

*Before Adrash Kumar Goel & Alok Singh, JJ.*

**DERA BABA JODH SACHAR,—Petitioner**

*versus*

**UNION OF INDIA AND ANOTHER,—Respondents**

C.P.W. No. 68 of 2006

22nd February, 2010

*Constitution of India, 1950—Art. 226—Income Tax Act, 1961—S. 80G(5)—Commissioner refusing to grant renewal of exemption to a registered Charitable and religious trust on ground of source of income—It is not source of income which is to be seen but investment of income—If income is being utilized for charitable purposes as per object of the trust/society then exemption ordinarily cannot be refused—To grant or refuse exemption under Section 80G main criteria which requires consideration is as to whether income derived, is being used for the charitable purposes, as per object of trust/society or not—Order refusing to grant renewal of exemption quashed—Matter remanded to Commissioner for reconsideration.*

*Held*, that learned Commissioner has not recorded any finding on the question, as to whether income derived by the petitioner-trust is being used for charitable purposes, as per the object of trust or not. Learned Commissioner refusing to grant renewal of exemption only on the ground of the source of income. From the perusal of the judgments, we are of the view that it is not the source of income which is to be seen, but investment of the income. If income is being utilized for charitable purposes as per the object of the trust/society, then exemption ordinarily cannot be refused. To grant or refuse the exemption under Section 80G, the main criteria which requires consideration is as to whether income derived, is being used for the charitable purposes, as per the object of the trust/society or not.

(Paras 12 & 13)

Sunil Mukhi, Advocate *for the petitioner.*

Sukant Gupta, Advocate *for the respondents.*

**ALOK SINGH, J.**

(1) By way of present petition, petitioner is challenging the order dated 9th September, 2005 passed by Commissioner of Income Tax, Karnal, thereby refusing to grant renewal of exemption under Section 80G(5) of the Income Tax Act.

(2) The brief facts of the present case are that petitioner/society was registered under Section 12AA(1)(b)(i) of the the Income Tax Act 1961 vide registration No. 227/91-D/97-98 dated 12th June, 1998. Petitioner claims to be a registered Charitable and Religious Trust being carrying out charitable activities like that of running a free Homeopathy Dispensary, Free Tailoring Training School for the poor girls and widows, Primary School imparting free education to the poor, carrying out daily religious preaching for the moral and ethical up-liftment of the society, carrying out daily free meal, langar and shelter provisions for the poor and other such charitable activities since 1910. The petitioner was granted exemption under section 80G of the Income Tax Act, 1961,—*vide* order dated 18th October, 2000 with effect from 1st February, 2000 to 31st March, 2005. The Commissioner of Income Tax called for various information and details from the petitioner and fixed the case from time to time and ultimately passed the impugned order refusing to grant renewal of exemption under Section 80G(5) of the Act.

(3) The petitioner is assailing the impugned order mainly on the ground that the Commissioner of Income Tax has failed to consider very important aspect that entire income derived is being used only for charitable purposes in India. It is a further case of the petitioner that learned Commissioner has not recorded even a whisper that income of the Trust was being used for other purposes and not for charitable purpose.

(4) Department has contested the claim of the petitioner by way of filing the written statement. The main ground of refusal to grant renewal of exemption that petitioner trust was found lending money to some persons and was found having constructed the building out of the funds received in a donation.

(5) We have heard learned Counsel for the parties and perused the record.

(6) Learned Counsel for the respondents raised preliminary objections about the maintainability of the petition arguing, order passed under section 80G refusing to grant renewal of exemption is an appealable order under Section 253 (1)(c) of the Income Tax Act, hence, writ petition without exhausting remedy of appeal should not be entertained.

(7) Order impugned was passed by the Commissioner of Income tax on 9th September, 2005 and present writ petition was filed on 3rd January, 2006. Appeal, against the order passed under Section 80G, was provided under Section 253(1)(c) for the first time, in the year 2007 with effect from 1st June, 2007. Prior to amendment by Finance Act, 2007 with effect from 1st June, 2007, there was no provision to file appeal against the order refusing to grant exemption under section 80G. Undisputedly, right to file appeal is a statutory right. It is a settled position of law that any amendment made in the Act is always prospective unless it is made retrospective. The present petition was filed prior to the amendment under Section 253(1) (c), hence, objection raised by learned Counsel for the respondents is not tenable and is rejected.

(8) Learned Counsel for the appellant vehemently argued that impugned order was passed on 9th September, 2005, thereafter Assessing Officer,—*vide* order dated 23rd October, 2006 has recorded that entire income is being used to charitable purpose. In view of order passed by Assessment Officer, impugned order requires reconsideration. Order dated 23rd October, 2006 reads as under :—

“The assessee society is running two dera ashrams : one at Panipat and another at Hardwar and also a Primary school (J.S. Model School) in the premises of Panipat ashram. The assessee trust is registered under section 12AA of the IT Act, 1961 and has claimed exemption under section 11 of the IT Act, 1961, as it has applied all of its income for the charitable purpose. On perusal of the records, the contention of the assessee that it has applied all of its income for the charitable purpose in India, as per the provisions of the IT Act and hence its claim of exemption of Rs. 5,28,344 under section 11 of the IT Act is justified, is accepted.”

(9) According to learned Counsel for the petitioner, at one place Assessing Officer is admitting that petitioner has applied all of its income for the charitable purposes in India and, at other place, the Commissioner without recording the finding on the question, as to whether income is being applied for the charitable purposes in India, passed the impugned order. According to learned Counsel for the petitioner, finding on the question, as to whether all the income derived is being used for charitable purposes in India is *sine qua non*, for granting or refusing the renewal of exemption under Section 80G.

(10) Learned Counsel for the petitioner has placed reliance on the judgment of Rajasthan High Court in the matter of **Shri Sardarmal Sancheti Charitable Trust versus Union of India and another (1)** where learned Single Judge in paragraph No. 5 has observed as under :—

“5.....however, it does appear appropriate to observe that mere contribution for the purpose of construction of one room in a hostel that is named Oswal Chhatrawas may not by itself be treated to be an act violating the requirements of Section 80G(5B) of the Act. The other aspects particularly those relating to utilisation of the funds of the trust concerned with reference to its aims and objects do require consideration and the application for renewal of exemption cannot be rejected with an abstract reference to the quantum of one particular donation in relation to a particular hostel, even if such a hostel is managed by a particular community.”

(11) Learned Counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Apex Court in the matter of **American Hotel and Lodging Association Educational Institute versus Central Board of Direct Taxes and others (2)**. The Hon'ble Apex Court in paragraph Nos. 29 and 30 has held as under :—

“29. In **Asstt. CIT versus Surat Art Silk Cloth Manufacturers Association (supra)** it has been held by this Court that test of predominant object of the activity is to be seen whether it exists solely for education and not to earn profit. However, the purpose

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(1) (2009) 20 DTR (Raj) 203

(2) (2008) 7 DTR (S.C.) 183

would not lose its character merely because some profit arises from the activity. That, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit, for, to achieve that, would not only be difficult of practical realization but would reflect unsound principles of management. In order to ascertain whether the Institute is carried on with the object of making profit or not it is duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established.

30. In deciding the character of the recipient, it is not necessary to look at the profits of each year, but to consider the nature of the activities undertaken in India. If the Indian activity has no co-relation to education, exemption has to be denied [see judgment of this Court in *Oxford University Press (supra)*]. *Therefore*, the character of the recipient of income must have character of educational institution in India to be ascertained from the nature of the activities.....”

(12) Having perused the order impugned, we find that learned Commissioner has not recorded any finding on the question, as to whether income derived by the petitioner trust is being used for charitable purposes, as per the object of trust or not. Learned Commissioner refused to grant renewal of exemption only on the ground of the source of income. From the perusal of the judgments cited above by learned Counsel for the petitioner, we are of the view that it is not the source of income which is to be seen, but investment of the income. If income is being utilised for charitable purposes as per the object of the trust/society, then exemption ordinarily cannot be refused.

(13) Learned Counsel appearing for the revenue has placed reliance on the judgment of the Uttarakhand High Court in the matter of **Commissioner of Income-Tax versus National Institute of Aeronautical Engineering Educational Society (3)** and argued that if imparting education is for the primary purpose of earning profit, then it is not a charitable activity. We are of the opinion that judgment of Uttarakhand High Court has no

application in the present matter. To grant or refuse the exemption under section 80G, the main criteria which requires consideration is as to whether income derived, is being used for the charitable purposes, as per the object of the trust/society or not.

(14) In view of the Assessment Order dated 23rd October, 2006 and in view of the judgments relied upon by the learned Counsel for the petitioner, we are of the view that matter requires reconsideration by the learned Commissioner.

(15) Accordingly, impugned order dated 9th September, 2005 is quashed. Matter is remanded back to the learned Commissioner of Income Tax to decide it afresh in accordance with law. Petitioner is directed to appear before the learned Commissioner on 29th March, 2010. No order as to costs.

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*R.N.R.*

*Before S.S. Saron, J.*

**SADHU SINGH,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**C.W.P. No. 10940 of 2008**

11th November, 2009

*Constitution of India, 1950—Arts. 226—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948—S. 42-A—Punjab Village Common Lands (Regulation) Act, 1961—S.7—Collector ordering ejectment of petitioner from land in dispute—Collector holding that Jumla Mushtarka land would be used by Gram Panchayat for common purposes—Petitioner seeking quashing of S. 42-A of 1948 Act—Lands which are not reserved or assigned for common purposes or are not being utilized for common purposes would not come within ambit of Section 42-A of the 1948 Act—Question of validity of provisions of Section 42-A of 1948 Act not to be gone into at this stage—Open to parties on basis of material*