

improvement Trust Vs. Cit

improvement Trust Vs. Cit

SooperKanoon Citation : sooperkanoon.com/75284

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Oct-27-2006

Judge : N Karhail, K Bansal

Appellant : improvement Trust

Respondent : Cit

Judgement :

1. This appeal arises out of the order of Commissioner, Hissar, passed on 18-3-2004, under Section 12AA of the Income Tax Act, 1961, by which registration sought by the assessee was refused. The assessee has taken up 9 grounds of appeal, the 10th is residuary in nature, which does not require any decision from us. The grounds are factual and argumentative in nature and, therefore, the grounds are not in accordance with ITAT Rules. However, the Learned Counsel of the assessee pointed out that ground Nos. 1 and 9 are the substantive grounds, the determination of which will dispose of the appeal. Ground No. 1 is against the refusal of registration under Section 12AA and ground No. 9 is against condonation of delay in filing the application for registration.

2. In the order, it is mentioned that the assessee applied for its registration under Section 12AA of the Act on 1-10-2003. It is further mentioned that the assessee was established under and governed by the provisions of Punjab Town Improvement Act, 1982 (hereinafter referred to as 'that Act'). The object of that Act was to create certain bodies, generally termed as "Town Improvement Trusts", empowered to deal with the development of towns and connected matters. The

powers given to the Improvement Trusts were similar to the powers vested in Municipal Committees. Such trusts could transact only such business as was authorized under that Act. Generally such trusts are constituted of seven trustees including a chairman, which are appointed by the State Government. They hold office during the pleasure of the Government.

They receive such salary or remuneration as sanctioned by the Government. The provisions of that Act were also made applicable in the State of Haryana. Thus, the trusts are in the nature of a "Local Authority". It is also mentioned that the income of such trusts was exempted under clause (20A) of Section 10 of the Act. However, this clause was omitted by Finance Act, 2002, with effect from 1-4-2003. The omission of this clause prompted the assessee to file an application for its registration with the sole motive of avoiding the incidence of tax. The learned CIT also referred to paragraphs 13.1 and 13.2 of the Explanatory Notes on provisions relating to direct taxes, in which it was pointed out that the income of Housing Boards and other statutory authorities, set-up for dealing with or satisfying the needs of housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, was hitherto exempt under the aforesaid clause. The clause was deleted by Finance Act, 2002. In view of the aforesaid legislative history, the conclusion of the learned CIT was that the sole motive for filing the application was to avoid tax. Coming to the registration, it was pointed out that the assessee is neither a trust nor a society. In this connection, provision contained in Section 3 of the Indian Trusts Act, 1882, was referred to, according to which a trust is an obligation annexed to ownership of the property, and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another, or of another and the owner. On the basis of this definition, it was pointed out that the assessee is not a trust, as it does not arise out of any obligation annexed to the ownership of the property. The assessee is also not a society as it has not been registered under the provisions of Societies Registration Act, 1860. It was his view that exemption under Section 11 can be given only to a trust or an institution. Since the assessee was neither a trust nor an institution (It appears that the word 'institution' was read by him to be synonymous with the word society), it was not entitled to registration under Section 12AA of the Act.

2.1 He also referred to provision of Section 2(15) of the Act which provides for an inclusive definition of the term "charitable purpose".

He was of the view that unless a trust or a society is set-up for charitable purposes only, it cannot claim registration under Section 12AA of the Act. The definition includes within its ambit relief of poor, education, medical relief, and advancement of any other object of general public utility. It was argued before him that the assessee promotes schemes which are in the nature of public utilities and, therefore, its purposes fall within the meaning of the charitable purpose. The view of the learned CIT was that improvement trusts discharge the functions of a State Government under the provisions of a statute. Therefore, such functions cannot be termed as charitable purposes. He was also of the view that the whole of the issue has to be examined from a wider Perspective and even if some expenditure has been incurred in an isolated manner, then, the main purpose of the assessee cannot be termed as charitable purpose. It was pointed out by him in this connection that the main functions of the assessee are acquisition of land, sale of plots of land, providing basic amenities such as roads, light, water, sewerage etc. The provisions of such facilities are necessary for sale of plots of land for realizing higher prices and, therefore, provisions of such facilities are merely incidental to the main purpose of purchase and sale of land.

2.2 He also referred to the accounts of the assessee for financial year 2002-03, in which receipts of Rs. 39,74,493 were shown. As against the aforesaid receipts, the assessee had incurred expenditure of Rs. 3,53,276 only for the alleged public purposes. The expenditure was lower than 85 per cent of the receipts. Therefore, his conclusion was that the primary function of the assessee did not constitute charitable purpose.

2.3 Coming to the issue of condonation of delay, it was represented before him that the assessee was unaware of its tax liability arising on account of omission of Section 10(20A) with effect from 1-4-2003. It received a letter from Secretary to Government of Haryana that the aforesaid provisions have been deleted from the Act. Therefore, the matter was discussed with the local tax consultant and after such discussion it was decided to file an application for its registration under the

Act with a view to seek exemption under Section 11. In this connection, the learned CIT pointed out that being a statutory authority, the assessee had sufficient legal advice. Prima facie, the only reason for filing the application was to seek exemption from Section 11. It was pointed out that in law, the assessee could seek its registration from the first day of the financial year in which its application was made, provided that other conditions were satisfied.

Since other conditions were not satisfied, the request for condonation of delay was rejected. The application for registration was also dismissed. Aggrieved by this order, the assessee is in appeal before us.

3. The learned Counsel of the assessee pointed out that the assessee was a creation of the State Statute. Its income was hitherto exempt from taxation under Section 10(20A). When the assessee came to know that the aforesaid provision has been omitted from the statute, it sought necessary legal advice and applied for registration by filing Form No. 10A on 1-10-2003. The application was complete in all respects. A prayer was also made to condone the delay and grant registration with effect from 1-4-2002.

3.1 Our attention was drawn towards Explanatory Note on the provisions relating to direct taxes and it was pointed out that the learned CIT referred only to paragraphs 13.1 and 13.2 in his order on page 3.

However, he did not refer to paragraph 13.3, reproduced in (2002) 258 ITR at page 24 (St.). This paragraph points out that donation made to housing authorities, referred to in clause (20A) of Section 10, are eligible for 50 per cent deduction in the hands of the donor. This clause has been deleted. The denial of exemption under Section 80G may result in drawing up of donations. To continue the incentive to the donors, Section 80G has been amended so as to provide that 50 per cent of the sum paid by an assessee to an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the needs for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or both, shall be deducted from the total income of such assessee. His case was that if, in spite of omission of Section 10(20A), donors' cases can be covered under Section 80G, the assessee's case

can also be covered under other provision for seeking exemption, such as sections 11, 12 etc.

3.2 The learned Counsel referred to pages 6, 7 and 8 of the paper book, which is nothing but scheme of Chapter IV of that Act, which identifies various types of schemes and the circumstances in which the schemes could be taken up by the assessee. For the sake of completeness of this order, the same are reproduced below Section 27 provides for re-housing of displaced resident house owners: 3. Relation, letting on hire, lease, sale, exchange or disposal of land.

4. Demolition of building which are unfit and are causing objection of light and air, 7. Provision for open space and enlargement or alteration of existing open spaces, 8. Reservation of land for production of fruit, vegetables, fuel, fodder etc. for residents of local area, 10. Provision of a system of drains and sewers for improvement of ill-drained and in-sanitary of localities.

11. All acts to be done intended to promote health of residents of area comprised in scheme including conservation and preservation from injury or pollution of rivers and other sources and means of water supply.

12. Demolition of existing buildings and their erection and re-erection.

15. Other matters which State Government deems necessary relating to scheme Section 29 prescribes street alignment on power of Municipal Committee; Section 30 prescribes to set back or forward buildings adjacent to the street alignment; Section 31 prescribes prohibition of building beyond a street alignment; Section 32 prescribes acquisition of property affected by deferred scheme; Section 33 provides for the initiation of the scheme upon an office representation by the Municipal Committee or otherwise; Section 34 provides for the consideration of such official representation by the Municipal Committee or otherwise; Section 35 provides for matters to be considered when framing improvement scheme; Section 36 provides for preparation, publication and transmission of notice as to improvement schemes and supply of documents to applicants and for receiving of objections thereto within the period prescribed therefor in the notification; Section 37 deals with transmission to trust of representation by committee as to

improvement scheme; Section 38 provides for issuance of notice of proposed acquisition of land to the owner/occupier of any immovable property which is proposed to be acquired and for filing of objections by them within a period of sixty days from the service of the notice; Section 39 provides furnishing information available in municipal record; Section 40 provides (i) for the consideration of the objections raised under sections 36,37 and 38 in respect of any scheme and then either to abandon the scheme or apply to the State Government to sanction it in its original form or in modified form; (ii) for the furnishing to the State Government along with its application with certain material to enable the Government to satisfy itself that the scheme had been duly framed by the Trust; and (iii) for the publishing of a notice for two consecutive weeks in the Official Gazette or in a newspaper or papers to the effect that the scheme had been submitted to the Government for sanction; Section 41 enables the Government either to sanction the scheme with or without modifications or reject it; Sub-section (1) of Section 42 provides for the notification of its sanction of a given scheme; Sub-section (2) of Section 42 provides that a notification under Sub-section (1) of Section 42 in respect of any scheme shall be conclusive evidence that the scheme had been duly framed and sanctioned; Section 44 provides for inclusion of different localities in combined scheme." 3.3 The case of the assessee was that all its objects constituted charitable purposes, being objects of general public utility, covered by Sub-section (15) of Section 2 of the Act. He also referred to paragraph 8 of the order of the learned CIT, in which it was mentioned that there is no doubt that the improvement trusts are created for the development purposes in the specified areas. It was also pointed out that in spite of admitting that the purpose of the assessee was development of the specified areas, yet, he came to the conclusion that such purpose does not come within the purview of "charitable purpose" under Section 2(15) of the Act for the reason that such functions are performed by the State Government. He also referred to page 26 of the paper book, being the questionnaire issued by the CIT to the assessee on 27-10-2003. Written submissions were filed in response to this questionnaire and it was pointed out that the nature of activities for the improvement and expansion of towns were laid down in sections 22 to 24 of that Act, the gist of which was enclosed along with the application filed in Form No. 10A. For the sake of completeness.

Chapter IV of the Punjab Town Improvement Act, 1982 (as applicable to Haryana) was also placed in the paper book on pages 36 and 37. The assessee had also filed a letter dated 12-3-2004 before the learned CIT in which clarification was furnished in respect of the matters raised in the questionnaire.

3.4 Coming to the legal argument, on the interpretation of Sub-section (15) of Section 2 of the Act, the learned Counsel relied on the decision of Hon'ble ITAT, Ahmedabad "C" Bench in the case of Gujarat Industrial Development Corpn. v. Asstt. CIT (2006) 10 SOT 23 (URO).

That assessee was created under the Gujarat Industrial Development Act, 1962, for the purpose of rapid and orderly development of industries in the industrial area and industrial estates established by the State Government. It made an application for its registration under Section 12A of the Act. The Hon'ble Tribunal pointed out that the purpose of securing rapid and orderly establishment and organization of industries in the industrial area and industrial estate in the State of Gujarat is an object of general public utility and, therefore, the assessee was entitled to registration under Section 12A of the Act. That assessee's income was also exempt under Section 10(20A) of the Act, which was omitted with effect from 1-4-2003. It applied for registration on 14-5-2003. Seeking registration with effect from 1-4-2002. The Hon'ble Tribunal pointed out that the amendment in law necessitated the assessee to file application for its registration and in such circumstances there was no justification for the CIT to refuse the condonation of delay. The case of the learned Counsel was that the facts of that case and the facts of this case are in pari materia. The assessee also undertook activities which are in the nature of public utility and its application was also necessitated because of change in the statute. Therefore, it was argued that its application should have been allowed by registering it.

3.5 The reliance was also placed on the decision of Hon'ble Supreme Court in the case of Gujarat Industrial Development Corpn. v. CIT . The Hon'ble court pointed out that the word "development" in Section 10(20A) of the Act should be interpreted in a wide sense. If that is done, there is no warrant to exclude development programmes relating to any industry from the purview of the word

"development" in the said clause. The word in that section does not indicate in any manner that the Legislature contemplated that the development should be confined to non-industrial activities. The development of a place can be accelerated through a number of schemes and establishments of industries is one mode of development of an area.

The case of the learned Counsel was that the assessee was entrusted with the task of development of Hansi town under its jurisdiction. The word "development" should be interpreted in a wider sense and, therefore, objects in pursuance of development should be held to be the object of general public utility.

3.6 The learned Counsel referred to page 28 of the paper book, which contains 10 items of expenditure incurred on operation of a fountain, electricity bill of the fountain, repair of water pipe line, electrical goods for markets, repairs of green belt, repairs of fountain etc. It was pointed out that assessee had incurred expenditure in pursuance of the object of advancing public utility. The details of the expenditure are also available on page 32 of the paper book. Therefore, his case was that the assessee had been carrying on activities of general public utility.

3.7 He also relied on the decision of Hon'ble ITAT, Delhi "A" Bench in the case of Market Committee v. CIT (2005) 3 SOT 98 (Del). That case dealt with registration of an agricultural market committee established under a statute, enjoying tax exemption under Section 10(20), which was withdrawn by Finance Act, 2002, with effect from 1-4-2003. It was pointed out that the Union Finance Minister informed that such assesseees could claim exemption under Section 11 on fulfilment of other conditions, consequent to which an application was filed under Section 12A of the Act. The objection of the CIT was that market committee established under a statute cannot be called as charitable institution.

The Hon'ble Tribunal pointed out that there was no force in the objection. It was further pointed out that withdrawal of exemption under Section 10(20) by an amendment does not preclude the assessee from seeking exemption under other sections, such as sections 11, 12 etc., provided conditions laid down in sections 11 to 13 are satisfied.

it was also pointed out that the fact that Market Committee collects fees, fines, and their officers are public servants, does not detract from coming to the conclusion that market committees are charitable institutions if otherwise their objects and activities are charitable in nature. It was also pointed out that the dominant object of such committees was to save the agriculturists from exploitation by middlemen and to provide them with better storage and transportation facilities for food grains. These are the objects of general public utility. It was also pointed out that registration by itself does not lead to exemption of the whole income and it was always open to the authorities to examine the claim under Section 11 subject to other conditions prescribed in sections 12 to 13. The learned Counsel pointed out that the facts of his case are in pari materia to the facts in the case of Marketing Committee, except that its income was hitherto exempt under Section 10(20A) and not under Section 10(20), as in the case of Market Committee (supra). Therefore, it was agitated that the learned CIT ought to have registered the assessee.

3.8 The learned CIT had given a finding that the assessee was neither a trust nor an institution. In connection with his finding regarding existence of the trust, it was pointed out that there was no obligation annexed to the ownership of the property, and arising out of a confidence etc., existed in this case. It was also held that the assessee has not been registered as a society. In this connection, the learned Counsel relied on the decision of Hon'ble ITAT, Amritsar Bench, in the case of Malli Ram Charitable Trust v. CIT (2003) 132 Taxman 221 (Mag.), in which it was pointed out that the application for registration has to be made in Form No. 10A by the person who is in receipt of income of the trust, which was done by that assessee. It was also not in dispute that documents evidencing the creation of trust were filed with the application. The Commissioner had no doubts about the objects of the trust. His only objection was that the trust deed was not registered either with the Registrar of Societies or with the Registrar of Documents. The Hon'ble Tribunal held that in view of clear provisions of law contained in Section 12A of the Act and Rule 17A of the Income-tax Rules 1962, that cannot be a ground for refusal of registration. It was pointed out by the learned Counsel that the instrument of creation was filed, which contained the objects of the trust and, therefore, it could not have been held by the learned Commissioner that the assessee ought to have been registered either with the Registrar of Societies or

Registrar of Documents. He also referred to the decision in the case of Market Committee (supra) to argue that what was required to be seen was that whether conditions prescribed regarding registration are fulfilled or not. The learned Counsel also distinguished between what could be termed as an activity of profit and an activity for profit, and in this connection he relied on the decision of Hon'ble ITAT, Pune Bench in the case of Goa, Daman & Diu Industrial Development Corpn. v. First ITO (1986) 15 ITD 447 (Pune). The aforesaid assessee was constituted for development of Goa, Daman & Diu. The question was whether in view of the fact that the assessee was a company, the activities of the assessee might be activities of profit but were not activities for profit and whether as the activities had no profit motive, the activities of the assessee were for charitable purpose if it fulfilled conditions for exemption under Section 11. The Hon'ble Tribunal held that if there was no motive to earn profit and the activities of the assessee were charitable in nature, its income could be exempted under Section 11 of the Act.

3.9 Coming to the issue of delay, it was pointed out that the assessee had filed the application on 1-10-2003. If its application had been successful, it was entitled to get registration with effect from 1-4-2003. However, it required registration with effect from 1-4-2002.

Thus, there was a delay of one year only. The delay occurred because of lack of knowledge on the part of the assessee that provisions of Section 10(20A) were deleted and, therefore, it was required to be registered with the Commissioner for claiming exemption under Section 4. As against the aforesaid, the learned DR pointed out that the income of the assessee was earlier exempt under clause (20A) of Section 10, as it constituted an authority under a law, as contemplated under that clause. A local authority is also a "person" under Section 2(31) of the Act. Therefore, the assessee is a person under the Income Tax Act.

However, only a trust or an institution can be registered under Section 12AA of the Act. Therefore, the question is whether the assessee is a trust or an institution? It was stressed that Section 12AA does not use the words "any person" or "local authority". Section 11(1)(a) also uses the words "income derived from property

held under trust". While, it was stated by him that the word "trust" should be given a wide meaning, yet, on facts the assessee neither constitutes a trust nor an institution. When his attention was drawn to the fact that the word "institution" has not been used in Section 11(i)(a), it was pointed out that the word "trust" may be interpreted liberally, but since the assessee is discharging governmental functions, it constituted neither a trust nor an institution.

4.1 The learned Counsel has made a reference to the speech of the Finance Minister to the effect that upon withdrawal of exemption under Section 10(20A), the assessees covered under that clause can seek exemption under Section 11 by getting them registered under Section 12AA. In this connection, the learned DR pointed out that it was also mentioned by him that the exemption will be available if the prescribed conditions are satisfied. In this case, the prescribed conditions were not satisfied, as pointed out earlier. He referred to the Commissioner's letter dated 27-10-2003, in which certain details were called for, which included the copy of constitution of the trust, copy of registration with Registrar of Societies /Trust, and a copy of the trust deed. He referred to the clarification submitted by the assessee and it was pointed out that no case was made out by it that it was a trust or an institution. The learned CIT had also required the assessee to prove inter alia the existence of the Trust /institution and genuineness of its activities vide letter dated 23-1-2004. In reply to this letter also, the assessee did not make out any case that it was either a trust or an institution. The assessee had merely placed reliance on the Gazette Notification under which the assessee was created, established and incorporated by the Government of Haryana in the year 1969. Thus, its existence as a trust or an institution was not established.

4.2 The learned DR referred to the activities of the assessee, actually undertaken by it and enumerated on pages 46 to 48 of the paper book. It was his case that there was no clause which specified item-wise expenditure to be incurred by the assessee and in this connection wide discretionary powers were given to the Management Committee. Therefore, his case was that conditions of Section 11 (1)(a) were not satisfied.

4.3 He also referred to pages 49 to 62 of the paper book, which is the Gazette Notification, framing rules for the functioning of the assessee. It was his view that clauses 3, 4, 5 and 6 permitted the assessee to carry on the business in immovable properties by way of sale, allotment, auction, lease, tender or otherwise. These activities involved profit element, profit motive and were not charitable in nature.

4.4 While referred to the accounts for the financial year 2002-03, it was pointed out that only a small amount of Rs. 3,65,500 was expended on development activities out of the total expenditure of Rs. 39,79,493. On the basis of the aforesaid, his case was that the activities of the assessee were not primarily charitable in nature.

4.5 Coming to the legal issue, he pointed out that the finding of the Hon'ble Tribunal in the case of Market Committee (supra) was that that assessee was actually carrying on charitable activities, which is not the case here. Therefore, the ratio of that judgment is not applicable on the facts of this case. Coming to the case of Gujarat Industrial Development Corpn. (supra), it was pointed out that that assessee was incorporated under Gujarat Industrial Development Act, 1962, and its main purpose was to develop industrial areas and industrial estates in the State of Gujarat. Thus, the dominant object was one of development, which is not the case here. Therefore, it was argued that the ratio of that case is also not applicable to the facts of the instant case.

Referring to the case of Malli Ram Charitable Trust (supra), it was pointed out that in that case the trust deed was not registered, while in the instant case there is no trust deed. Therefore, the facts are materially different and in view thereof, the ratio of that decision is also not applicable to the facts of this case.

5. In the rejoinder, the learned Counsel pointed out that various schemes floated or announced by the assessee were not the part of the instrument of its creation. Therefore, what has to be seen at the time of registration is the objects of the assessee. It was his case that the modalities for achieving the objects and the reservations made in such modalities do not lead to a conclusion that the objects of the assessee are not charitable in nature. In fact, such issues cannot be examined at the stage of registration, wherein only issue to be examined is

whether objects are charitable in nature. It was also to be seen whether various formalities have been complied with. The issue of exemption under Section 11(1)(a) will arise only at the time of assessment, in which only such part of the income, which have been applied towards charitable purposes, will be exempted.

6. We have considered the facts of the case and rival submissions. It may be pointed out that the conditions for registration of trusts etc.

and procedure for registration thereof are covered by sections 12A and 12AA respectively. Section 12A uses the words "any trust or institution". It is not the case of the assessee that it was established as a trust under Section 3 of the Indian Trust Act, 1882.

Its case is that it is an institution and in this connection, the learned Counsel had referred to the decision in the cases of Market Committee (supra) and Gujarat Industrial Development Corpn. (supra).

The Market Committee was a local authority under Section 10(20), which constituted a person under Section 2(31) of the Act. That person was granted registration by the ITAT, Delhi Bench "A". Gujarat Industrial Development Corpn's case (supra) was an entity registered under Gujarat Industrial Development Act, 1962, which was considered to be a person, being an artificial juridical person under Section 2(31) of the Act. The assessee is also an artificial juridical person created under the Punjab Town Improvement Act, 1982. Therefore, we do not find any difficulty in holding that the assessee is a person. The term "institution" has not been defined in the Act, but Sub-section (26) of Section 2 of the Act regarding the definition of the term "Indian companies" takes within its ambit a corporation established by a Central, State or Provincial Act. Even if reliance is not placed upon this sub-section, it is clear that the assessee is a person under clause (vii) of Sub-section (31) of Section 2. As pointed out earlier, the word "institution" has not been defined in the Act. We have perused Concise Oxford English Dictionary which defines the aforesaid word as under: (i) an organization founded for a religious, educational, or social purpose; (ii) an organization providing residential care for people with special needs; 6.1 The assessee was created by an Act of the Government of Haryana under the Punjab Town Improvement Act, 1982, whose

provisions have been extended to the State of Haryana also. The purpose is to improve infrastructure in cities, towns and villages, falling within its jurisdiction. Similar bodies have been created for other cities, towns etc. Therefore, it can be very well said that it is an organization founded for a social purpose and, therefore, it constitutes an institution. We have already seen that Market Committees, performing the work of development activities of the market to help agriculturists to sell their agricultural produce without exploitation by middleman, have been granted registration. We may point out here that the word "institution" has a wide ambit as seen from its meaning in the Oxford Dictionary, than the word "person" used in the Act. Therefore, we do not see any reason as to why the assessee, performing a useful social purpose, should not be termed as an institution, registerable under Section 12AA of the Act. Therefore, we are of the view that the assessee does constitute an institution under Section 12A of the Act.

6.2 Section 12A provides that provisions of Section 11 and Section 12 shall not apply to the income of any trust or institution unless it has made an application for its registration in the prescribed form and in the prescribed manner. The assessee has made an application to the Commissioner in the prescribed form and in the prescribed manner.

Therefore, apart from delay in filing the application, conditions of Section 12A(a) are satisfied. As mentioned earlier, the procedure for registration has been prescribed in Section 12AA of the Act. It is provided that the Commissioner may call for such documents or information as he thinks necessary in order to satisfy himself about the genuineness of the activities and after satisfying himself about the objects and genuineness of the activities, he shall pass an order in writing registering the trust or institution. On careful study of this section, it will be seen that the Commissioner has to examine two things before registering a trust or an institution. These are 6.3 We have already enumerated the objects of the trust in paragraph 3.2 of this order. It was placed before the learned CIT that as per preamble of Punjab Town Improvement Act, the dominant object of the applicant is for improvement and for expansion of Hansi town, and preamble of that Act was placed on the record of the CIT. Gist of Section 23 to Section 44 were also placed before him. These sections empower the assessee to provide for street schemes

and deferred street schemes; development and expansion schemes; housing accommodation scheme; re-housing accommodation scheme and re-housing of displaced resident house owners etc. With a view to implement the aforesaid schemes, the assessee was enabled to acquire land by any mode, demolished buildings which are unfit and are causing obstruction or air and light; re-distribution of sites; alteration of streets; provision for open spaces etc.; reservation of land for production of fruits, vegetables, fuel, fodder etc.; drainage, water supply and lighting of streets; provision for sewers; promoting health of the residents in the prescribed area; demolition of existing buildings and their erection and re-erection; advancing funds for re-erection of buildings as per scheme; promoting communication facilities and other matters which State Government may consider necessary relating to the schemes. On combined perusal of these sections, it will be clear that the basic intent and purpose of constituting the assessee was to develop the town of Hansi for securing better amenities and better living for the people of the town. To our mind, all these activities constitute charitable purposes, as understood under Section 2(15) of the Act, under the residuary clause of "object of general public utility". Therefore, we are also of the view that there is nothing in the objects of the assessee which could come in the way of its registration.

6.4 Coming to the activities, both the learned DR and the learned Counsel have referred to the receipt and payment account for the financial year 2002-03. It is seen that the assessee has earned substantial income on sale of land. Income has also been earned from banks by way of interest and charges recovered from various persons.

The total income amounted to Rs. 39,79,493. A large portion of the income, amounting to Rs. 13,07,167, has been expended on salaries of the employees. Various expenses have been incurred which can be termed as office expenses. Expenses amounting to Rs. 1,47,191, debited under the head "Contingencies" have also been incurred, which are in the nature of office expenses. Development expenses amounting to Rs. 3,65,500 have also been incurred. The case of the learned Counsel was that all the expenses were incurred while carrying out activities as per objects for which the assessee was created. As against the

aforesaid, the case of the learned DR was that development expenses were incurred only to the extent of Rs. 3,65,500 and major expenses were incurred on establishment etc. Therefore, his case was that substantial expenses could not be said to be application of income for charitable purposes under Section 11 (1)(a). We have considered this matter also. We find that the incurring of expenditure on establishment does not lead to any inference that the activities of the assessee are not charitable. It is another matter to say that major portion of the expenditure was incurred not in connection with the objects of the assessee, but on the establishment. According to us, what is to be seen under this connection is whether the assessee was carrying on activities in accordance with the objects enumerated in instrument of its creation or the funds of the assessee were diverted for totally different purposes. We find that the assessee has incurred expenditure in pursuance of objects and certain other expenses have also been incurred on establishment. There is nothing in the activities of the assessee which could be said to be non-genuine in the sense of being non-existent or completely contrary to its objects. It may be clarified here that we are not giving a finding that expenses incurred otherwise than on development schemes amount to application of income under Section 11 (1)(a). That is an issue to be decided in assessment. What we have to consider is whether the activities of the assessee are genuine, in the sense that it is carrying on the activities purported to be carried out by it. If the issue is examined in this light, it will be clear that the assessee has been carrying out development activities in the town of Hansi. Therefore, we do not find any reason to come to any adverse conclusion in this matter also. The learned DR had pointed out that there was no provision in the instrument of creation of the assessee, which apportioned expenditure on various activities to be carried out by the assessee. In view thereof, his case was that the assessee is not entitled to its registration under the Act. We have considered this matter also. We may point out that all objects of the assessee are charitable in nature and, therefore, it is not a case where objects are partly charitable in nature and partly non-charitable in nature. In such a situation, there is no requirement for specifying the ratio of expenditure to be incurred on various activities. It may also be pointed out that Section 11 (1)(b) deals with partly charitable trusts or institutions, under which only that portion of the income is exempted which is applied for charitable purposes.

However, this section applies to the trusts created on or before the commencement of the Act. As all the objects of the assessee are charitable in nature, this section is not applicable. There is nothing otherwise in the Act, which makes a provision for allocation of expenses to various objects. Therefore, we are of the view that this argument does not support the revenue.

7. Having considered all the facts, we are of the view that the facts of this case are covered by the ratio of decisions in the cases of Market Committee (supra), Malli Ram Charitable Trust (supra) and Gujarat Industrial Development Corpn. (supra). Therefore, we are of the view that the assessee is entitled to its registration. Thus, ground No. 1 of the appeal is allowed.

8. Coming to the issue of condonation of delay, the case of the assessee was that the same occurred due to lack of knowledge of Fiscal Laws on part of the assessee. However, when the omission of Section 10(20A) was brought to its notice by the Collector, it took urgent steps by seeking legal advise and filed the application on 1- 10-2003.

Similar issue had come up for adjudication before Hon'ble Tribunal in the case of Market Committee (supra). It was held that circumstances, as enumerated above, should not come in the way of granting retrospective registration. We are of the view that the delay was on account of bona fide reason beyond the knowledge of the assessee.

Therefore, it is held that the assessee ought to have been granted registration with effect from 1-4-2002. Thus, ground No. 9 is also allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com