

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर. एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI. R.L. NEGI, JM

आयकर अपील सं./ ITA NO.468/Chd/2018
निर्धारण वर्ष / Assessment Year : 2013-14

The JCIT(OSD), (Exemptions) Circle-1, Chandigarh	बनाम	M/s Patiala Improvement Trust Chotti Baradari, Patiala-Punjab
स्थायी लेखा सं./PAN NO: AAAJI0034L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO.847/Chd/2019
निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT C-1(E), Sector-17, Chandigarh	बनाम	M/s Patiala Improvement Trust Chotti Baradari, Patiala-Punjab
स्थायी लेखा सं./PAN NO: AAAJI0034L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO.164/Chd/2019
निर्धारण वर्ष / Assessment Year : 2015-16

The DCIT (E) C-1, Sector-17, Chandigarh	बनाम	M/s Patiala Improvement Trust Chotti Baradari, Patiala-Punjab
स्थायी लेखा सं./PAN NO: AAAJI0034L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashok Goel, CA
राजस्व की ओर से/ Revenue by : Dr. G.S. Phani Kishore, CIT

सुनवाई की तारीख/Date of Hearing : 07/10/2020
उद्घोषणा की तारीख/Date of Pronouncement : 07/10/2020

आदेश/Order

PER RAM LAL NEGI; JM

The Revenue has filed the captioned appeals against the orders dt. 02/01/2018, 22/03/2019 and 28/11/2018 passed by the Ld. Commissioner of Income Tax(Appeals) (for short "the CIT(A)"), Patiala pertaining to the A.Y. 2013-14, 2014-15 and 2015-16 respectively, whereby the Ld. CIT(A) has allowed the appeals filed by the assessee against the assessment orders passed under section 143(3) of the Income Tax Act, 1961 (for short the 'Act').

2. Since these appeals pertain to the same assessee and the Revenue has raised the common issue in all the three appeals, except in appeal pertaining to the Assessment year 2014-15, wherein the Revenue has challenged the action of the Ld. CIT(A) *inter alia* on the ground that the Ld. CIT(A) has erred in allowing the ground of appeal with respect to disallowance of donation expenditure of Rs. 4 crore, these appeals were clubbed, heard together and are being disposed of by this common order for the sake of convenience.

ITA No. 468/Chd/2018 AY 2013-14

3. Brief facts of the lead case pertaining to the Assessment year 2013-14 are that the assessee society registered under section 12A of the Act, 1961 with the Ld. CIT-1, Amritsar vide No. CIT-I/ASR/2006-07/213 dated 24/04/2006 & vide order No. CIT-I/ASR/ITI(Tech)/07-08/PS-81, dt. 26/10/2007, subsequently withdrawn vide order F.No. CIT/PTA/Tech/12AA, dt. 13/10/2014, filed its return of income for the assessment year under consideration declaring nil income after claiming exemption u/s 11 of the Act. The AO noticed that during the year relevant to the assessment year under consideration the assessee carried on the business of sale and purchase of residential plots and commercial properties and earned huge net profit of Rs. 9,95,74,223/-, which does not fall within the ambit of the advancement of any other object of general public utility under section 2(15) of the Act. Accordingly, the AO asked the assessee to justify its claim and after hearing the assessee rejected the claim of the assessee. The AO rejected the claim of the of the assessee and after making addition on account of disallowance of donation amounting and disallowance of service Tax paid, passed Assessment Order u/s 143(3) of the Act, determined the total income of the assessee at Rs. 11,00,93,437/-

4. The assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) relying on the decision of the ITAT Amritsar Bench in the case of

Hoshiarpur Improvement Trust Vs. ITO, Ward-1 Hoshiarpur, ITA No. 200/ASR/2010 & 336/ASR/2014 for the A.Ys 2005-06 & 2009-10 and the decision of the ITAT Chandigarh Bench in assessee's own case ITA No. 177/Chd/2016, allowed the appeal of the assessee. Feeling aggrieved by the said findings of the Ld. CIT(A), the Revenue is in appeal before this Tribunal.

5. The Revenue has challenged the impugned order by raising the following effective grounds:

i. That on the facts and circumstances of the case, the Ld.CIT(A) has erred in law in holding that the assessee is eligible for exemption u/s 11 whereas the assessee was not actual carrying on activities for the advancement of objects of general public utility.

ii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in ignoring the true intent and purpose behind the amendment in section 2(15) brought in w.e.f. 01.04.2009 and which was also clearly explained in CBDT circular No. 11 dated 19.12.2008 by providing that "an assessee who claims that their object is 'Charitable purpose' within the meaning of s. 2(15) would be well advised to eschew any activity which is in the nature of trade, commerce or business or rendering of any service in relation to any trade, commerce or business."

iii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in ignoring the intent of amendment in 2(15) by relying on the objects of the assessee even when the said amendment had refocused the section's applicability based on the activities of entities.

iv. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in ignoring the stringent import of the proviso wherein even activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business have been specifically precluded from the ambit of exemption clauses.

v. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the assessee eligible for exemption u/s 11 by holding that business activities being carried on by the assessee were incidental to the attainment of objects which predominantly were for town improvement whereas the assessee had not been able to demonstrate during the course of proceedings that any such activity was carried on.

vi. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding the business activities as incidental even as the accounts of the entity reveal that this (sale/purchase of properties on commercial lines) has become the predominant activity to the detriment of the main mandate of the improvement Trusts namely town improvement.

vii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not taking into account the amendment brought in section 2(15) w.e.f. 01.04.2016 which expressly bars exemptions to entity carrying on business activities in the course of actual carrying of such advancement of objects of general public utility.

viii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in ignoring the intention and purpose behind the omission of section 10(20A) w.e.f. 04.04.2003 which earlier has expressly provided exemption to statutory authorities constituted for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, town and villages, or both.

ix. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in failing to consider the judgements in PUDA Vs. CIT and Jalandhar Development Authority Vs. CIT which have been followed by the Tribunal Amritsar Bench in Jammu Development Authority Vs. CIT reported as (2012) 52 SOT ASR which were upheld by Hon'ble J&K High Court (2102) 52 SOT ASR 153 which was further upheld by Hon'ble Supreme Court of India in special Leave to Appeal (C) No. 4990 of 2014 vide its order dated 21.07.2014."

6. The only grievance of the Revenue is that the Ld. CIT (A) has wrongly held that the assessee is entitled for exemption u/s 11 of the Act. At the outset, the Ld. Counsel for the assessee submitted that the issue involved in the present appeal is covered in favour of the assessee by the order of the coordinate Bench in assessee's own case in ITA No. 120/Chd/2017 for the A.Y. 2012-13. The Ld. Counsel further pointed out that the Tribunal has decided this issue in favour of the assessee by following the judgment of the Hon'ble Jurisdictional High Court in the case of *Tribune Trust* (2016) 76 taxmann.com 363 (P&H) in which the Hon'ble High Court has decided the issue of applicability of Section 2(15) of the Act in favour of the Improvement Trust, Moga.

7. Ld. Counsel further pointed out that the Hon'ble Jurisdictional High Court has confirmed the decision of the Tribunal and dismissed the Revenue's appeal *ITA No. 74/2018* in assessee's own case, by following its earlier judgment rendered in the case of *Tribune Trust Vs. CIT and anothers*.

8. On the other hand the Ld. Departmental Representative (DR) fairly admitted that the issue involved in the present case is covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court, however, supported the order passed by the A.O. on the ground that the Department has filed SLP against the order of the Hon'ble High Court in the Hon'ble Supreme Court. The Ld. DR further admitted that the Hon'ble Supreme Court has not stayed the operation of the impugned order.

9. We have heard the rival submissions of the parties and gone through the material available on the record including the order of the coordinate Bench rendered in assessee's own case pertaining to the assessment year 2012-13 as well as the judgment of the Hon'ble jurisdictional High Court delivered in assessee's own case. As pointed out by the Ld. Counsel for the Assessee, the Coordinate Bench has decided the identical issue in favour of the assessee in assessee's own case for the A.Y. 2012-13. The findings of the coordinate Bench read as under:

"9. Ld. AR relied on the order of the Ld. CIT (A) and the order in his own case. In the course of hearing on 07.06 2017, the Ld AR submitted the decision of Hon'ble Punjab and Haryana High Court in the case of Tribune Trust (2016) 76 taxmann.com 363 (P&H). In this case the Hon'ble High Court has decided the issue of applicability of section 2(15) in favour of Improvement Trust , Moga The Hon'ble High Court has also considered the decision of Hon'ble J&K High Court in the case JDA and has tried to distinguish it by holding that:

'The judgment is of no assistance to the appellant for the Division Bench observed that there were findings of fact that the assessee/appellant had in that case not been acting to advance any object concerning general public utility. The judgment was, therefore, based on the facts of this case. It is obviously for this reason that the Division Bench held that no question of law much less a substantial question of law emerged from the order of the Tribunal. It is difficult to

understand how this order can possibly be relied upon as laying down any law when Court itself records that the order impugned therein is based on the facts of that case. The dismissal of the Special Leave Petition filed against that order is, therefore, of no assistance to the Revenue either."

Hon'ble High Court of Punjab & Haryana High Court vide order dt. 23/12/2016 in case of CIT(E), Chandigarh Vs. M/s Improvement Trust, Moga held as under:

73. The Tribunal also rightly held that an object of general public utility does not necessarily require the 66 of 74 ITA-62-2015 and ITA 147-2016 - 67 - activities to be funded or subsidized by the State. So long as the objects fall within the ambit of the words "object of general public utility", it is sufficient. The achievements of those objects do not have to be as a result of State funding or State subsidy. The Tribunal accordingly rightly held that the authorities were not justified in denying the benefit of section 11 and holding that the assessee was not covered by the words "advancement of any other object of general public utility" in Section 2(15). The Tribunal, therefore, rightly directed the Assessing Officer to delete disallowance of exemption.

74. It cannot possibly be suggested that the Government of Punjab formed the trusts under the Punjab Town Improvement Act, 1922 because it wanted to carry on the business as colonizers or developers under the mask of the category "objects of general public utility".

75. Section 28(2)(iii) of the Punjab Town Improvement Act, 1922 permits a scheme under this Act to provide inter- alia for the disposal of the land vested in or acquired by the trust including by lease, sale and exchange thereof. This, however, is not the predominant activity or responsibility of the trust. Nor for this assessee is making profits from this activity its predominant motive.

76. The power of the assessee to dispose of land conferred by Section 28(2)(iii) is not an absolute or independent power. It is conferred upon the assessee in the discharge of its statutory duties imposed on it by the PTI Act of framing schemes. Sub section (1) of Section 28 entitles the assessee to combine the various schemes referred to in Chapter-IV. Sub section (2) stipulates that the scheme 67 of 74 ITA-62-2015 and ITA 147-2016 - 68 - under the Act may provide for a variety of things including the disposal of land belonging to the assessee. This power is, therefore, in furtherance of, connected with and in relation to a scheme in Chapter-IV. It is not an absolute power independent of and unconnected with the assessee's statutory functions under the PTI Act.

77. The predominant activity of and the purpose for the establishment of the assessee is summed up in two words "town improvement" in the title "Punjab Town Improvement Act, 1922". The preamble is titled "An Act for the improvement of Certain Areas". The preamble states "whereas it is expedient to make provision for the improvement and expansion of towns in Punjab". The Act in general and Chapter-IV thereof in particular indicates the reason for and the basis of the establishment of the trust. Almost every section in the Chapter indicates clearly that the trust is established for the purpose of "advancement of the object of general public utility". This is the predominant purpose of the trust.

78. The language of the provisions of the Act are self explanatory in this regard. The trust must deal with the buildings unfit for human habitation, the danger caused or likely to be caused to the health of the inhabitants of the area on account of the congested conditions of streets or buildings or want of light, air, ventilation or proper conveniences in an area and sanitary defects. The trust is required to frame the street schemes to lay out new streets, thoroughfares and open spaces or alter existing streets whenever it appears to the trust that it is necessary to do so for the purpose of providing building sites or remedying 68 of 74 ITA-62-2015 and ITA 147-2016 - 69 - defective ventilation or creating new or improving existing means of communication and facilities for traffic.

79. The trust must also prepare development schemes. This duty contained in Section 24 is not akin to that of a private developer or a colonizer as wrongly suggested by the Assessing Officer and confirmed by the CIT(A). The development scheme under section 24 is prepared for the purpose of development of a locality. Sub section (2) of Section 24 provides that the trust may if it is of the opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto within the local area of such trust prepare "an expansion scheme". The development scheme, therefore, is for the public purpose of development of any locality and an expansion scheme is also prepared when it is expedient and for the public advantage as opposed to a mere personal advantage as in the case of private developers or the colonizers. The two cannot possibly be compared. These schemes do not contemplate mere development of the plots and the construction of the premises for sale. The Trust must under the Act adopt a holistic approach for the betterment and advantage of the entire area within its jurisdiction.

80. Section 25 which provides for a housing accommodation scheme to be framed is similar. The trust is required to frame such a scheme if it is of the opinion that it is expedient and for the public advantage to provide housing accommodation for any class of inhabitants within its local area. The trust is, therefore, to be motivated not by personal but by public benefit. Such activities clearly fall 69 of 74 ITA-62-2015 and ITA 147-2016 - 70 - within the last category of cases in the proviso to Section 2(15) as it stood at the relevant time, namely, "advancement of an object of general public utility".

81. It can hardly be suggested that the Government of Punjab established the assessee's trust and conferred upon it public responsibilities and duties of the nature specified in the PTI Act as a camouflage for its commercial, trade and business ventures. The creation and incorporation of the trust under section 3 is for a public purpose. We have no doubt whatsoever that the activities of the trust fall within the meaning of the words "charitable purpose" in Section 2(15).

82. Whether the mandate of the Act is followed by such a trust is a different matter. The facts in that regard are relevant in examining whether the activities of the trust of a given year entitled it to the benefit of the Income Tax Act. Mere profit making on account of certain incidental or ancillary activities of the trust do not disentitle it to the exemptions. The Trust constituted under the PTI Act is likely to make profit on account of its commercial or business activities such as when it acts pursuant to the power under section 28(2)(iii) by disposing off its lands. That,

however, does not take it out of the definition of 'charitable purpose' in Section 2(15). As we held earlier, trade, commerce and business in Section 2(15) must be such as to involve an element of profit. Profit, however, is not the predominant motive of such trusts. In our view considering the nature of the Act, selling of plots and premises by the trust is only incidental and ancillary to its main purpose which at the cost of repetition is "town improvement" in 70 of 74 ITA-62-2015 and ITA 147-2016 - 71 -almost every respect. Even where the plots are developed and premises are constructed and sold at the market price, the activity is not commercial or business venture per se but one necessitated on account of the implementation of the provisions of the trust through statutory schemes. The main purpose of such schemes is driven by public requirements and not as a commercial venture per se. They are incidental to the main object of the trust.

83. In the present case, the Assessing Officer has not indicated any facts which indicate that the assessee deviated from this principle. He has merely referred the extent of profit making activities without correlating the same to the other activities of the trust. In our view, therefore, the order of the Tribunal must be upheld.

84. Mr. Goel relied upon the judgment of the High Court of Jammu & Kashmir in *Jammu Development Authority v. Union of India* and another ITA No. 164 of 2012. The Division Bench dismissed the appeal with the following order:-

"1. The instant appeal under section 260-A of the Income Tax Act, 1961 (for brevity, the Act) is directed against order dated 14.06.2012 passed by the Income Tax Appellate Tribunal, Amritsar, upholding the order withdrawing the status of Charitable Institution given to the appellant- assessee under Section 12AA(1)(b)(i) of the Act. The Tribunal has reached a categorical conclusion that the assessee-Jammu Development Authority cannot be regarded as an institution or trust which may have been set up to achieve the objects enumerated under Section 2 of the Act particularly in view of the addition of first and second proviso made by the Finance Act, 2008 w.e.f. 01.04.2009 to Section 12AA of the Act. There are findings of fact that the assessee-appellant has not been acting to advance any of the object concerning general public utility. Even otherwise the proviso which has been added by the Finance Act, 2008 w.e.f. 01.04.2009 stipulates that the advancement of any other object of the general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business or a cess or fee of any other consideration.

2. We find that no question of law much less a substantial question of law would emerge from the impugned order of the Income Tax Appellate Tribunal warranting admission of the appeal. The appeal is wholly without merit and is thus liable to be dismissed.

3. For the reasons aforementioned, this appeal fails and same is dismissed alongwith connected application(s)."

The judgment is of no assistance to the appellant for the Division Bench observed that there were findings of fact that the assessee/appellant had in that case not been acting to advance any object concerning general public utility. The

judgment was, therefore, based on the facts of this case. It is obviously for this reason that the Division Bench held that no question of law much less a substantial question of law emerged from the order of the Tribunal. It is difficult to understand how this order can possibly be relied upon as laying down any law when Court itself records that the order impugned therein is based on the facts of that case. The dismissal of the Special Leave Petition filed against that order is, therefore, of no assistance to the Revenue either.

86. The assessee, namely, Moga Improvement Trust is undoubtedly an authority constituted in India. It is also constituted by or under a law, namely, the Punjab Town Improvement Act, 1922. Further, it is engaged for the purpose of dealing with and satisfying the need for housing accommodation. It is also constituted for the purpose of planning, development of improvement of cities, towns and villages or for both as is evident from Sections 22 to 28 of the PTI Act quoted above. The appellants, would, therefore, undoubtedly have been entitled to the benefit of Section 10(20A). The assessee would not have been entitled to the benefit of Section 10(20A) upon its omission by the Finance Act, 2002 with effect from 01.04.2003. Section 10(20A) of the Act did not contain any other requirement. It was wider than Section 2(15).

However, Section 2(15) and the corresponding sections including Sections 11, 12, 12A and 12AA are independent of Section 10(20A) of the Act. Upon the omission of Section 10(20A), the provisions of the other sections were not affected. They remained intact. An assessee could have been entitled to the provisions of Section 10(20A) and the other provisions simultaneously. The omission of one, however, does not affect the validity or the existence of the others. The two provisions are distinct and independent of each other. Thus the omission of Section 10(20A) did not affect the rights of the parties claiming the benefit of Sections 2(15), 11, 12, 12A and 12AA of the Act.

12. Following the same we do not find any infirmity in the order of the Ld. CIT(A) and deciding the identical issue in favour of the assessee the departmental appeal stands dismissed."

10. Further, as pointed out by the Ld. Counsel for the assessee, the Hon'ble jurisdictional High Court has dismissed the Revenue's appeal ITA No. 74 of 2018 filed against order dated 13.07 2017 rendered by the Tribunal in assessee's appeal pertaining g to the assessment year 2013-14 and confirmed the same. Admittedly, the Hon'ble Supreme Court has not stayed the operation of the impugned order dated 11.07.2018 passed by the Hon'ble jurisdictional High Court. Under these circumstances we deem it appropriate to dispose of this appeal by following the decision of the Hon'ble High Court rendered in assessee's case.

11. In our considered view, since the order passed by of the Ld. CIT(A) is in accordance with the judgment of the Hon'ble jurisdictional High Court, we do not find

any reason to interfere with the same. Hence, respectfully following judgment of the Hon'ble High Court in assessee's case discussed above, we uphold the findings of the Ld. CIT(A) and dismiss the revenue's appeal.

ITA No. 847/Chd/2019 AY 2014-15

The fact of the case and the issue involved in the present case are identical to the facts of the case and the issue involved in assessee's appeal for the assessment year 2013-14 except the amount of total income of the assessee determined by the AO and ground No (vii) of the appeal, vide which the Revenue has challenged the action of the Ld. CIT(A) in allowing the donation amounting to Rs. 4 crore towards Punjab State Cancer and Drug Addiction Treatment infrastructure Fund on the ground that the Ld. CIT(A) has allowed the same without discussing the same in its order.

2. We have heard the rival submissions and perused the material on record. Vide ground No. I to vi, the Revenue has challenge the action of the Ld. CIT (A) in holding the assessee eligible for claiming exemption u/s 11 of the Act. Since we have decided the identical issue in favour of the assessee in Revenue's appeal ITA No. 468/chd/2018, pertaining to the Assessment year 2013-14 by following the judgment of the Hon'ble jurisdictional High Court discussed above, consistent with our findings in the said case we uphold the findings of the Ld. CIT (A) and dismiss ground No 1 to vi of the Revenue's appeal.

3. So for as the issue raised by the Revenue vide ground No (vii) is concerned, as pointed out by the Ld. DR, the Ld. CIT(A) has not discussed this issue separately in its order as to whether the donation in question is related to the objects of the assessee society so as to allow the same. In our considered opinion, there is merit in the contention of the Ld. DR that the Ld. CIT(A) ought to have discussed and decided the issue before allowing the claim of the assessee. The Ld. Counsel for the assessee also admitted that the Ld. CIT (A) has not dealt with this issue separately. Therefore, in our considered view, this issue requires adjudication by the first appellate authority. Hence, in all fairness, we set aside this issue to the file of the Ld. CIT (A) for deciding the same after affording a reasonable opportunity of being heard to the assessee.

ITA No. 164/Chd/2019 AY 2015-16

The fact of the case and the issue involved in the present case are identical to the facts of the case and the issue involved in assessee's appeal for the assessment year 2013-14 except the amount of total income of the assessee determined by the AO. Since, we have upheld the order of the Ld. CIT(A) and dismissed the Revenue's appeal ITA No. 468/Chd/2018 pertaining to Assessment Year 2013-14, consistent with our finding in the said appeal, we uphold the order of the Ld. CIT(A) and dismiss the present appeal filed by the Revenue.

In the result, appeals filed by the revenue for the Assessment years 2013-14 and 2015-16 are dismissed and appeal pertaining to the Assessment year 2014-15 is partly allowed for statistical purposes.

(Order pronounced on 07/10/2020 under Rule 34(4) of the Income Tax Rules)

Sd/-
एन.के.सैनी
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT
AG
Date: 07/10/2020

Sd/-
आर. एल. नेगी
(R.L. NEGI)
न्यायिक सदस्य/ Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar