

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH**

**BEYFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA Nos. 157 to 159/CHD/2015
Assessment Years : 2007-08, 2008-09 & 2009-10

M/s Punjab Heritage & Tourism Vs. The ACIT, Circle 4(1),
Promotion Board, Plot No. 3, Chandigarh
Sector 38-A,
Chandigarh

PAN No. AAATP6562G

(Appellant)

(Respondent)

Appellant by : Sh. Tej Mohan Singh, Advocate
Respondent by : Sh. Ashish Abrol, CIT DR

Date of Hearing : 21.08.2018
Date of Pronouncement : 07.09.2018

ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assesseees against the separate orders of the Commissioner of Income Tax(A), Patiala [hereinafter referred to as 'CIT(A)'] dated 21.11.2014.

2. The assessee in all the appeals on identical facts has agitated the levy of penalty / confirmation of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). **ITA No. 157/Chd/2015** for assessment year 2007-08 is taken as a lead case for narration of facts.

ITA No. 157/Chd/2015 for AY 2007-08

3. The assessee is a society created by the Punjab Government. The assessee applied for registration u/s 12AA of the Act to the

Commissioner of Income Tax as charitable trust / society on 18.12.2006. The Commissioner of income Tax-II issued a letter dated 22.6.2007 to the assessee stating therein as under:-

“Subject : Application for registration u/s 12A(a) of the Income-tax Act, 1961 – Regarding

Please refer to your application for registration u/s 12A(a) of Income-tax Act, 1961 filed with office on 18.12.2006.

A perusal of the deed of declaration of the Board reveals that clause 26 dealing with the ‘Dissolution is in violation of section 11 of the Income-tax Act, 1961. Therefore, your application for registration u/s 12AA of the Income-tax Act, 1961 may not be considered favorably. It can only be considered an amendment of this clause and receipt of amended Rules and Regulations.”

Thereafter the assessee society filed return of income for the year under consideration on 31.10.2007 claiming exemption of income u/s 11 of the Act. In the return of income under Column 8, in respect of the particular date of registration u/s 12A of the Act, it was mentioned by the assessee as ‘Applied for’. Subsequently, as required by the Commissioner of I.Tax (CIT) vide letter dated 22.6.2007, the amended constitution incorporating dissolution clause was filed with the CIT on 1.1.2008. However, the office of the Commissioner of Income Tax directed the assessee to file a fresh form 10A / application for registration. Thereafter, the assessee filed a fresh form No. 10A along with amended trust deed with the Department vide letter dated 19.3.2008. Finally, vide order dated 2.7.2008, registration u/s 12A was granted to the assessee but the same was granted w.e.f. Assessment year 2009-10.

4. For the assessment year under consideration, the Assessing officer noted that assessee had wrongly claimed exemption u/s 11 of the Act as the assessee was granted registration u/s 12A of the Act only w.e.f. assessment year 2009-10. He, therefore, denied the claim of exemption to the assessee and made the addition in respect of interest income earned by the assessee on the grants received from the government. He further noticed that the assessee had not shown the receipt of interest income in its profit and loss account rather the same had directly been reflected in the balance sheet to avoid the tax liability. He further noted that the assessee society claimed expenditure of Rs. 7,29,721/- in the income and expenditure account and that the major portion of this expenditure was on account 400th year Martyrdom Day (c). That the government had already provided huge grant in aid for such purpose and that the application of these grants could not be allowed out of interest on FDRs. He, therefore, disallowed the expenditure of Rs. 7,29,721/- on this account claimed by the assessee and added back the same to the total income of the assessee. The assessee unsuccessfully contested the above addition upto the level of the Tribunal. The Assessing officer also initiated penalty proceedings u/s 271(1)(c) of the Act and levied the impugned penalty of Rs. 50,29,240/- in this case which has been further confirmed by the CIT(A).

5. The plea taken by the Ld. Counsel for the assessee is that the assessee society is a Government undertaking and that there was no deliberate intention either on the part of the assessee or on the part of its employees to conceal its income or to avoid the tax liability.

Further, it has been pleaded that since the Ld. CIT(A) in his letter dated 22.6.2007 had not rejected the application of the assessee for registration u/s 12A of the Act, rather, it was observed that the application can be considered on amendment of the clause and receipt of amended rules and regulations. That the assessee was under bonafide belief that the application of the assessee for registration was pending and that is why in the return of income under the relevant column, it was mentioned that the registration u/s 12A was 'Applied for'. It has been further submitted that the assessee received grants from the government for specific purpose. The remainder of such grants after application i.e. the surpluses, if any, and the further interest earned/ accrued on such grants / surplus was liable to be remitted back to the government, hence, the assessee did not show the same as its income. The Ld. Counsel for the assessee has further submitted that since assessee was under bonafide belief that its application for registration u/s 12A will be accepted and the registration will be granted from the date of application i.e. 18.12.2006 covering the year under consideration, hence, there was no act of furnishing of inaccurate particulars of income or concealment of income on the part of the assessee.

6. The Ld. DR, on the other hand, has relied on the findings of the lower authorities and has vehemently submitted that since the additions made by the Assessing officer have been confirmed up to the level of the Tribunal, hence, the penalty u/s 271(1)(c) of the Act has rightly been levied /confirmed by the lower authorities.

7. At this stage, Ld. Counsel for the assessee has submitted that the Tribunal has not confirmed the addition on merits, rather, the appeal of the assessee had been dismissed being barred by limitation.

8. We have heard the rival contentions and have gone through the records. In our view, though the additions on merits have been made in this case, yet, it is not a fit case for levy of penalty u/s 271(1)(c) of the Act. The assessee had claimed exemption u/s 11 of the Act vide his application 18.12.2006, however, the registration to the assessee institution as a charitable institution had been granted from assessment year 2009-10. The fact on the file also shows that the assessee had applied for registration vide his application on 18.12.2006 and the said application of the assessee was not rejected by the Ld. CIT in clear terms rather it was conveyed that the application of the assessee can be considered on filing of the amended deed with dissolution clause incorporated in it. The assessee was under bonafide belief that its application for registration was likely to be allowed and it had also been specifically mentioned in the return in the relevant Colum that registration is "Applied for". The assessee has also pleaded on merits that even otherwise since the assessee was liable to remit the amount of interest to the government and it was shown as liability, hence, the same was not shown as receipt in the income and expenditure account. Similar plea has also been taken regarding interest expenditure earned by the assessee. In view of the above, it is not a case of furnishing of inaccurate particulars of income or concealment of income on the part of the assessee warranting penalty u/s

271(1)(c) of the Act. The impugned penalty levied by the lower authorities is, therefore, ordered to be deleted.

ITA Nos. 158/Chd/2015 (A.Y. 2008-09)

9. Since the facts and issue involved in this appeal are identical, hence, the levy of penalty agitated in this appeal is ordered to be deleted.

ITA Nos. 159 Chd/2015 (A.Y. 2009-10)

10. For the year under consideration, the assessee has been allowed registration u/s 12A of the Act, hence, the Assessing officer accepted the claim of the assessee for exemption u/s 11 of the Act. However, the impugned penalty has been levied treating the interest earned as income of the assessee which has not been utilized for charitable purposes.

11. In view our discussion made above in respect of this issue while adjudicating the appeal for earlier years 2007-08 and 2008-09, it is not a case of furnishing of inaccurate particulars of income or concealment of income on the part of the assessee warranting penalty u/s 271(1)(c) of the Act. The impugned penalty levied by the lower authorities is, therefore, ordered to be deleted.

In the result, all the three appeals of the assessee are hereby allowed.

Order pronounced in the Open Court on 07.09.2018.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER
Dated : 07.09.2018
Rkk

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*