendment will take effect from 1st day of October, 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn".

A perusal of Clause (4), reveals that approvals granted on or after 1st December, 2006, shall be valid till they are withdrawn. The argument by counsel for the revenue that the circular would come into effect from October, 2010, by reference to Clause (5) of the circular is not tenable as Clause (5) of the circular, applies to approvals granted under Section 80(4) and not to exemptions granted under Section 10 (23) (vi) of the Act.

We, therefore, have no hesitation in holding that as Clause (4) of CBDT, circular No.7 of 2010, provides that an exemption once granted shall operate in perpetuity till withdrawn, the impugned orders passed by ignoring Clause (4) are contrary to law. The petition is allowed, the impugned orders are *set aside* and the Commissioner of Income Tax Exemption, Chandigarh, the officer empowered, to consider an application for exemption, is directed to pass a fresh order after taking into consideration Clause (4) of the CBDT circular.

Parties are directed to appear before the Commissioner of Income Tax Exemption on 02.03.2016, who shall decide the matter within three months.

(RAJIVE BHALLA)
JUDGE

February 01, 2016 **(LISA GILL)**
m. sharma **JUDGE**