

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

ITA No. 31/2014

Commissioner of Income Tax

.....Appellant(s)/Petitioner(s)

Through: Ms. Pariksha Parmar, Advocate &
Mr. K.D.S Kotwal, Advocate vice
Ms. Aruna Thakur, Advocate

Vs

M/s D.N Memorial Trust

..... Respondent(s)

Through: None

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

ORDER
09.05.2023

1. Order dated 16.08.2011 was passed by the Commissioner of Income Tax, J&K, Jammu under Section 12AA(1)(b) of the Income Tax Act, 1961 in which the registration applied by the assessee Trust was refused by holding that the assessee institution did not satisfy the registering authority, the then Commissioner of Income Tax, J&K, Jammu with the genuineness of its activities and it was held that the assessee Trust had generated surplus (profit) out of their total receipts, thus, the provisions contained under Section 12(AA)(1) (b)(ii) of the Income Tax Act, 1961 were applied in the case.

2. Aggrieved of the order passed by the Commissioner of Income Tax, J&K, Jammu, the assessee filed an appeal before the learned Income Tax Appellate Tribunal, Amritsar in M.A No. 33(Asr)/2013(Arising out ITA No. 617(Asr)/2011) who has allowed the appeal of the assessee with the directions to the department to grant registration to the assessee applied by the assessee.

3. Aggrieved of the order dated 31.03.2014 passed by Income Tax Appellate Tribunal, Amritsar, the Commissioner of Income Tax, J&K, Jammu

filed the present appeal under Section 260A of the Income Tax Act, 1961. The Commissioner of Income Tax, J&K, Jammu vide its order 16.08.2011 refused to grant the registration by passing the following order:-

“.....In view of the above, I am of the considered view that the assessee institution has not satisfied me with the genuineness of its activities and as the surplus profits as mentioned above are not in consonance with the intent and spirit of provisions of Section 12AA and provisions of Section 12AA(1)(b)(ii) are applicable in this case. Keeping in view the above facts of the case, I refuse to grant registration to the Trust.”

4. The Income Tax Appellate Tribunal, Amritsar has passed the following order while allowing the appeal:-:-

“We have heard the rival contentions and perused the facts of the case. There is nothing on record brought out by the Ld. CIT that fees structure is in-genuine or against the accepted norms. Nothing has been brought on record by the Ld. CIT that the activities of the Trust are for non-charitable purpose or for personal purposes of the trustees etc. Rather whatever funds were acquired by the Trust have been utilized for the purpose of educational activities of the institution and in the absence of any adverse material brought on record by the Ld. CIT, the application by the assessee can not be rejected. The decision of the Hon’ble Allahabad High Court in the case of City Montessori School (Regd.) Vs. Union of India and Others (supra) and decision of Hon’ble Punjab & Haryana High Court, in the case of CIT vs. Manav Mangal Society (supra), support our view. As regards arguments made by Ld. DCIT(DR) Mr. Tarsem Lal, nothing has been brought on record by him or by Ld. CIT about the falsity of the trust. Nothing further has been brought on record that fees structure was so huge to treat the motive of trust as profits-making or non-charitable. Therefore, the arguments of the Ld. DR. Mr. Tarsem Lal are general arguments and without any basis and cannot support the revenue. In the facts and circumstances of the case, the Ld CIT is directed to grant registration to the assessee as applied by the assessee. Thus, all the grounds of the assessee are allowed.”

5. Mr. K.D.S Kotwal, learned Dy. A.G fairly stated that the law has been laid down by the Supreme Court in Civil Appeal No. 5167 of 2008 along with connected matters titled M/s Queen’s Educational Society Vs. Commissioner of Income Tax whereby they approved the judgment passed by the Punjab & Haryana High Court in the case of CIT Vs. Manav Mangal Society Vs. Commissioner of Income Tax (2010) 328 ITR 421. It is appropriate to reproduce the relevant para of the judgment of the Supreme Court passed in M/s

Queen's Educational Society Vs. Commissioner of Income Tax which is as under:-

“We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.01.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court Judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with section 11 of the Income Tax Act.”

6. In view of the judgment passed by the Supreme Court referred hereinabove, the issue in hand is squarely covered. In such circumstances, no substantial question of law arises for consideration as the Income Tax Appellate Tribunal, Amritsar while allowing the appeal has considered all the aspects.

7. There is no merit in the appeal and the same is, accordingly, dismissed.

Jammu
09.05.2023
Tarun

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking:-
Whether the order is reportable:-

Yes/No
Yes/No

