IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.9728 of 2011
Date of decision:16.07.2012

National Horticulture Board .....Petitioner

Versus

Chief Commission of Income Tax, Haryana Region & another

.....Respondents

CORAM : HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Ms.Radhika Suri, Advocate, for the petitioner,

Ms.Urvashi Dhugga, Advocate, for the respondents.

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G.S.SANDHAWALIA J.

1. Challenge in the present writ petition is to the order dated 26.04.2011 (Annexure P-1) passed by the Chief Commissioner of Income Tax, Haryana Region, Panchkula whereby the application in Form 56 for claiming exemption under Section 10(23C)(iv) of the Income Tax Act, 1961 (hereinafter to be referred to as the 'Act') for the assessment years 2011-12 to 2013-14 was rejected.

2. The case pleaded by the petitioner is that the petitioner is the National Horticulture Board set up by Government of India in 1984 as an autonomous society under the Societies Registration Act, 1860 to promote integrated development in Horticulture and was exempted from Income Tax by notification upto 2007 being an exempted body under Section 10(23C)(iv) of the Act. Notifications for the assessment years 1987-88 to 2007-08 have been appended as Annexure P-2. It is averred that the petitioner was also registered as a Trust on 23.04.1999 w.e.f. 01.04.1999

under Section 12-A of the Act (Annexure P-3) and has been regularly filing its return of income in Form No.3A and has annexed the audited accounts as Annexure P-4. In view of the provisions of Section 10(23C)(iv) as amended by the Finance Act, 2007, the petitioner had filed application before respondent No.1 along with Form No.56 as provided by Rule 2C of the Income Tax Rules, 1962. The petitioner had supplied all relevant information in the application for the assessment year 2008-09 which was rejected on the ground that the audit report was filed under Form 10B and not under 10BB vide the order dated 26.03.2008 which was set aside in CWP No.9339 of 2008.

3. Petitioner, thereafter, again approached the Chief Commissioner of Income Tax, Haryana Region, Panchkula with an application for exemption for decision on merits under Section 10(23C)(iv) of the Act for assessment years 2008-09, 2009-10 & 2010-11. Respondent No.1-Chief Commissioner sought some clarifications which were submitted. Respondent No.1 allowed the application for exemption for the year 2008-09 but declined for the assessment year 2009-10 vide order dated 29.09.2008 on the ground that the petitioner was charging processing fees ranging from 0.1% to 0.5% of the project costs. The petitioner, thereafter, filed CWP No.3773 of 2009 which stands admitted for regular hearing. Thereafter, the petitioner-Board had taken a decision not to charge any process fees in its meeting held on 04.02.2009 and to refund the process fees. It was also decided that the Board will only charge for application form and scheme brochures and the processing fees was refunded to all the parties. Thereafter, respondent No.1 again declined exemption for the assessment year 2010-11 and the said order was challenged by filing

CWP No.2767 of 2011 which is pending final adjudication. An application was filed on 16.04.2010 for grant of exemption for assessment years 2011-12 to 2013-14 along with copies of balance sheet and income & expenditure statement for the year ending 31-03-2008, 30.03.2009 and provisional accounts for the year ending on 31.03.2010. In pursuance of the query from the respondent, the petitioner also supplied complete information along with audited accounts for the year ending on 31.03.2010 and stated that the balance sheet for the year ending on 31.03.2011 was under compilation and the proper books of account could be provided for the perusal of the Chief Commissioner. Respondent No.1 rejected the application on twin grounds. Firstly, that the petitioner had failed to furnish the information pertaining to assessment year 2011-12 and secondly, that the petitioner's case has already been rejected vide order dated 20.08.2009 for assessment years 2009-10 to 2010-11.

4. Respondent No.1, in its reply, defended the impugned order on the ground that the application filed by the petitioner-Society for exemption for the assessment year 2009-10 had already been rejected on 20.08.2009 and no fresh grounds had been brought out. The application of the petitioner was rejected as the activities of the petitioner-Society were not charitable and that the application had been filed on 16.04.2010 and was required to be decided within a period of 12 months as per un-numbered Proviso No.09 of Section 10 (23C)(iv). Respondent No.1, while passing the order, had failed to consider the plea of the petitioner that the balance sheet for the year ending 31.03.2011 was under compilation and could not be produced as a valid ground for granting exemption/approval. In the written statement, the plea of processing fees has also been raised and that

application fees were now being charged and therefore, the order was sought to be justified.

5. A perusal of the order shows that the ground for rejection that has prevailed upon respondent No.1 is relating to not filing the balance-sheet and income & expenditure accounts statement pertaining to the assessment year 2011-12. It is noticed that in the absence of the requisite information, the genuineness of the claim could not be established; and since the petitioner had been asked to file the said balance-sheet and income and expenditure accounts statement but had failed to do so. The impugned order is dated 26.04.2011 for the assessment year 2011-12. The time for getting the accounts audited and file the balance-sheet was still there which was under compilation and this fact was brought to the notice of respondent No.1 vide letter dated 11.04.2011 (Annexure P-17). In the said letter, the copies of balance-sheet and income and expenditure accounts statement for the years ending as on 31.03.2008, 31.03.2009 and 31.03.2010 were annexed. Once the financial year 2011-2012 had started w.e.f. 01.04.2011 and only 26 days had passed, the rejection of the application for non-production of the audited balance-sheet and income and expenditure accounts for the assessment year 2011-2012 was not justified as there was still time available with the petitioner to get its accounts audited and file the return for assessment year 2011-2012.

6. The second reason given by respondent No.1 that the petitioner's case had already been rejected for the assessment years 2009-10 & 2010-11 vide order dated 20.08.2009 and nothing new had been brought thereafter as compared to the earlier years also does not stand judicial scrutiny. A perusal of the communication dated 11.04.2011 shows that the

petitioner had not been charging processing fees since 01.02.2009 which was the ground of rejection for those years. The application fees received by the Board was from sale of application forms and not for income of the Board but were only incidental charges and reliance was placed upon advancement of the object of general public utility which falls under the charitable acts under Section 2 of the Act. The respondent No.1 has failed to consider these factors and, therefore, his order cannot be legally sustained. Thus, we have no option but to quash the same in view of the facts noticed above.

7. Accordingly, the present writ petition is allowed. The order dated 26.04.2011 passed by respondent No.1 is quashed, respondent No.1 shall re-decide the application of the petitioner in view of the documents placed before it. It is, however, made clear that any observation made herein is for the purpose of deciding the present petition shall not have any bearing on the merits of the case. In other words, the respondent No.1 shall decide the case without being influenced by the observations made hereinabove.

(G.S.SANDHAWALIA)
JUDGE

16.07.2012 **(AJAY KUMAR MITTAL)**
sailesh **JUDGE**