

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**ITA No. 359/Agra/2014
(ASSESSMENT YEAR: N/A)**

Shree Teekam Chand Educational & Charitable Trust Society 22, Nehru Nagar, Agra. PANNo.AAKTS2145Q (Assessee)	Vs.	CIT -1, Agra. (Revenue)
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Assessee by	Shri R. C. Tomar, AR.
Revenue by	Shri Inderjeet Singh, CIT DR.

Date of Hearing	18.09.2017
Date of Pronouncement	07.12.2017

ORDER

PER, A. D. JAIN, JUDICIAL MEMBER:

This is assessee's appeal against the order dated 31.10.2014, passed by the ld. CIT, rejecting the assessee's application for grant of registration u/s 12AA of the IT Act.

2. The ld. CIT, while rejecting the assessee's application, has observed as follows:

"2. To examine and confirm the genuineness of the activities of the trust, the applicant was required to attend the office along with relevant documents/records

of the trust. For this purpose a letter dated 28/30.08.2014, fixing the date of hearing on 11.09.2014, was sent. Shri R.C. Tomar, ITP/AR attended the proceedings on 11.09.2014 and, thereafter, the papers and documents filed by him were carefully perused. It is claimed that the Trust is running a school in the name and style of G.D. Goenka Public School, Ussaini, Hazratpur, Firozabad. The trust is apparently a franchisee of the popular G.D. Goenka stream. The franchise has been acquired by paying substantial amount of royalty annually. The exact modus operand as to how the school is being run is not clear from the papers and documents and the payment of royalty itself is questionable vis a vis charitable purpose in terms of provisions of section 2(15). At this moment who is running the school is not clear. The applicant trust is also making capital expenditure after obtaining unsecured loans of more than Rs.10 crores. the amounts involved and the modus operandi bring out a semblance of an adventure in the nature of trade rather than a charitable entity engaged in imparting education. Considering these aspects, it has not been found possible to grant registration u/s 12AA of the IT Act, 1961.”

3. The ld. Counsel for the assessee has contended that the ld. C.I.T. has erred on facts and in-law to reject the proper application filed in Form No.

10A in accordance with the requirement of section 12A for grant of registration u/s 12A of the I.T. Act; that the C.I.T. has erred on facts and in law to reject the claim of grant of registration on mere presumption by making a remark "at this moment who is running the school is not clear", when sufficient material and audited affairs containing details of running of school by the society were placed before him; that the C.I.T. has not confronted the appellant with any adverse material so as to show that the appellant is not running the educational institution, or that its object is not covered by section 2(15), or that the affiliation granted by Central Board of Secondary Education Board vide letter CBSE/Afl./SL-01205-13-14/2013-14 was not genuine, or the school building in which school is being run was not in existence, or that the school was run by G.D. Goenka, a separate entity; that the appellant is an independent trust with no interference of any outside body, as erringly presumed by the C.I.T; that the CIT has erred in observing that as to how the school being is run is not clear; that the C.I.T. has failed to appreciate that the proviso to sec. 2(15) does not apply in the case of educational activities and where the purpose of a trust or institution is to impart education, it constitutes a charitable purpose; that the C.I.T. has erred in not appreciating that u/s 12AA of the Act, he is only to examine the genuineness of the objects of the trust and not the application of income.

4. The Id. DR has placed strong reliance on the impugned order.
5. We have heard both the parties and have perused the material on record. It is an undisputed fact that the assessee is a Society which has been established for educational purposes, as is available from APB 4-6, the Objects of the assessee's Society.
6. The assessee is running a school named G.D. Goenka Public School, Ussaini, Hazratpur, Firozabad. This school has been granted affiliation with the CBSE, which is clear from affiliation letter (APB 12-14) dated 05.04.2013. The school is being run after raising loans from bank and others. The factum of the raising of such loans and investment made in school building construction stands accepted by the Department by way of the assessee's return for A.Y. 2013-14.
7. The assessee's return for A.Y. 2011-12 (APB 25 to 32) shows investment in fix assets by way of purchase of land. This stands accepted by the Department. All assets and liabilities are in the name of the assessee Society and G.D. Goenka has no concern therewith. The assessee's return for A.Y. 2012-13 alongwith balance sheet stands accepted by the Department. For A.Y. 2011-12, there was a deficit of Rs.10,232/-. For A.Y. 2012-13, there was excess of expenditure over income, amounting to Rs.47,479/-. The income and expenditure account of the school shows excess of expenditure over income, of Rs.4,92,417/-. As per the balance

sheet (APB 19-22), the investment in fixed assets has been shown at Rs.9.20 crore. The investment in purchase of land was of Rs.22,15,200/- in A.Y. 2011-12. The investment over construction of school building was shown at Rs.9.98 crore. The returns filed by the assessee have attracted no adverse remark from the Department. In fact, the Id. CIT has himself observed the assessee to have made expenditure after obtaining unsecured loans of more than Rs.10 crore. This itself goes to show that the expenditure in establishing and running the school was laid out by the assessee Society. The Id. CIT has not made any observation that any expenditure was made by G.D. Goenka.

8. Nothing has been brought on record to show that the assessee Society is working/is to work under G.D. Goenka, or that there is any interference of G.D. Goenka in the affairs of the school run by the assessee Society.

9. Then, there is nothing on record to show that any part of the fund has been utilized by the assessee Society for any profit/gain. Nothing has also been brought on record to show that funds were diverted to either the trustees, or their relatives. There is no violation of section 13 of the I.T. Act, as such.

10. In 'S.R.M. M. CT. M. Tiruppani Trust vs. CIT', 230 ITR 636 (SC), it has been held that money having been spent on acquisition of assets for educational institution amounts to application of funds for charitable purposes.

11. In view of above, the grievance sought to be raised by the assessee is found to be justified. It is accepted. The order under appeal is unsustainable in law. It is reversed. The Id. CIT is directed to grant registration to the assessee Society subject to verification of the documents with regard to his observation that the modus operandi as to how the school is being run is not clear.

12. In the result, the appeal is allowed.

Order pronounced in the open court on 07/12/2017.

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

Dated: 07/12/2017

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT AGRA