

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 249 of 2010

Date of Decision: 30.8.2010

Commissioner of Income-tax, Panchkula

....Appellant.

Versus

M/s Haryana Building & Other Construction Works Welfare Board

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 23.9.2009 of the Income Tax Appellate Tribunal, Chandigarh Bench 'B' (hereinafter referred to as "the Tribunal") passed in ITA No. 907/Chd/2008, proposing to raise following substantial question of law:-

"Whether on the facts and circumstances of the case the ITAT was justified in directing the Commissioner of Income tax to grant registration to the assessee despite the fact that there is no application of funds towards charitable purpose by the assessee?"

2. The assessee has been created under the Building & Other

Construction Works (Regulation of Employment & Condition of Service) Act, 1996. It applied under Section 12AA for registration as Charitable Institution to the Commissioner of Income Tax. The Commissioner rejected the application on the ground that the assessee did not receive any voluntary contribution but only received statutory cess and it did not carry on charitable activities during the year. On appeal, the Tribunal reversed the view taken by the Commissioner relying upon order passed by the Director of Income-tax (Exemption), Bangalore in the case of Karnataka Board, carrying on identical activities and further holding that activities of the assessee were covered under Section 2 (15) of the Act. The finding recorded by the Tribunal is as under:-

“The Board was constituted under section 18 of the building and other construction workers (Regulation of Employment & conditions of service) Act, 1996. The source of receipt of the assessee are receipts from the cess imposed on the cost of construction projects and paid by the executive agency of the project and also contribution from building workers. For regulating the working of the Board, the Government of Haryana framed rules. The Board is responsible for:

- a) All matters connected with the administration of the Fund;
- b) Laying down policies for the deposits of the amount of the Fund.

- c) Submission of annual budget to State Govt. of Haryana.
- d) Submission of annual report to State Govt. on the activities of the Board.
- e) Proper maintenance of accounts.
- f) Annual audit of accounts of the Board Govt. in accordance with the provisions of the Act.
- g) Collection of contribution of the Fund and other charges.
- h) Launching of prosecutions for and on behalf of the Board.
- i) Speedy settlement of claim and sanction of advances and other benefits.
- j) Proper and timely recovery of any amount due to the Board.

The objects and the purposes for which the Board was constituted are broadly mentioned hereunder:-

- i) To regulate the employment conditions of service.
- ii) To prove safely, healthy and welfare measure to the “building and other constructions works”, which is most numerous and vulnerable segment of the second largest unorganized labour sector in India after agriculture.

If the aforesaid activities/objects are analysed, one fact is clearly oozing out that the objectives/activities

of the assessee are of general public utility, therefore, it can safely be said that these falls under the definition of 'charitable purposes' as defined under section 2 (15) of the Act. The department on identical situation granted registration to Building and Other Constructions Welfare Board, Karnataka vide order dated 30.9.2008 (copy available on record) granting registration under section 12AA of the Act fortifies the claim of assessee. The Chandigarh Bench of the Tribunal in the case of Command Area Development Authority Vs. CIT, Panchkula (ITA No. 282/Chd/2009), on the powers of the learned Commissioner, granted registration to the assessee."

3. We have heard learned counsel for the revenue.
4. It is submitted that the Board had not incurred any expenditure in the year under consideration and did not have any income from voluntary contributions. Reliance has been placed on the judgment of Kerala High Court in **Self Employers Service Society v. Commissioner of Income-Tax, [2001] 247 ITR 18** to submit that in such a case, registration under Section 12AA was not justified.
5. We are unable to accept the submission. Requirements for registration are laid down under Section 12AA(1)(b), i.e. satisfaction as to objects of the trust or the institution and genuineness of its activities. The Commissioner has not given any valid reason for not being satisfied about the objects of the trust and genuineness of its activities. It only stated that the assessee was not receiving voluntary

contributions and had not done any charitable activity during the year. The Tribunal has given valid reasons for holding that the objects and activities of the assessee to be genuine. The assessee was a statutory body constituted for advancing welfare of workers employed in construction activity which is an object of general public utility under Section 2 (15) of the Act. Having regard to nature of statutory constitution of the assessee and its objects, activities of the assessee are continuing in nature. This finding is not shown in any manner to be erroneous. As regards the judgment of Kerala High Court in **Self Employers Service Society's case (supra)**, the same is distinguishable. Therein it was held that since no charitable work was done by the society in question, its genuineness was not established. In the present case, the assessee is not a private society as in the case considered by the Kerala High Court. The assessee is a statutory body and functioning under the statutory provisions. Judgment of the Hon'ble Supreme Court in **Commissioner of Income-Tax v. Gujarat Maritime Board, [2007] 295 ITR 561** supports the case of the assessee for being covered by Section 2(15). Relevant observations are:

“We have perused a number of decisions of this court which have interpreted the words, in section 2(15), namely, “any other object of general public utility”. From the said decisions it emerges that the said expression is of the widest connotation. The word “general” in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as

distinguished from benefit to an individual or a group of individuals would be a charitable purpose (CIT v. Ahmedabad Rana Caste Association [1983] 140 ITR 1 (SC). The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry (CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722 (SC). If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity (Addl. CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC).”

6. In view of finding of the Tribunal that the assessee was a genuine Charitable Institution, direction of the Tribunal for grant of registration is fully justified. No substantial question of law arises.

7. The appeal is dismissed.

**(ADARSH KUMAR GOEL)
JUDGE**

August 30, 2010
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**(AJAY KUMAR MITTAL)
JUDGE**