

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.6513 /Del /2014
Assessment Year: ----**

Regional Education Development and Welfare Society, Rajpal Chauhan, President, C/o Kumar Vijay Gupta & Co., 301, 3 rd floor, Apna Bazar, Gurgaon-122001	vs	CIT, New CGO Complex, B-Block, NH-IV, Faridabad.
(Appellant)		(Respondent)

Appellant by : Shri Kapil Goel, Adv.
Respondent by: Shri Atiq Ahmad, Sr. DR

**Date of Hearing : 11.09.2017
Date of Pronouncement: 04.10.2017**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the assessee society challenging rejection of application for registration u/s 12AA of the Income Tax Act,1961 (hereinafter called 'the Act') vide order dated 24.09.2014 passed by the Ld. CIT-Faridabad.

2. Grounds of appeal are reproduced below:

“1. That on the facts and in the circumstances of case and in the law, the Ld. Commissioner of Income Tax has erred both on facts and in law in rejecting the application for grant of registration under Section 12A of the Income Tax Act, 1961.

2. That the CIT has wrongly dismissed the application for Registration u/s 12AA of the Income Tax Act, 1961, without giving appropriate for submitting the case and ignoring all merits of the case.

3. That the Id. CIT has also wrongly concluded that aims & object of the Society are vague and unspecific.

4. That the Id. CIT has passed the order in haste and is against the facts, law and provisions of the Income Tax Act, 1961 and Rules made there under.

5. That the Id. CIT had wrongly ignored the fact that the appellant trust exists solely for educational and charitable purpose and not for the purpose of profit.

6. The appellant trust craves to add, modify delete, and withdraw any further ground on or before the date of hearing.”

3. The reasons mentioned by the Ld. CIT for rejecting assessee’s application u/s 12AA are as under:

“On perusal of documents on record, it was noticed that there are various objects of the Society, like (i) to develop former & vocational education, (ii) manage & run institutions to provide qualitative education, (iii) to prompt woman craft age, (iv) to prompt tailoring, (v) to prompt child-nursing, (vi) to prompt embroidery, (vii) to prompt to raise health standard, etc. Actually, there are thirteen aims and objectives of the Society. However, during the proceeding, it was seen that the society

is only running a school in the name & style of Saraswati High School, Village: Begampur Khatola, VPO: Khandsa, Gurgaon. During the hearing, it was confirmed by the Authorized Representatives of the applicant society that the society has not done any activities regarding the other Aims and Objective. Also, vide letter dated 15/17.09.2014, the society was asked to furnish objective-wise details of activities undertaken by the applicant society. However, the same were not provided. Therefore, the Aims & Objects mentioned in the Memorandum of Association appear to exist on paper only. It was so held in CIT v. G.D. Naidu Industrial Educational Trust (1942) 10 ITR 358 (Mad) that the mere proposal to bring to existence an institution may not be sufficient compliance.

Keeping in view the aforesaid facts and circumstances, it is clear that the applicant society failed to discharge its onus in terms of producing material to substantiate its claim that society's aims/objects and terms of memorandum are of the charitable nature and the same are being followed. Also the applicant society failed to discharge its onus produce concrete evidence to show the genuineness of the request of the applicant society for registration u/s 12AA of the Income Tax Act cannot be acceded to and the application in form 10A is, therefore, rejected accordingly u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961”

4. The Ld AR submitted that as per Para 2.3 of impugned order it is noted by the Ld CIT that one of the objects of society is to run institution/s to provide qualitative education which *ipso facto* qualifies as eligible charitable object defined u/s 2(15) of the Act. He further submitted that the Ld. CIT has further noted in same Para that the society is only running a school in the name and style of Saraswati High School, Village Begampur Khatola, VPO Khandsa Gurgaon which amply demonstrates that the real

purpose of the society is education. The Ld. AR submitted that this was further highlighted with reference to same Para about the *factum* of not carrying of any other activities as mentioned in other objects which further proves the genuineness of the objects of the assessee society being limited to education. The Ld. AR also referred to the Paper Book and submitted that for three consecutive years, in assessee's own case, the revenue has, u/s 143(3) assessments, for assessment years 2012-13, 2013-14 and 2014-15, accepted that the assessee society is meant for education only and is doing only education activity. It was submitted that no exception is drawn in these orders to the exemption claimed/allowed u/s 10(23C)(iiiad) of the Act.

4.1 The Ld. AR also referred to the impugned order and submitted that the grounds relied upon by the Ld. CIT for rejecting the application u/s 12AA are alien and extraneous to the parameters laid down by the various courts. It was submitted that the courts have held from time to time that the approach to be adopted at the time of granting of registration should be limited to verifying the real purpose of the society etc and the genuineness of its objects which in present case is admittedly fulfilled.

4.2 The Ld. AR placed reliance on the judgment of the Jurisdictional Punjab & Haryana High Court in the case of Sonapat Hindu Educational Society reported in 278 ITR 262 (P&H). The Ld. AR also relied on the following judicial precedents-

- i. Hon'ble Punjab & Haryana High Court decision in case of IILM Foundation Academy, order dated 26.09.2016 (ITA no. 198/2011)
- ii. Hon'ble Kerala High Court decision in case of Sree Anjaneya Medical Trust reported in 382 ITR 399
- iii. Hon'ble Supreme Court's decision in the case of Dawoodi Bohara Jamat reported in 364 ITR 31.
- iv. Hon'ble Karnataka High Court decision in case of Sanjeevamma Hanumanthe Gowda Charitable Trust (285 ITR 327)
- v. Hon'ble Allahabad High Court decision in case of Fifth Generation Education Society (158 ITR 634)
- vi. Hon'ble Karnataka High Court decision in case of Garden City Education Trust (191 Taxman 238)

- vii. Hon'ble Punjab & Haryana High Court decision in case of Surya Educational & Charitable Trust (355 ITR 280)(203 Taxman 53)
- viii. Hon'ble Allahabad High Court decision in case of Red Rose School (212 CTR 394)
- ix. Hon'ble Allahabad High Court decision in case of Lucknow Educational and Social Welfare Society (340 ITR 86)
- x. Hon'ble Punjab & Haryana High Court decision in case of BKK Memorial Trust (256 CTR 424)
- xi. Hon'ble Supreme Court decision in case of Queen's Educational Society (372 TR 699)
- xii. Hon'ble Punjab & Haryana High Court decision in case of Baba Kartar Singh Dukki Educational Trust (221 Taxman 493)
- xiii. Hon'ble Ahmedabad ITAT bench decision in case of M/s SM Badat Education & Welfare Trust, order dated 15.07.2016 (ITA No. 477/Ahd./2015).

5. The Ld. DR relied on the order of the Ld. CIT.

6. We have heard the rival submissions and have also perused the material on record. It is an admitted fact that the assessee society exists for education purpose only which has been duly recorded in Para 2.3 of impugned order. Further, three consecutive orders passed u/s143(3) of the Income Tax Act have accepted assessee's claim of exemption u/s 10(23C)(iiiad). Thus, there remains no doubt that the objective of the assessee society is 'education'. The Hon'ble Punjab & Haryana High Court made the following observations in the case of Sonepat Education Society (supra):

"...It is well-settled that for the purpose of construing the purpose of a trust, it is not necessary that one remains confined to the objects of the society or the trust, as set out in the memorandum of association or the trust deed, as the case may be. What is required to be found is the real purpose of establishment of the trust. There can be no quarrel with the proposition that the CIT, conferred with the power to grant exemption, is fully competent to find out the real purpose, as distinguished from, the ostensible purpose of establishment of the society or the trust. If the CIT is convinced that the purpose of the society or the trust is not charitable, nothing debars him from denying the approval but, at the same time, if he is satisfied that the objects of the trust, as set out in the deed of declaration, were charitable, then having regard to the object of the provision, the approval should not be denied on mere technicalities. As a matter of fact, the power to grant or negative the claim for approval is coupled with a duty..."

7. Similarly, the Hon'ble Kerala High Court in case of Sree Anjaneya Medical Trust reported in 382 ITR 399 (Ker) observed as under-

“It is clear from a plain reading of sections 12A and 12AA of the Act that what is intended thereby is only a registration simplicitor of the entity of a trust. This has been made a condition precedent for claiming the benefits of exemption. No examination of the modus of the application of the funds of the assessee or an examination of the ethical background of its settlors is called for, while considering an application for registration. The stage for consideration of the relevance of the object of the assessee and the application of its funds arises at the time of the assessment. Where benefits are claimed by assesses in terms of sections 11 and 12 of the Act, the question as to the nature of such contribution and income can be looked into. At the time of registration of the assessee what is to be looked into is whether the assessee is a genuine one or whether it is a sham institution floated only to avail of the benefits of exemption under the Act.”

8. Coming to the facts of the present appeal, the observations of the Ld. CIT in the impugned order are contradictory. The Ld. CIT, on the one hand, mentions that the assessee society has been running a school and on the other hand he mentions that the objects appear to exist only on paper. This coupled with the fact that the department has also accepted the assessee's claim of exemption u/s 1023C (iiiad) for three consecutive years leaves no doubt about the genuineness of the objects of the society. We also find support from the observations of the Hon'ble Punjab and Haryana High Court and the Hon'ble Kerala High Court as

reproduced above. Accordingly, we reverse the order passed by the Ld. CIT and direct him to grant registration to the assessee society.

9. In the final result, the appeal of the assessee is allowed.

The order is pronounced in the open court on 4th October, 2017.

Sd/-

**(G.D. AGRAWAL)
PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 4th October, 2017

‘GS’

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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By Order

ASSISTANT REGISTRAR