IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 50 of 2018
Date of decision: 16.05.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

……Appellant

Vs.

M/s Sant Girdhar Anand Parmhans Sant Ashram, Ranjri, P.O. Raya Tehsil & District Samba, Jammu & Kashmir (PAN No. AAMTS0194B)

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Denesh Goyal, Senior Standing Counsel.
for the appellant-revenue.

Ajay Kumar Mittal,(ACJ).

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 11.08.2017, Annexure A.2, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in I.T.A. No.653(Asr)/2015, claiming following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in directing the approval to be accorded instead of reverting it back for re-examination in the light of its findings?
>
> (ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in granting approval u/s 80G of the Act to the assessee, ignoring the fact that the pooja

expenses incurred by the assessee were in violation of section 80G(5B) of the Income Tax Act, 1961?

(iii) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in placing reliance on the fact of the assessee having 12AA registration and by ignoring the statutory condition that 12AA registration is merely a pre-condition for entities to be eligible for approval u/s 80G(5)?

(iv) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in ignoring the statutory provisions that for 80G(5) approvals charitable purpose does not include any purpose partly or wholly of which are religious in nature?

(v) Whether on the facts and in the circumstances of the case, the order of the Appellate Tribunal is contrary to the evidence and material on the record of the case and therefore, perverse?

(vi) Whether on the facts and in the circumstances of the case, the order of the case, the order of the Appellate Tribunal is suffering from non-application of mind and is unreasonable and arbitrary?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. An application was received for grant of approval under Section 80G(5)(vi) of the Act on 11.05.2015 in the office of the Commissioner of Income Tax (E) [in short, "CIT(E)"], Chandigarh, who, while passing an order under Section 80G(5)(vi) of the Act denied approval vide order dated 30.11.2015 primarily on the ground that the assessee was spending more than 5 per cent of total receipts for religious purposes as pooja expenses and telecast expenses. The assessee filed an appeal before the Tribunal. Vide order dated 11.08.2017, Annexure A.2, the Tribunal allowed the appeal, in view of the fact that the assessee had been granted exemption under Section

12AA of the Act on 30.11.2015 itself and which was still in existence and if there would be any violation, that would be subject to variation/withdrawal by the CIT(E). Hence the instant appeal by the appellant-revenue.

3. We have heard the learned counsel for the appellant-revenue.

4. Learned counsel for the revenue relied upon judgment of this Court in ***CIT vs. Gulab Devi Memorial Hospital Trust,*** (2017) 391 ITR 73 to contend that registration under Section 12AA of the Act by itself is not automatic for granting approval under Section 80G of the Act.

5. It would be apt to examine the case reported in ***Gulab Devi Memorial Hospital Trust's*** case (supra), on which heavy reliance has been placed by learned counsel for the revenue. In the said case, the assessee claimed registration under Section 12AA of the Act, which was granted. Simultaneously, exemption under Section 80G of the Act was also approved. Thereafter, the exemption under Section 80G of the Act continued to be granted year after year till the assessment year 2009-10. The assessee sought exemption for the assessment years 2010-11 to 2014-15 through an application to the CIT(E) which was rejected on the ground that the assessee was generating substantial surplus and was spending only a percentage for charitable purposes. It was recorded that the assessee therein had deviated from its charitable objects. After examining the relevant statutory provisions and the case law on the point, it was held by this Court that grant of exemption under Section 10(23C) and registration under Section 12AA of the Act in favour of an institution would be essential and persuasive factor for the grant of exemption under Section 80G of the Act though that by itself may not be sufficient to do so. There is

no quarrel with the aforesaid proposition of law. However, the facts of each case would govern the decision in given set of circumstances.

6. Admittedly, in the present case, the application for grant of approval of under Section 80G(5)(vi) of the Act was filed by the respondent-assessee on 11.05.2015 before the CIT(E). The said approval was denied on the ground that the assessee was spending more than 5 per cent of the total receipts for religious purposes as pooja expenses and telecast expenses. The CIT(E) had also accorded approval under Section 12AA of the Act on 30.11.2015 itself as is evident from the order of the Tribunal. The Tribunal had recorded that the assessee had demonstrated that spending more than 5% of total receipts for religious purposes as pooja expenses and telecast expenses was justified. Further, as noticed by CIT(E) in the order dated 30.11.2015 denying approval to the assessee under Section 80G(5)(vi) of the Act, the aims and objects of the assessee as per Memorandum of Association are noticed to be as under:-

> "i). The main objects of the society to create and spread spiritual awakening among the common masses:
>
> ii). To spread teachings of great Indian Saints.
>
> iii) organise gathering of the people desirous to be benefitted from the spiritual teachings.
>
> iv) Publicise teachings and philosophy of great saints through press etc.
>
> v). Extend financial assistance to the poor, destitute for their economic upliftment and education etc."

Accordingly, it was recorded by the Tribunal that since assessee had been granted exemption under Section 12AA of the Act which was in existence and in case of any violation, the same was subject to variation/withdrawal by the CIT(E), there was no logic in denying approval under Section 80G 5(vi) of the Act. We do not find any reason to differ with the view taken by the Tribunal. Needless to say, in case, in subsequent years, the revenue is satisfied that the activities of the respondent-assessee are not qualified for charitable purposes, it shall be open for the department to initiate action for cancellation of registration under Section 12AA of the Act and also for passing appropriate orders regarding approval granted under Section 80G(5)(vi) of the Act in accordance with law.

7. Learned counsel for the appellant-revenue has not been able to controvert the findings recorded by the Tribunal warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Acting Chief Justice

May 16, 2018 **(Tejinder Singh Dhindsa)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**