

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM**

**ITA No. 6116/Mum/2016**

(A.Y. 2015-16)

Anaesthesia Academic Society (Ass) C/o Manjula Sudeep Sarkar Flat No. 101, Empire Bldg., Veera Desai Road, Andheri (W), Mumbai-400 068	Vs.	Commissioner of Income Tax (Exemptions), 6 <sup>th</sup> Floor, Piramal Chambers, Parel, Mumbai- 400 012
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AAFTA1034P</b>		

**Assessee by** : Parag Ravindranath, AR

**Revenue by** : R.P. Meena, DR

**Date of hearing:** 08-11-2017 **Date of pronouncement :** 16-11-2017

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the Assessee is arising out of the order of Commissioner of Income Tax (Exemptions), Mumbai, [in short CIT(E)] vide order No. CIT(E)/u/s.12A/48425/2016-17 dated 18-08-2016 denying registration under section 12AA(1)(b)(ii) read with section 12A of the I.T. Act, 1961 (hereinafter 'the Act').

2 The only issue in this appeal of assessee is against the order of CIT(E), denying registration vide order No. CIT(E)/u/s.12A/48425/2016-17 dated 18-08-2016 under section 12AA(1)(b)(ii) read with section 12A



of the Income Tax Act. For this assessee has raised following three grounds: -

*“1. The learned Commissioner had erred to interpret the section 2(15) “charitable purpose”, of the Income Tax Act, 1961.*

*2. Section 2(15) of the Income Tax Act 1961 State as follows:-*

*‘Charitable purpose’ includes relief of the poor, education, [yoga,] medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility.”*

*3. The trust is established not for the benefit of individual, class of doctor, but for education of the special field of medical science, namely Anesthesiology. The anesthesiologist come together and form an organization for the purpose of education and research in anesthesiology.*

*The learned Commissioner has wrongly interpreted that the organization is formed for the benefit of individual doctors coming together to form society. The trust has already started educational activities.”*

3. Briefly stated facts are that the assessee filed an application for registration under section 12A of the Act in form No. 10A on 22-02-2016



along with memorandum of association constituting this society dated 03-08-2015. Admittedly, this society is registered with Assistant Commissioner of Charity, Mumbai vide registration No. F-63084/Mumbai dated 12-01-2016. According to CIT(E), the assessee has filed Pan Card of the Trustees and settlers, copy of bank accounts, NOC in respect of its office premises, certificate of registration issued by Charity Commissioner, copies of audit accounts and notes on activities undertaken by the assessee society. The CIT(E) after going through the memorandum of association noted that the society does not fall under definition of section 2(15) of the Act as there is neither any charity involved nor any benefit going to general public. Accordingly, the show cause notice dated 09-08-2016 was issued as to why its application should not be rejected. The assessee replied, but CIT(E) rejected the application by observing in Para 6 and 8 as under: -

*“6. I have carefully considered the various facts, the trust deed, reply given by the applicant trust and various other information on record. However, the submissions made by the applicant trust are not acceptable since the main object of the applicant trust was to associate only with all the anaesthesiologists practicing in the field of anaesthesia and also for the research and development of anaesthesiology in particular. Nowhere in the object clause it is mentioned that they would be doing it for the benefit of the general public at large. The activities are meant to enrich the professional knowledge of the anaesthesiologists. The written submission given by the applicant trust which states*



*that it would ultimately benefit the society at large, cannot be accepted for the reason that the object of the trust does not mention any such intention.*

7. *In view of the above discussions, it is crystal clear that the activities of the trust and the predominant object mentioned in the trust deed does not fall within the definition of section 2(15) of the Act, since the main object of the applicant trust was to cater only to the organization of anaesthesiologists and not for the interest of the general public at large. Therefore, the applicant trust is not eligible for registration u/s. 12A of the I.T. Act.*

8. *Further, as per the provisions of Section 12AA(1)(b), a Trust is to be granted registration if the Commissioner is satisfied about the objects of the Trust and the genuineness of its activities. Both these requirements are cumulative and not alternative. The satisfaction of the registering authority cannot be a subjective satisfaction based on whim or caprice. It has to be a bona fide and objective satisfaction, based on due application of mind to a certain set of facts or materials before him."*

Aggrieved, assessee is in appeal before Tribunal

4. We have heard the rival contentions and gone through the facts and circumstances of the case. We have gone through the copy of



memorandum of association and rules and regulations and noticed that following are the aims and objectives: -

- a) *To associate and affiliate into one organization all the anaesthesiologists who are currently practicing in the field of anaesthesia or were actively associated with anaesthesiology research and development or who are otherwise interested in anesthesiology in particular.*
- b) *To undertake, encourage research and development in the field of anesthesiology.*
- c) *To publish journals, books, research papers to disseminate information and new researches, progress and development in various fields of anaesthesia in particular and anaesthesiology in general.*
- d) *To maintain the highest standards in the ethics and practice of anaesthesia.*
- e) *To encourage education, research and scientific progress in various field/stream of anaesthesia.*
- f) *To Give adequate training to those who are properly qualified and intend to take up various sub specialities of anaesthesia.*



- g) To disseminate information with regard to anaesthesia.*
- h) To edit, publish and circulate publications journals, books in the filed of anaesthesia and related subjects.*
- i) To protect the public against irresponsible and unqualified practitioners of anesthesia.*
- j) To safeguard the professional interests of its members.*
- k) To affiliate with international bodies for promotion of mutual exchange of knowledge amongst the members and professional colleges all over the World and to disseminate such information and knowledge through seminars, conferences, publications, lectures, training programmes, refresher courses, awareness programmes and by such other similar activities.*
- l) To encourage faculty exchange programmes in India and abroad.*

5. From the above, we find that the society is established for the purposes of spreading of education in the field of anesthesia. Anesthesia is a special field for medical science and education in specialized medical field to evaluate the benefit of this research at much higher number of poor patients also and to do research and to develop knowledge on anesthesiologist means to held the large number of patients who undergo treatment in various hospitals. It was argued before us, that charitable



purposes include education and said trust is doing work of education by conducting research and development, publishing the journals, books etc. in the field of anesthesiology medical science. Even going by the aims and objectives above reproduced, we are of the view that there is no whisper that assessee trust is not for general public or it is for any special community. Provision of section 2(15) of the Act reads as under: -

*"charitable purpose "includes relief of the poor, education, [yoga,] medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:'*

**Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not



*exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;*

6. It is also evident that this year the receipt of donation is only ₹ 1,25,000/- as on 31-03-2016. According to us, the newly inserted proviso to section 2(15) of the Act will not apply in respect of the first three limbs of section 2(15) of the Act i.e. relief for the poor, education or medical relief. Consequently, where the purpose of the trust or institution is relief for the poor, education or medical relief, it will constitute as charitable purpose even if it incidentally involves for carrying commercial activities. Finally, we are of the view that whether such an entities carrying on the activity in the nature of the trade and commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity and each case would therefore be decided on its own facts and no generalization is possible. Accordingly, we are of the view that this society requires to register under section 12A of the Act as none of the authorities have doubted the genuineness of the society or there is any clause violated the proviso to section 2(15) of the Act. By going through the aims and object, we grant the registration and allow the appeal of the assessee.

**3. In the result, the appeal of assessee is allowed.**

Order pronounced in the open court on 16-11-2017.

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated:16-11-2017  
Sudip Sarkar /Sr.PS



**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**