

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 422/(Asr)/2017

Assessment Year: 2017-18

Swami Vivekanand
Educational & Welfare Society,
Vill. Ramnagar Channa, Katron
Manal Road, Tehsil Sherpur
[PAN: AAHAS 4523N]

(Appellant)

Vs. Commissioner of Income Tax
(Exemptions), Chandigarh

(Respondent)

Appellant by : Sh. Yash Paul Goyal (Adv.)

Respondent by: Sh. Prithi Pal, CIT- D.R.

Date of Hearing: 03.04.2018

Date of Pronouncement: 20.04.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee contesting the Order u/s. 12AA(1)(b)(ii) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 31.05.2017 by the Commissioner of Income Tax (Exemptions), Chandigarh ('CIT(E)' for short, or the Competent Authority), denying the assessee registration u/s. 12AA of the Act.

2. The assessee-society, formed and registered as such on November 8, 2011, applied for registration u/s. 12AA in the prescribed form on 30.11.2016. The only activity, as stated, pursued by it since inception is running a school by the name 'The Lords School' at Katron, Manal Road, Village Ramnagar Channa, Tehsil

Sherpur, which started its first academic session from 01.04.2013 (refer para 16 of the assessee's reply dated 18.05.2017, at PB pgs. 77-78, and PB pg. 85). Though initially the society had varied objects in its Memorandum of Association (MOA), vide supplementary deed dated 14.09.2016 (PB pgs. 14-26), the same was restricted only to providing education to all persons irrespective of their caste, creed or religion. All the other aims and objects were declared as omitted. Other notable amendments were by way of that to Clause 10 of its charter, whereby the assets of the society as on the date of its dissolution would be transferred to a trust or society with similar objects as the assessee-society, and no part thereof shall accrue to the members of the 'Governing Body' of the society. Likewise, for its corpus funds. Further, the assessee's funds were to be deployed for its' objects, and that surplus with it for the time being invested in accordance with the provisions of the Act and the rules made there-under. The nature of the society was to be a non-profit society, existing solely for philanthropic purposes and not for the purpose of profit. For the financial years (f.ys.) 2013-14 to 2015-16, the assessee's gross receipt being below Rs.100 lacs, it claimed exemption on its' entire income u/s. 10(23C)(iiiad). As, however, its' gross receipt was likely to exceed Rs.100 lacs thereafter, precluding section 10(23C)(iiiad), so that it would now require being approved u/s. 10(23C)(vi), which reads as under, the assessee preferred instead to be registered u/s. 12AA:

'Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall no be included—

(23C) any income received by any person on behalf of—

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority ; or'

This did not meet the approval of the competent authority. The two, i.e., section 10(23C)(vi) and sections 11 and 12 (requiring, per section 12A, registration u/s. 12AA), represented different and separate codes under the Act. It was not permissible to change track mid-way, for which no rationale had been furnished. The financial statements of the assessee-society revealed it to have sources of income other than from the school, which had thus not been divulged. Clearly, therefore, the society had pursued activities, i.e., apart from school, which had not been disclosed, and which was also apparent from the variation in the value of fixed assets of the society (as a whole) as compared with that of the school alone. The assessee had also issued a perfunctory response to the requirement of furnishing details of cash deposits in bank, i.e., post November 8, 2016, i.e., when the demonetization came into effect, exhibiting its' reluctance to divulge details of its activities, and which therefore severely impinged on the efforts to examine the genuineness of its' activities. The school was also charging, apart from tuition fee, fees under various heads, viz. admission fee, registration fee, development fund, transport charges, etc., indicating it to be for profit. The registration was accordingly denied, so that, aggrieved, the assessee is in appeal.

3. We have heard the parties, and perused the material on record.

Our first observation is that there is nothing on record to indicate that the supplementary deed dated 14.09.2016 is registered, which is to be with the office of the Additional Registrar, Distt. Sherpur, Manal (Sangrur), i.e., the authority issuing the certificate of registration (the said authority working, as we understand, under the aegis of the Registrar of Firms and Societies, Chandigarh). The

amendments per the supplementary deed would take effect, even if from the date of the said deed itself, only upon its registration. The only other aspect considered untenable by us, requiring consideration, is *qua* the school building, being situate on a leasehold land. This is as the lease, beginning 16/2/2012, is for a period of 30 years (PB pgs. 88-101, with english translation at PB pgs. 88A,89A). The lessors, who are the family members of the founder members of the assessee-society, are, as per the lease-deed, entitled to take back the possession of the land at the end of the lease period. How would the school building, constituting the principal asset of the society, be then taken possession of by it at the end of the lease term? In fact, this eventuality could occur even earlier, where the land is resumed, as on account of non-payment of lease rent, which as per the financial accounts is unpaid up to 31.03.2016 (enclosed as a part of the paper-book). Of the fixed assets of Rs.121.32 lacs (as on 31.03.2016), building (including building-under-construction) is at Rs.71.92 lacs (PB pgs. 69,70). The same is, as clarified by the ld. counsel for the assessee, Mr. Goyal, likely to witness an increase from year to year as the school, presently upto Class 7, would go up to class 12, with one class being added each year. All the other assets (other than furniture attached and forming part of the building) could be removed and relocated. The assessee-society's principal asset would under the circumstances not only be lost to it, but stand to be passed to persons who have founded the same. This, then, unwittingly perhaps, becomes a mechanism for the transfer of assets/wealth of the assessee-society thereto! The dissolution clauses, read out by Sh. Goyal, on being questioned in this respect, would not be of much assistance to the assessee-society as the school building, being fixed to the land, could not be transferred to any other society (with similar objects) either during the currency or even at the end of the lease period. We observe this to be a serious structural defect in the assessee's functioning, adversely impacting its' functioning and, thus, the genuineness of its activities. The

transfer of the property of the society to others – likely to be persons having founded the same or their relatives, without the assessee being suitably compensated therefor, is a distinct possibility. Rather, the society ought to be suitably compensated for the goodwill in the event of it being unable to continue to run the school beyond the lease term, from the persons who may undertake to run it thereafter – being by then (presumably) well established. Mr. Goyal would further state that the lessors could furnish an undertaking that the lease shall be renewed, etc. or the society suitably compensated for the building. However, on being asked about the legal sanctity of such an undertaking, he could not furnish any satisfactory answer. Why, the lease rent, which is a reasonable sum at present, may stand increased manifold by the lessors as a condition for the renewal of the lease! We are not, we may clarify, raising a false alarm – the incident not likely to occur in recent future – the school being at a nascent stage, but pointing to what is imminent, inasmuch as the lease would expire at the end of its term, with no mechanism in place for the restoration of the school building, or its value, forming a predominant part of the assessee-society's capital.

4. Apart from the foregoing, we do not, as observed earlier, find any merit in any of the several objections raised by the competent authority, to which quite a few were added by the Id. CIT-DR during arguments, of course, on the basis of the material on record. The assessee-society is at liberty to at any time switch from one provision to another, unless, of course, proscribed by law, which we find as absent. That the society is not pursuing any other activity is apparent from its' financial statements, summarized at para 6 of the impugned order, as under:

F.Y.	Gross Receipt	Net Surplus	Fixed Assets	Cash & Bank
Swami Vivekanand Educational & Welfare Society (Consolidated with the school)				
2013-14	Rs. 61,49,533/-	Rs. 4,42,243/-	Rs. 1,06,64,618/-	Rs. 3,17,634/-
2014-15	Rs. 52,54,142/-	Rs. 1,07,621/-	Rs. 92,57,820/-	Rs. 6,87,380/-
2015-16	Rs. 87,54,528/-	Rs.18,89,331/-	Rs. 1,21,32,430/-	Rs. 3,01,057/-

F.Y.	Gross Receipt	Net surplus	Fixed Assets	Cash & Bank
The Lords School, Village Ramnagar				
2013-14	Rs. 46,81,533/-	Rs. 4,24,749/-	Rs. 36,73,929/-	Rs. 2,69,833/-
2014-15	Rs. 52,54,142/-	Rs. 12,97,093/-	Rs. 29,66,200/-	Rs. 6,67,279/-
2015-16	Rs. 87,54,528/-	Rs. 29,04,932/-	Rs. 64,69,972/-	Rs. 2,54,412/-

Apart from a minor gain for f.y. 2013-14 (being the excess of donation received - at Rs.14.68 lacs, over the society expenses), the consolidated surplus is lower than that of the school. The Id. CIT(E) has clearly failed to observe this apparent fact. The donation aforesaid also explains the increase in the gross receipt of the society over that of the school for f.y. 2013-14. The assessee is booking expenditure on lease rent; depreciation (on school building); interest on term loan (for the building and buses); accountancy charges, etc., only in the society's accounts. The same is a part of the school expenditure – even as argued by the Id. counsel, and we do not find any reason for the accounting pattern adopted. The addition to the school building for each year exceeds the term loan availed and the development fund, so that a part of the surplus also gets invested therein. The only other income is by way of interest at Rs.5,333/-, for f.y. 2015-16. It is rather prudent to invest the surplus funds in liquid deposit, fetching some income, even as it may well repay (or prepay) the term loans, earning better return on its capital. School fees – which is to be seen in total, we agree, has to be reasonable. The reason is simple. Charge of hefty fees undermines and violates the very basis or notion of charity, excluding those placed at the lower end of the societal strata. That apart, the assessee, by its constitution, is a non-profit society. The reasonableness afore-stated, however, is to be considered with reference to the cost of providing education, quality of which is

to be maintained. The school is affiliated to the Punjab Board, running on CBSE pattern. There is nothing to suggest of the costs being inflated, as we – not unoften, see, with a view to disclose a reasonable profit! A surplus, by itself, which in fact is essential, would not render the society as not a non-profit society, even as, given its mandate as a non-profit body, it may well be contained, if not restricted further, from the level of 20% to 25% (of the gross receipt) which obtains for f.y.s. 2014-15 & 2015-16, being only the second and third years of its operation. This is as the total fees (cost to the students) could be reduced by as much, while still meeting the cost, which would only stabilize in future. All the receipts and expenses being accounted, with the accounts being audited, we find no basis for drawing any adverse inference from the deposit of cash in bank post 08.11.2016. The facts are required to be seen in perspective, which we find has not been by the competent authority.

5. Under the circumstances, we only consider it proper that the matter is restored back to the file of Id. CIT(E). We have already noted two aspects on which we find the assessee to have not furnished a satisfactory explanation, and which impinge directly on the acceptance or otherwise - being germane to the parameters laid down for the purpose, of the assessee's application u/s. 12A. The assessee, as assured by the Id. AR before us, shall clarify on those aspects before the Id. CIT(E), with a view to satisfy him thereon. It needs to be appreciated that it is, under law, the competent authority which is to be satisfied about the objects of the society as well as the genuineness of its' activities. Further, we are conscious that the Id. CIT(E) has not commented adversely on either of these aspects. However, neither as he expressed satisfaction with regard thereto, so that the same stand apparently overlooked by him, even as have been found extremely relevant by us. Tax proceedings, it may be noted, are not adversarial proceedings, as clarified by

the higher courts time and again; the purview of an appellate authority being the correct determination of the assessee's tax liability, and which would include the procedural aspects as well. We have, in deciding this appeal, followed the dictum by the Apex Court laid down in *CIT v. Walchand & Co. (P.) Ltd.* [1967] 65 ITR 381 (SC), i.e., the Tribunal is to deal with and determine all the questions which arise out of the subject matter of appeal, in light of the evidence, and consistently with the justice of the case. We decide accordingly.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on April 20, 2018

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 20.04.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Swami Vivekanand Educational & Welfare Society,
Vill. Ramnagar Channa, Katron Manal Road, Tehsil Sherpur
- (2) The Respondent: Commissioner of Income Tax (Exemptions), Chandigarh
- (3) The CIT (E), Chandigarh
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order