

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

**ITA No. 320 of 2016
Date of decision: February 14, 2017**

The Commissioner of Income Tax (Exemptions), Chandigarh

.....Appellant

Vs.

M/s Ameliorating India

.....Respondent

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

Present: Mr. Denesh Goyal, Advocate for the appellant.
Mr. Naresh Ghai, Advocate for the respondent.

Ajay Kumar Mittal, J.

1. This order shall dispose of ITA Nos. 320 and 346 of 2016 as learned counsel for the parties are agreed that the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No.320 of 2016.

2. ITA No.320 of 2016 has been filed by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 16.3.2016, Annexure A.3 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the Tribunal") in ITA No.851/CHD/2015, claiming following substantial questions of law:-

- i) Whether on the facts and circumstances, the order of the ITAT is not perverse in not deciding the case on merit on the ground that CIT had not conducted the proceedings personally even when the statute empowers

the CIT to make inquiries about the genuineness of activities for which he has an established set up in the shape of his office?

- ii) Whether on the facts and circumstances, the Hon'ble ITAT has not erred in holding that no opportunity was afforded to the assessee whereas the assessee appeared in CIT office twice and did not furnish the documents/information and also did not furnish any reason for not furnishing the same?
- iii) Whether on the facts and circumstances, the order of ITAT has ignored the established dictum that in case of clauses beneficial to the assessee, the onus is entirely on the applicant, a responsibility not redeemed in the instant case?
- iv) Whether on the facts and circumstances, the order of the ITAT is not perverse in not taking into account the order passed by the CIT explaining therein the reasons for rejecting the claim for registration/approval under section 12AA/80GG(5)(iv) after going through the material/evidence on record that was obtained during the conduct of proceedings which satisfies the condition of section 12AA(1)(a) and 12AA(1)(b) of the Act regarding procedure for registration?

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.320 of 2016 may be noticed. The respondent-assessee filed application for registration under Section 12AA and approval under section 80G(5)(iv) of the Act on 31.3.2015. During the course of proceedings, the assessee was asked to furnish certain information/documents like original and certified copy of the trust deed, bye laws, memorandum of association, activities, books of account and receipt books etc. The appellant failed to furnish the said information. In the absence of supporting documents/information, the

Commissioner of Income Tax (Exemption) (CIT) held that the activities of the trust could not be said to be genuine and thus rejected the application for registration under section 12AA of the Act, vide order dated 02.09.2015, Annexure A.1. Consequently, the application for approval under Section 80G(5)(iv) of the Act was also rejected, vide order dated 02.09.2015, Annexure A.2. Aggrieved by the order, the assessee filed appeal before the Tribunal. Vide impugned order dated 16.3.2016, Annexure A.3, the Tribunal allowed the appeal and set aside the orders passed by the CIT holding that the proceedings were not conducted by the Commissioner personally and instead the same were conducted by the Deputy Director (Systems). Thus, no proper opportunity of being heard was given to the assessee. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. Section 12AA and 80G(5)(iv) of the Act read thus:-

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.

(4) Without prejudice to the provisions of sub-section (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 it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

80G. (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—

(2) to (4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely :—

(i) to (iii)

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;”

6. Section 12AA of the Act prescribes procedure for registration of trust or institution by the Principal Commissioner or the

Commissioner of Income Tax after perusing the objects of the trust or institution and the genuineness of its activities. The order is required to be passed in writing.

7. In the present case, the assessee had filed application for registration under section 12AA and approval under section 80G(5)(iv) of the Act. It was required to furnish certain information/documents. On its failure to furnish the relevant documents/information, the application was rejected by the CIT. The order was passed by the Deputy Director (Systems) and not by the CIT himself. Thus, no proper opportunity of being heard was given to the appellant. The Tribunal after examining the matter held that law does not permit Deputy Director (Systems) to hear any matter under Sections 12AA and 80G(5)(iv) of the Act. It is for the CIT(Exemptions) to hear and conduct the proceedings himself after giving opportunity of being heard. Thus, the impugned order in the present case was held to be violative of the provisions of the Act and the matter was sent to the CIT(Exemptions) to re-decide the issue afresh in accordance with law by giving reasonable sufficient opportunity of being heard to the assessee. The relevant findings recorded by the Tribunal read thus:-

“4. The assessee submitted that the impugned order has been passed in arbitrary and whimsical manner without proper/personal opportunity of being heard granted to the assessee. The copy of the order sheet is filed on record which was obtained by the assessee under information supplied under RTI Act. The order sheet revealed on 30.4.2015 and 22.8.2015, the Director of the assessee society appeared in the proceedings however there is no signature of the learned CIT(Exemptions) in the order sheet, lastly the order sheet on 2.9.2015 is recorded by Deputy Director (Systems) which reads as under:-

“Application of Ameliorating India, Ludhiana for 12A as well as 80G is placed for consideration/approval,

Sir.

Sd/-
DD(systems)

At the end of the above order sheet there is initial of CIT(Exemptions).

4.1 The above order sheet support the contention of the assessee that no opportunity of being heard have been granted by the learned CIT(Exemptions) and he did not consider the application on merits. Section 12AA of the Act provides that the Commissioner on receipt of the application for registration shall call for the documents and after satisfying himself about the object of the trust or institution and genuineness of its activities, he shall pass an order registering institution or refusing to register the institution. It also provides that no order under sub clause (ii) shall be passed unless assessee has been given reasonable opportunity of being heard.

4.2 The above order sheet filed on record clearly shows that none of the proceedings have been conducted by the learned CIT(Exemptions) Chandigarh. The last order sheet dated 2.9.2015 clearly shows that entire proceedings have been conducted by DD (systems) i.e. Deputy Director (Systems) for CIT(Exemptions) Chandigarh and nothing has been done in the matter by CIT(Exemptions) himself.

5. We may note that law does not empower Deputy Director (Systems) to hear any matter under Section 12AA and 80G(5)(iv) of the Act. It is for the learned CIT(Exemptions) to hear and conduct the proceedings himself after giving opportunity of being heard to the assessee shall pass an order in accordance with law. The order sheet clearly shows that only at the end of entire order sheet, the learned CIT(Exemptions) put his initial. The impugned orders are therefore violative of the provisions of law

and do not give power to the CIT(Exemptions) to delegate his power to the Deputy Director (Systems) to hold enquiry and proceedings under the above provisions. The assessee therefore rightly contended that the order is passed arbitrary without giving any proper/personal opportunity of being heard in the matter. In this view of the matter, we are of the view that impugned orders of the learned CIT(Exemptions) cannot be sustained in law and the matter requires reconsideration at the level of CIT (Exemptions) Chandigarh.

6. We accordingly set aside both the impugned orders and restore the matter in issue to the file of CIT(Exemptions) Chandigarh with direction to re-decide both the matters afresh in accordance with law by giving reasonable sufficient opportunity of being heard to the assessee. We direct that learned CIT(Exemptions) Chandigarh shall hold the proceedings and enquire into the matter personally and shall not delegate any of his power to the Deputy Director (Systems) on the matter. With these observations and direction, both the appeals of the assessee are allowed for statistical purpose.”

8. Learned counsel for the appellant has not been able to show that the view taken by the Tribunal is erroneous. He has also not been able to produce any material on record to show that the approach of the Tribunal is legally unsustainable. Thus, no substantial question of law arises. Consequently, both the appeals stand dismissed. The original record/file produced by learned counsel for the appellant be returned to him under proper receipt.

(Ajay Kumar Mittal)
Judge

February 14, 2017
‘gs’

(Ramendra Jain)
Judge