

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDI GARH

ITAs-402, 412, 413, 422, 464 & 468-2015 (O&M)
Date of decision: - 25.07.2016

Haryana State Pollution Control Board, Panchkula

... Appellant

Versus

Deputy Commissioner of Income Tax, Panchkula

... Respondent

CORAM: HON'BLE MR. JUSTICE S. J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: - Mr. Sandeep Goyal, Advocate,
for the appellant.

Mr. Denesh Goyal, Advocate,
for the respondent.

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S. J. VAZIFDAR, A. C. J. (ORAL)

Liberty to amend the appeals by annexing the complete copy of the impugned order of the Tribunal dated 28.04.2015 as Annexure A-5/1. Needless to add that the same shall be done without removing the existing Annexure A-5.

The appeals are against the order of the Tribunal dismissing the appellant's appeals. The appeals pertain to the assessment years 2006-2007 to 2011-2012.

2. The appeals are admitted on the following substantial questions of law raised in paragraph 3: -

"(i) Whether on the facts and circumstances of the case, the charges received by the appellant Board can be deemed to be income and thus chargeable to tax?

(ii) Whether on the facts and circumstances of the case, the Ld.

**For Subsequent orders see CM-15191-CIL-2016 Decided by HON'BLE MR. JUSTICE S. J. VAZIFDAR;
Tribunal was justified in dismissing**
HON'BLE MR. JUSTICE DEEPAK SIBAL

the appeal of the appellant without awaiting for outcome of result of application moved u/s 10(23)(c)(iv)?"

3. The Tribunal in paragraph 11 observed that at the time of considering the application for registration under Section 12 AA, the concerned authority is required to examine only the aims and objects of a particular institution and if the same are found to be charitable in nature the registration should be granted. It was further observed that the other issues such as non audit of accounts, non application of 85% of the funds for charitable purposes can be examined only at the time of assessment when the exemption is granted under Sections 11 and 12 of the Act. What the Tribunal obviously meant was that the other issues would be examined if the exemption is granted. It is important to note that the Tribunal further observed that in these cases the Commissioner had not recorded any findings as to how the objects of the assessee are not charitable. Lastly, it is directed that in the event of the appellant obtaining the approval under Section 10(23C), the Assessing Officer should consider the matter in the light of such approval. This is followed by the operative part of the order dismissing the appellant's appeals.

4. In our view, it was not a simplicitor or an absolute order of dismissal. The Tribunal proceeded on the basis that the appellant had not obtained registration under Section 12A or under Section 10(23C)(iv). The order, however, expressly holds that the CIT (Appeals) had rightly declined the exemption under Section 12A. It is important to note that the Tribunal held that if the assessee is able to obtain approval under Section 10(23C), then the Assessing Officer should consider the matter in the light of such approval. The operative part of the

appellant's appeals. In view of what was observed in the earlier paragraph, we hold that the dismissal was not absolute. As aforesaid, the Tribunal had directed the Assessing Officer to consider the matter afresh in the event of the appellant obtaining approval even under Section 10(23C).

5. After the order of the Tribunal, the appellant obtained the exemption under Section 10(23C)(iv) by an order dated 01.03.2016. The application for the same was, however, made on 28.01.2013. The approval it is agreed has been granted with retrospective effect for the assessment years 2006-2007 to 2014-2015. This covers the period in question, namely, the assessment years 2006-2007 to 2011-2012. In these circumstances, it is not necessary for the appellant to challenge the order in so far as Section 12AA is concerned.

6. In view of the observations in the order of the Tribunal to the effect that in the event of the appellant obtaining approval under Section 10(23C), the Assessing Officer should consider the matter in the light of such approval, it is not necessary to remand the matter to the Tribunal. The proper course would be to remand the matter to the Assessing Officer.

7. The appeals are, therefore, disposed of by directing the Assessing Officer to consider the matter regarding the appellant's assessment for the years 2006-2007 to 2011-2012 in the light of the exemption granted under Section 10(23C).

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

25.07.2016

Amoch

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

**For Subsequent orders see CM-15191-CII-2016 Decided by HON'BLE MR. JUSTICE S.J. VAZIFDAR;
HON'BLE MR. JUSTICE DEEPAK SIBAL**