

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 237 of 2015 (O&M)

Date of Decision: 7.9.2015

Gurdaspur Improvement Trust, Gurdaspur

...Appellant.

Versus

Commissioner of Income Tax, Amritsar and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Rohit Sud, Advocate for the appellant.

Mr. Denesh Goyal, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. Delay in refiling the appeal is condoned.
2. This order shall dispose of two appeals bearing ITA No. 237 of 2015 and 59 of 2013 as both the appeals arise out of one and same ITA No. 461(Asr)/2011 for the assessment year 2006-07 wherein in one case the said appeal has been dismissed whereas in other case the same has been allowed. ITA No. 59 of 2013 has been filed by the revenue and ITA No. 237 of 2015 has been filed by the assessee. For brevity, the facts are being extracted from ITA No. 237 of 2015.
3. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 23.1.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 461(Asr)/2011 for the assessment year 2006-07

claiming the following substantial questions of law:-

- (i) Whether in facts and circumstances of the case, after the grant of registration under section 12A of the Act can the assessing officer go into the objects and hold them to be non-charitable? If know, whether the Id. tribunal was justified to hold that the activities done by the appellant trust does not qualify for exemption?
- (ii) Whether in facts and circumstances of the case, the impugned orders are liable to be set aside that on one hand it is observed that the case laws relied by the CIT were relating to the granting registration under section 12A of the Act and not relating to the exemption provided under section 11 and 12 of the Act and on the other hand the Ld. ITAT has itself heavily placed reliance on the judgment of PUDA Vs. CIT which was relating to the grant of registration under Section 12A of the Act making it contradictory?
- (iii) Whether in facts and circumstances of the case, the assessing officer was justified in assessing the appellant as local authority despite of the fact the appellant was granted registration under section 12AA of the Act?
- (iv) Whether in fact and circumstances of the case, the action of the authorities below, the

impugned orders Annexure A-1 to A-3 are legally sustainable in the eyes of law?

4. Put shortly, the few facts necessary for disposal of the present appeal as mentioned therein may be noticed. The appellant filed its return of income on 23.7.2007 for the assessment year 2006-07 declaring nil income in the status of a Trust. The said return was processed under Section 143(1) of the Act. The Assessing Officer vide order dated 29.12.2008 (Annexure A-1) framed the assessment at ₹ 46,30,435/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Amritsar [hereinafter referred to as "the CIT(A)"]. The CIT(A), Amritsar vide order dated 22.6.2011 (Annexure A-2) partly allowed the appeal by granting exemption of Section 11 of the Act. Being dissatisfied with the order, Annexure A-2, the revenue filed the appeal before the Tribunal, who vide order dated 23.1.2014 (Annexure A-3) allowed the appeal by upholding the assessment order dated 29.12.2008 (Annexure A-1). Hence, the present appeal by the assessee.

5. We have heard learned counsel for the parties.

6. Both the appeals one by the assessee and the other by the revenue have been filed against the two conflicting orders dated 9.10.2012 (Annexure A-3 in ITA No. 59 of 2013) and dated 23.1.2014 (Annexure A-3 in ITA No.237 of 2015) passed by the Tribunal in one and the same case, i.e. ITA No. 461(Asr)/2011 for the assessment year 2006-07 between the same parties.

6. It was not discernible whether before passing the order dated 23.1.2014, earlier order dated 9.10.2012 was recalled. Learned counsel for the parties are also unable to show that the order passed by

the Tribunal on 9.10.2012 was ever recalled. In the absence of the said material, we are surprised to see how the second order came to be passed. Moreover, earlier the case was decided in favour of the assessee and secondly the converse view has been taken. In such circumstances, it would be appropriate to remand the matter back to the Tribunal.

7. In view of the above, both the impugned orders dated 9.10.2012 (Annexure A-3) in ITA No. 59 of 2013 and dated 23.1.2014 (Annexure A-3) in ITA No.237 of 2015 are set aside and the matter is remanded back to the Tribunal to decide afresh, in accordance with law after affording an opportunity of hearing to both the parties.

**(AJAY KUMAR MITTAL)
JUDGE**

September 7, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 59 of 2013

Date of Decision: 7.9.2015

The Commissioner of Income Tax-II, Amritsar

...Appellant.

Versus

The Gurdaspur Improvement Trust, Gurdaspur

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Denesh Goyal, Advocate for the appellant.

Mr. Rohit Sud, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

For orders, see **ITA No. 237 of 2015 (Gurdaspur Improvement Trust, Gurdaspur v. Commissioner of Income Tax, Amritsar and another).**

**(AJAY KUMAR MITTAL)
JUDGE**

September 7, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**