

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1257CHD/2017
(U/s 12AA)

M/s Sri Dashmesh Academy Trust, Anandpur Sahib, Ropar	बनाम	The CIT (Exemptions), Chandigarh
स्थायी लेखा सं./PAN NO: AAEFTS3279F		

अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
---------------------	--	-----------------------

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Sh. J.K.Garg, CIT DR

सुनवाई की तारीख/Date of Hearing : 31.07.2018
उद्घोषणा की तारीख/Date of Pronouncement : 30. 10. 2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the appellant-assessee namely 'Sri Dashmesh Academy Trust' against the denial of exemption u/s 12A of the Income-tax Act, 1961 (in short 'the Act') by the Commissioner of Income Tax (Exemptions), Chandigarh [hereinafter referred to as CIT(E)] vide his order dated 30.06.2017.

2. The aims and objects of the assessee society are to set up and carry on the administration and management of an academic institution at Anandpur sahib to be known as 'Sri Dashmesh Academy' for imparting

education of high standard in general and training for administrative service and armed forces in particular to the children of persons domiciled in Punjab. It has been submitted that the assessee is an ongoing entity and has been in operation for nearly 40 years. The appellant-society filed application before the CIT (E) for registration u/s 12A of the Act so as to be able to claim exemption u/s 11 of the Income-tax Act, 1961 (in short 'the Act'). It has been further submitted by the Ld. Counsel for the assessee that the Ld. CIT(E) rejected the application of the appellant-assessee mainly for the reason that there was no dissolution clause in the Memorandum of Association ('MOA') / Trust Deed of the appellant-assessee. The Ld. CIT(E) observed that in case of trust / society established for charitable or religious purposes, the income or any property of such trust or institution should be applied for such purposes only and that no part of income or any property of trust or the society should be used or applied directly or indirectly for the benefit of any person referred to in sub section (3) of section 13 i.e. the author of the trust or founder of the institution, any family member of such author or founder, any trustee of the trust or manager of the institution, any relative of such author or founder person or member trustee or manager and even any concern in which any of such person has a substantial interest including a person who has made substantial contribution to the trust of the society.

3. The Ld. CIT(A) (E) observed that in the absence of dissolution clause, there was a reasonable presumption that the assets and liability of the society will be distributed amongst the members of the society in case the society stops its operation or dissolved. He, therefore, observed that

the provisions of section 13(1)(c) of the Act were clearly attracted in this case. He further observed that earlier the society was denied registration in the year 1981 by the then Commissioner of Income Tax(E), Patiala stating that the applicant was an educational institution covered u/s 10(22) of the Income-tax Act, 1961 and that the provisions of sections 11 & 12 of the Act were not applicable in this case. Thereafter, the assessee society did not file any application for 36 years. The society thereafter has been claiming deduction u/s 10(23C) (iiiab) of the Act as the entire capital cost of the school / academy has been met by the Ministry of Defence and Government of Punjab. That the society receive the grants regularly from the Government for all specific needs to meet the capital and Revenue expenditure. That there was no explanation on the part of the society as to how the case of the appellant was still not covered u/s 10(23C)(iiiab) of the Act. Finally, the Ld. CIT (E) because of the absence of the dissolution clause in the Trust deed and finding the explanation from the assessee society to the queries raised, as not plausible, dismissed the application of the appellant for registration u/s 12 of the Act.

4. Before us, the Ld. Counsel for the assessee has submitted that the objection relating to non-incorporation of dissolution clause has been addressed now and a dissolution clause has been added in the 'MOA', hence, the assessee Trust be granted registration u/s 12A of the Act. He in this respect has produced a letter dated 5.2.2018 along with amended Memorandum of Association and has pleaded that the society, during the meeting of its members held on 17.7.2017 under the Chairmanship of Sardar Parkash Singh Badal, has amended the Memorandum of Association

wherein a dissolution clause (xvi) has been added. The contents of the said letter dated 05.02.2018 are reproduced as under:-

“2740893
0172-2740303

‘SRI DASMESH ACADEMY TRUST

*No.SDA/Trust
H.No. 60, Sector -5,
Chandigarh*

No. SDA.MOA/2018

05 Feb 2018

*To
The Registrar,
Registrar of Firms & Societies Punjab,
Sector 17, Chandigarh*

*Sub:- ADDITON/ AMENDMENT TO “MEMORANDUM OF ASSOCIATION”
SRI DASMESH ACADEMY TRUST*

- 1. Reference discussion held in your office in Jan 2018 on the subject*
- 2. Following Registers containing Minutes of Board of Governess Meeting held since 1978 onwards are sent herewith addition desire:-*
- 3. (a) Registrar containing Board of Governors Meeting from Ser No. 01 to 06.*
(b) Register containing Board of Governors Meeting from Ser No.07 to 19.
- 2. Last Meeting of Board of Governors was held on 15 May 2007 (MS-3)***
- 3. Term of ”Board of Governors was NOT extended further by the Members of the Dasmesh Trust.***
- 4. During the meeting of Member of Sri Dasmesh Academy Trust held on 17 July 2017, under the Chairmanship of Sardar Parkash Singh Badal, it was decided to Add the amendment to Memorandum of Association vide Sub Hed (Item No. III) of the Minutes, Copy of Minutes are enclosed.*
- 5. Copy of letter signed by Sardar Parkash Singh Badal for obtaining approval of Amended Memorandum of Association, along with its enclosure are forwarded herewith for your action please. The Addition / amendment has been carried out in Sub Head (xvi,. Para 2 of Memorandum of Association.*

An early Action is requested please

*Sd/-
(.....)”*

(Emphasis supplied by us)

5. The scanned amended "Memorandum of Association" attached with the aforesaid letter is reproduced as under:-

MEMORANDUM OF ASSOCIATION

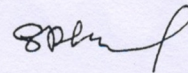
1. The name of the society is "SRI DASMESH ACADEMY TRUST" hereinafter for the sake of brevity referred as "THE TRUST".
2. The objects for which the Trust is established are to set up and carry on the administration and management of an academic institution at Anandpur Sahib to be known as "SRI DASMESH ACADEMY" hereinafter called "The Academy" for imparting education of high standard in general and training for administrative Services and Armed Forces in particular to the children of personals domiciled in Punjab.
3. The powers and functions of the Trust are:-
 - (i) To regulate the expenditure and to manage the accounts of the Academy.
 - (ii) to receive grants, subscriptions and donations for the purposes of the Academy.
 - (iii) to make rules and regulations for the conduct of meetings and affairs of The Trust and to adopt and vary them from time to time.
 - (iv) to purchase, take on lease or accept as gift or otherwise any land which may be necessary or convenient for the purposes of the Trust and on such terms and conditions as they may think fit and proper;
 - (v) to construct, purchase, take on lease or accept as a gift or otherwise, any building or buildings which may be necessary or suitable for the purposes of the Trust and on such terms and conditions as they may think fit and proper.
 - (vi) to sell, exchange, lease or otherwise dispose of any properties of the Trust, moveable or immovable, on such terms as they may think fit and proper;
 - (vii) to execute conveyances, transfers of government securities, reconveyances, mortgages, leases, bonds and agreements in respects of property moveable or immovable belonging to the Trust or to be acquired for the purposes of the Trust;
 - (viii) to appoint in order to execute any instrument or transit any business of the Trust, any person as attorney of the Trust with such powers as they may deem fit;
 - (ix) to enter into any agreement with Central Government or State governments for receiving grants.

...2..

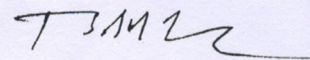
-2-

- (x) to raise and borrow money on bonds, mortgages, promissory notes or other obligations or securities founded or based upon all or any of the properties and assets of the Trust or without any securities and upon such terms and conditions as they may think fit;
 - (xi) to make, draw, accept, endorse and negotiate the Central Government and other promissory notes, bills, cheques or other negotiable instruments;
 - (xii) to invest the funds of the Trust in or upon such securities as they may deem fit and from time to time transpose any investment
 - (xiii) To make such rules and bye-laws as they may from time to time, consider to be necessary for regulating the management of the Academy and the affairs of the Trust;
 - (xiv) to delegate all or any of its powers to the Governing Body or to anyone or more members of its body of its officers; and
 - (xv) to do all such other sets and things as may be requisite in order to further the objects of the Trust.
 - (xvi) if upon winding up or dissolution of the Trust, the remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the society but shall be transferred to the Punjab Government/Punjab Defence & Security Relief fund Committee at or before the time of dissolution.
4. (a) The signatories of this Memorandum of Association may admit to the membership of the Trust the following persons subject to their agreeing in writing to join the membership of the Trust.

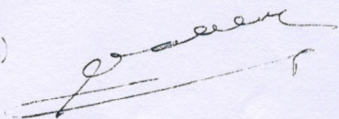
1. S.Surjit Singh Rakhra
Ex- Cabinet Minister, Punjab
Rakhra Palace, Patiala



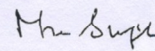
2. S.Balwinder Singh Bhundar,
Hon'ble Member of the Rajya Sabha
Kothi No. 256, Sector 11-A, Chandigarh



3. Gp Capt Amarjeet Singh Grewal, FRGS(Retd)
H.No. 5782, Duplex,
Mani Majra (UT), Chandigarh



4. Air Marshal Manmohan Singh (Retd)
AVSM, PVSM, Vr C
Kothi No. 198, Sector 18A, Chandigarh



..3.....

-3-

- (b) In the event of any vacancy arising in the membership of the Trust, due to any cause whatever, the remaining members may supply the vacancy by co-opting any person who may agree in writing to join the membership of the Trust.

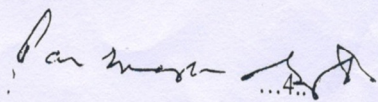
If a Trustee fails to attend three consecutive meeting of the Trust without any leave of absence his/her names may be deleted from the list of Trustees.

- (c) one of the members of the Trust may be appointed to be an Honorary Secretary of the Trust.
- (d) The Trust will be the Supreme Body for regulating the affairs of the Academy.
- (e) The names and addresses and occupations of the first members of the Governing Body to which by the rules of the Trust, the management of its affairs is entrusted are :-

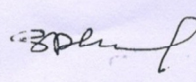
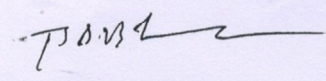
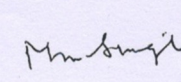
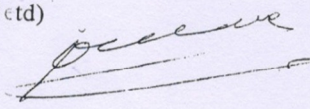
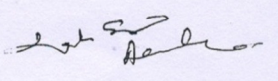
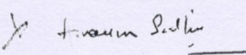
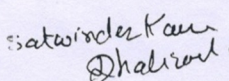
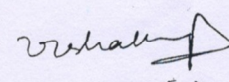
1. Chief Minister, Punjab Chairman, (Ex-Officio)
2. Four members from amongst the Trustees to be elected by themselves
3. One member to be nominated by the Punjab Defence & Security Relief Fund Committee
4. Three Administrative Secretaries of Punjab Govt. (Education, Finance and Defence Services Welfare Deptt) as Ex-Officio Members
5. Two eminent educationists to be nominated by the Trust
6. Secretary of the Trust as Hony. Member Secretary of the Governing Body and
7. Director of the Academy.

We the several persons, whose signatures, occupations and addresses are given hereunder, are desirous of being formed into an Association in accordance with the provisions of the Societies Registration Act, 1980, in pursuance of this Memorandum of Association and in testimony of this, we have subscribed our respective names and signatures hereto on the _____ day of August in the year 2017 at Chandigarh.

1. S.Parkash Singh Badal
Son of Late S.Raghuraj Singh
Vill & PO Badal Distt.Muktsar



-4-

2. S. Surjit Singh Rakhra X 
S/O Sh. Kartar Singh
Rakhra Palace, Patiala
3. S. Balwinder Singh Bhundar, M.P. 
Kothi No. 256, Sector 11-A
Chandigarh
4. Air Marshal Manmohan Singh (Retd) 
PVAS, AVSM, Vr C
S/O S. Iqbal Singh
Kothi No. 198, Sector 18 A
Chandigarh
5. Gp Capt Amarjeet Singh Grewal, FRGS (Retd) 
S/O S. Dalip Singh
H.No. 5782, Duplex
Modern Housing Complex,
Mani Majra (UT) Chandigarh
6. Dr. Jasbir Singh Ahluwalia, IAS (Retd) 
S/O S. Kartar Singh Ahluwalia
Kothi No. 1607, Sector 33
Chandigarh
7. S. Amarjeet Singh Sidhu, IAS (Retd) X 
S/O S. Gurbux Singh
17-B, Model Town, Patiala
8. Smt. Satwinder Kaur Dhaliwal, Ex-MP 
Kothi No. 965, Phase IV
SAS Nagar (Mohali)
9. Mr. Vishal Singh 
S/O S. Satnam Singh
Kothi No. 502, Sector 10-C
Chandigarh

WITNESS

6. A perusal of the aforesaid amended Memorandum of Association reveals that vide clause 4(a) the MOA, the following persons, subject to their agreeing in writing, have been decided to be admitted to the membership of the Trust.

1. *S. Surjit Singh Rakhra, Ex-Cabinet Minister, Punjab*
2. *S. Balwinder Singh Bhundar, Hon'ble Member of the Rajya Sabha*
3. *GP Capt Amarjeet Singh Grewal, FRGS (Retd), Chandigarh*
4. *Air Marshal Manmohan Singh(Retd), AVSM, PVSM, VR C, Chandigarh*

7. The aforesaid persons have appended their signatures against their names conveying their acceptance for being admitted to the membership of the trust.

8. This amended MOA / Resolution has been signed by the following persons:-

- 1 S. Parkash Singh Badal
Son of Late S.Raghuraj Singh,
Vill & PO Badal Distt. Muktsar
- 2 S. Surjit Singh Rakhra
S/o Sh. Kartar Singh,
Rakhra Palace, Patiala
- 3 S. Balwinder Singh Bhundar,M.P.
Kothi No.256,Sector 11-A,
Chandigarh
- 4 Air Marshal Manmohan Singh (Retd),
PVAS, AVSM, Vr C, S/o S.Iqbal Singh,
Kothi No.198, Sector 18A,
Chandigarh
- 5 GP Capt Amarjeet Singh Gerewal,
FRGS (Retd)
S/o S.Dalip Singh, H.No. 5782, Duplex Modern
Housing Complex, Manimajra (UT),
Chandigarh
- 6 Dr Jasbir Singh Ahluwalia, IAS (Retd),
S/o S.Kartar Singh Ahluwalia
Kothi No. 1607, Sector 33, Chandigarh

- 7 S.Amarjeet Singh Sandh,
IAS (Retd), S/o S.Gurbax Singh,
17-B, Model Town, Patiala
- 8 Smt.Satwinder Kaur Dhiliwal,
Ex.MP, Kothi No. 965, Phase IV,
SAS Nagar, (Mohali)
- 9 Mr Vishal Singh, S/o S. Satnam Singh, Kothi
No.502, Sector 10-C,
Chandigarh

9. Surprisingly, the said 'MOA,' whereby, the four persons as mentioned above have been decided to be admitted as members of the trust and who have put their signatures against their names conveying their consent for admitting them to membership of Trust, are themselves signatory of the said amended resolution. The fact on the file reveals that the said resolution is not a valid resolution as the persons who were proposed to admitted as members of the trust are themselves signatory of the amended 'MOA' making whole of the documents as invalid and illegal.

10. Now coming to the original Memorandum of Association (MOA) of dated 17.02.1978, Clause 4 (e) of the 'MOA', speaks about the first members of the Governing Body to whom the management of the affairs of the trust is entrusted. The said original 'MOA' is reproduced as under:-

"MEMORANDUM OF ASSOCAITION

1. *The name of Society is "Sri Dashmesh Trust" hereinafter for the sake of brevity referred to as "The Trust"*
2. *The Objects for which the Trust is established are to set up and carry on the administration and management of an academic institution at Anandpur Sahib to be known as 'Sri Dashmesh Academy' hereinafter called 'The Academy' for*

imparting education of high standard in general and training for Administrative Services and Armed Forces in particular to the children of persons domiciled in Punjab.

3. *The powers and functions of the Trust are :-*

4. *i) to regulate the expenditure and to manage the accounts of the Academy*

ii) to receive grants, subscriptions and donations for the prupose of the Academy.

iii) to make rules and regulations for the conduct of meeting and affairs of the trust and to adopt and vary them from time to time.

iv) To purchases, take on lease or accept as gift or otherwise any land which may be necessary or convenient for the purpose of The Trust and on such items and conditions as they may think fit and proper;

v) to construct, purchase, take on lease or accept as a gift or otherwise, any building or buildings which may be necessary of suitable of the purposes of the Trust and on such items and conditions as they may think fit and proper;

vi) to sell, exchange, lease or otherwise disposal of any properties of the Trust, movable or immovable on such terms as may think fit and proper;

vii) to exercise conveyance, transfer or government securities, reconveyances, mortgages, leases, bond and agreements in respect of property, movable or immovable belonging to the Trust or to be acquired for the purpose of the Trust;

viii) to appoint in order to execute any instrument of transact any business of the Trust, any persons as attorney of the Trust with such powers as they may deem fit;

ix)to enter into an agreement with Central Government or state Governments for receiving grants;

x) to raise and borrow money on bonds, mortgages, promissory notes and other obligations or securities founded or based upon all or any of the properties and assets of the

Trust or without any securities and upon such terms and conditions as they may think fit;

xi) to make, draw, accept endorsee and negotiate the Central Government and other promissory notes, bills, cheques or other negotiable instruments;

xii) to invest the funds of the Trust in or upon such securities as they may deem fit and from time to time transpose any investment.

xiii) to make such rules and bye-laws as they may from time to time, consider to be necessary for regulating the management of the Academy for the affairs of The trust;

xiv) to delegate all or any of its powers to the Governing body or to anyone or more members of the its body or its officers; and

xv) to do all such other acts and things as may be requisite in order to further the objects of the Trust.

4 (a) the signatories to this Memorandum of Association may admit to the membership of the Trust the following persons subject to their agreeing in writing to joint the membership of the Trust:-

- 1. Col P.S.Gill,
Ltd. Governor, GOA,
Panaji*
- 2 Air Chief Marshal Arjan Singh,
7-A, Kauthilya Marge New Delhi*
- 3. Shri Yagya Datt Sharma, M.P.
30, Dr.Rajendra Prasad Road,
New Delhi*
- 2. Maj.Gen A.K.Luthra,
52, Sector 4,
Chandigarh*

(b) in the event of any vacancy arising in the membership of the Trust, due to any cause whatsoever, the remaining members may supply the vacancy by Co-opting any persons who may agree in writing to join the membership of the trust.

c) One of the members of the Trust may be appointed to be an Honorary Secretary of the Trust.

d) The Trust will be Supreme body for regulating the affairs of the Academy.

(e) The name and addressees and occupations of the first members of the Governing body to which the rule of the Trust, the management of its affairs is entrusted area:-

- 1. Chief Minister, Punjab, (Chairman, (Ex-officio)*
- 2. Four member from amongst the Trustees to be elected by themselves:*
- 3. One member to be nominated by the Punjab Defence & Security Relief Fund Committee ;*
- 4. Three, Administrative Secretaries of Punjab Govt. (Education, Finance and Defence Services Welfare Deptt. as Ex-officio Members ;*
- 5. Two eminent educationists to be nominated by the Trust;*
- 6. Secretary of the Trust as Hony. Member Secretary of the Governing Body;*
- 7. Director of the Academy”*

Amendment: *.....the following as sub para (b) to existing para (4)*

(b) If a trustee fails to attend three consecutive meetings of the trust, his /her name may be deleted from the list of Trustees on

We the several persons, whose signatures, occupations and addresses are given hereunder are desirous of being formed into an Association in accordance with the provisions of Societies Registration Act, 1860, in pursuance of this memorandum of Association and in testimony of this, we have subscribed our respective names and signatures hereto on the 17th day of February in the year 1978:

<i>1</i>	<i>S. Parkash Singh Badal Son of Late S.Raghuraj Singh, Vill & PO Badal Distt. Faridkot</i>
<i>2</i>	<i>Gurcharan Singh Tohra, M.P. 12-A, Western Court, New Delhi</i>

3	<i>Col. P.S. Gill Lt. Governor, GOA, Panaji</i>
4	<i>Air Chief Marshal Arjan Singh 7-A, Kautiyla Marg, New Delhi</i>
5	<i>Lt Gen Gartaj Singh, Kothi No. 80, Sector 5, Chandigarh</i>
6	<i>Sh. Balawant Singh, Finance Ministry, Punjab</i>
7	<i>Yagna Datt Sharma, M.P. 30, Dr.Rajendraprasad Road New Delhi</i>
8	<i>Dasant Singh Khalsa, M.P. 22, Westorn Court, New Delhi</i>
9	<i>Ravi Inder Singh, Speaker, Punjab Vidhan Sabha, Chandigarh</i>
10	<i>Ajit Singh Sarhadi, Advocate General, Punjab Chandigarh</i>
11	<i>Maj.Gen A.K.Luthra, 32, Sector 4, Chandigarh</i>

Sd/-

Witnesses”

11. Alongwith the said ‘MOA’ of 1978, there is attached amended Regulation, which reads as under:-

“AMDNDED REGULATION

GOVERING BODY

1. The Management of the affairs of the Sri Dasmesh Academy Trust will be entrusted to a Board of Governor, hereinafter referred to as ‘The Board.

2. (a) The Board shall comprise of the following members:-

<i>1</i>	<i>Chief Minister, Punjab</i>	<i>Chairman</i>	<i>Sd/</i>
<i>2</i>	<i>Four member from amongst the Trustees to</i>	<i>Members</i>	<i>Sd/</i>

	<i>be elected by themselves</i>		
3	<i>Principal and Director of the Academy</i>	<i>Member Secretary</i>	<i>Sd/</i>
4	<i>Secretary to the Government of Punjab, Education Department</i>	<i>Ex-official member</i>	<i>Sd/</i>
5	<i>Secretary to the Government of Punjab, Finance Department</i>	<i>-do-</i>	<i>Sd/</i>
6	<i>Secretary to Government of Punjab, Defence Service Welfare Department</i>	<i>-do-</i>	<i>Sd/</i>
7	<i>Two eminent educationists to be nominated by the Trust</i>	<i>Co-opted member</i>	<i>Sd/</i>
8	<i>One member to be nominated by the Punjab Defence and Scrutiny Relief Fund Committee.</i>	<i>Nominated Member</i>	<i>Sd/</i>
9	<i>Member Secretary of the Trust</i>	<i>Ex-officio Member</i>	<i>Sd/</i>

(b) The Chief Minister of the Punjab shall be Ex-officio Chairman of the Board and the Principal and Director of Sri Dashmesh Academy shall be ex-officio Member Secretary of the Board.

c) The term of the Board shall be three years

(d) The seat of a nominated Member of the Board shall become vacant if he / she dies. Resigns, become of unsound mind, is declared insolvent, is convicted of criminal offence, involving moral turpitude, ceases to be a member of the committee/trust accepts any paid job or office of profit in the Academy or enters into any contract of relationship with the Academy thereby his interest as member conflicts with his duty as such or is removed by the Trust from the Membership of the Board.

DESIGNATION

3. A member other than an ex-officio member may resign his office by a letter addressed to the Chairman and

such resignation shall take effect as soon as it had been delivered to the latter.

FILLING UP VACANCIES

4 (a) *Any vacancy in the Board shall be filled in the same manner as is provided in regulation No.2.*

(b) No act done, or proceedings taken by the Board shall be invalid merely on the ground of any vacancy or defect in the constitution of the Board or of any defect or irregularity in the nomination of any person acting as member thereof or of any defect or irregularity in such act or procedure not effecting the merits of the case.

POWER OF THE BOARD

5 *The Board shall have all powers which may be necessary or expedient for the achievement of the objects of the Trust. These powers shall include power to create any post for carrying out the proses of the Trust and to employ any officer and servant including the Head of the Educational Institution and other teaching staff, to fix their grade of pay, emoluments and other terms and conditions of service, to suspend, remove, dismiss or otherwise punish any officer or servant so appointed and to abolish any post when in the opinion of the trust it is no more required.*

POWERS AND DUTIES OF THE CHAIRMAN OF THE BOARD.

6 (a) *The Chairman shall have power to convene meetings of the Board at any time when he considers it necessary.*

(b) In an emergency, which, in the opinion of the Chairman requires that immediate action should be taken, the Chairman shall take such action as he deems necessary but shall report his action to the Board at its next meeting.

(c) The Chairman shall exercise such other powers as may be delegated by the Board.

(d) In the absence of the Chairman, at any meeting of the Board, the Members present shall select one from amongst themselves to preside at the meetings.

POWERS AND FUNCTIONS OF THE MEMBER SECRETARIES.

- (a) The Member Secretary of the Trust shall be the Chief Administrative officer of the trust and be responsible for the setting up of the entire campus and carrying out all the directives of the Trust.*
- (b) The Member Secretary of the Board of Governors shall be responsible for the Academic Wing including its administration and shall deal with the Board of Governors for the said purpose.*
- (c) The Member Secretaries shall be responsible for ensuring that all moneys are expended on the purpose of which they are granted or allotted.*
- (d) They shall prepare and submit to the Trust and the Board for their approval, annual statement of the accounts and budget estimates;*
- (e) They shall keep the record of the meeting of the Trust and the Board.*
- (f) They shall exercise such powers and perform such duties as may be delegated agreed or assigned to them by the Trust and the Board either generally or specifically.*

MEETING OF THE BOARD OF GOVERNORS

- (8) (a) The Board shall meet at least thrice a year and a copy of the proceedings of each meeting shall be furnished to the Chairman as soon as possible after the meeting.*
- (b) The quorum of the meeting of the board will be five.*
- (c) The Chairman, if present, shall preside over the meeting of the Board and in his absence, the members present shall elect one from amongst themselves to preside.*

SUITS BY OR AGAISNT THE TRUST

- 9. All suits, complaints and applications by the Trust in any Court or Office whatsoever shall be instituted or filed in name of Trust under the signatures of the Member Secretary of the Trust / Board of Governors or if for any cause they are unable to do so on account of physical absence or otherwise, any other member of the Trust / Governing Body. Body may do so, if authorised by a resolution of the Trust duly passed at as meeting convened for the purpose.*

FUNDS OF THE TRUST

10 All funds of the Trust shall be invested in a Bank of Banks or in financially sound companies offering best rate of interest. The Member Secretary of the Trust alongwith other Trustees or members of the Building Committee to be nominated for this purpose shall be entitled to and authorised to deal with the name. For the prospers of dealing with Bank Or Banks or with Government in regard to funds and investments of the Trust, they shall be and are hereby authorised to sign, endorse, negotiate and otherwise deal withal such accounts, funds or investments.

11 Non-official members so the Trusts and the Board will be reimbursed by the Trust and the Academy their travelling allowance in respect of the journey undertaken to attend such committees thereof, or in connection with the business of the Trust and the Academy as may be provided in the rules to be made in this behalf by the Trust and the Board. Non-official Members shall not be entitled to get any other remuneration.

12 The trust and the Board shall cause regular accounts to be kept of all its moneys and properties and to have them audited by qualified auditors.

13 Such other matters as have not been provided for above will be regulated by rules to be made by the Trust.

It is certified that this is a true copy of the Regulations' of the Trust.

*Sd/-
(Parkash Singh Badal)
Chairman
Sri Dasmesh Acadmy Trust.*

*Sd/
AIR chief marshal
ARJAN SINGH
Member, Sri Dashmesh Academy Trust*

*Sd/-
Sardar Basant Singh Khalsa
Member, Sri Dashmesh Academy Trust
Major General*

*Sd/-
A.K. Luthera
Member, Sri Dashmesh Academy Trust”*

12. It is pertinent to mention that the said clause 4 (e) till date has not been amended as the similar clause 4(e) has also been found mentioned in the alleged amended 'MOA', as reproduced in earlier para of this order. A perusal of the above clause reveals that the Chief Minister Punjab is the Ex-officio Chairman of the Governing Body, which means that the Chairman of the Governing Body / Board of Governors has to be a person who is the serving / present Chief Minister of Punjab and not to be a private person in his individual name or capacity.

13. Even as per amended regulation attached with the original Memorandum of Association 1978, it has been resolved that the management of the affairs of 'Sri Dashmesh Academy Trust' shall be entrusted to Board of Governors whose Chairman will be the Chief Minister of Punjab and further that other ex.officio officers of the Government as mentioned above, will also be part of the Board of Governors. However, a perusal of the letter dated 5.2.2018 addressed to the Registrar of Firms and Societies, Punjab (as reproduced in earlier para) reveals that the last Meeting of the Board of Governors was held on 15.5.2017 and that the term of Board of Governors was not extended further by Members of 'Sri Dashmesh Academy Trust', which means that the members of the assessee trust have conveniently stepped back and stopped entrusting the management affairs of the trust to the Governing body as against object clause mentioned in the original 'MOA' as well as alleged amended 'MOA' of the year 2017 attached with the aforesaid letter dated 5.2.2018. It is pertinent to mention here that the date on which the said amended 'MOA' was passed, as is revealed from the above reproduced

‘MOA’, is mentioned as “*on the ___day of August in the year 2017 at Chandigarh*”. The relevant date only finds mention in the letter dated 5.2.2017 addressed to the Registrar of Firms and Societies i.e. dated 17.7.2017. Even the month mentioned in the letter is July 2017, whereas, the month mentioned in ‘MOA’ is that of August 2017. Why the members have not mentioned the date while signing and adopting the amended ‘MOA’ has remained unexplained. It is pertinent to mention here that though the assessee trust (in its letter dated 12.6.2017) addressed to the ACIT (Exemptions) has claimed that it was formed by Ministry of Defence and Government of Punjab and further that it owned land and building allotted by the Government of Punjab / constructed from the 100% finances obtained from the Government of Punjab and Ministry of Defence, Government of India. Even it has been further mentioned that the corpus fund was contributed initially at the time of incorporation by the Punjab Government to the tune of Rs. 2,00,00,000/- and by the Punjab Defence and Security Relief Fund Committee of Rs. 70,00,000./-. It has been further claimed that the trust has been 100% financed by the Government. Further, in the letter dated 16.2.2017 addressed to the ACIT (Exemptions) it has been further claimed by the assessee society that the entire capital cost (100%) of the school /academy met by the Ministry of Defence and the Government of Punjab and further they send regularly the grants for all specific needs to meet capital or Revenue expenditure of the trust. That since the “**said trust is baby of the Central and State Government**” (emphasis supplied by us) and most of the governing body members are Ex-officio members viz. Chief Ministers of Punjab, one Member of Punjab Defence & Security Committee, three Administrative Secretaries of Punjab

Government (Education, Finance & Defence) etc, and, therefore, it has been claimed that the trust is being run by the Government and that in case of dissolution, nobody shall draw any share or benefit from the Trust / society. The contents of the letter dated 12.6.2017 as well as 16.6.2017 for the purpose of ready reference are reproduced below:-

“12th June 2017

The Asstt. Commissioner of Income Tax (Exemptions)
CHANDIGARH

Re : Application u/s 12AA of Income Tax Act In the case of Sri Dasmesh Academy Trust

Dear Maam',

This refers to your letter F. No. CIT(E)/CHD/12AA/2017-18/1491 dated 02.06.2017 on the above captioned subject. The parawise reply of the same as under:-

- 1. The assessee owns land and building, the Govt. of Punjab allotted the land by a special Gazette Notification, copy attached as Annexure 'A'.*
- 2. The Sri Dashmesh Academy Trust was formed by Ministry of Defence and Govt. of Punjab to educate the children of serving and Ex-defence personnels and the poor children of the area.*
- 3. The copy of Memorandum of Association along with its registration has already been placed on record earlier.*
- 4. The copies of the bank statement are attached as Annexure 'B'. All the payment relates to the direct expenditure made for running the school*
- 5. The trust receives the grants from Punjab Govt. and Ministry of Defence as per the specific requirement from time to time.*
- 6. The copies of Income Tax returns for the last three assessment years are attached as Annexure 'C'. The assessee claims the deductions u/s 10(23C)(iiiab) of Income Tax Act.*
- 7. The assessee has filed the application u/s 11 & 12 of Income Tax Act on 7th August, 1981. The Hon'ble Commissioner of Income Tax, Patiala has communicated that the provisions of section 11&12 of Income Tax Act are not application to the trust, copy attached as Annexure 'D'.*
- 8. No donation under FCRA has ever been received by the assessee.*
- 9. The Corpus Money was contributed initially at the time of*

incorporation as per following details:-

<i>i) Punjab Govt.</i>	<i>2,00,00,000</i>
<i>ii) Punjab Defence and Security Relief Fund Committee (under the Ministry of Defence)</i>	<i>70,00,000</i>
Total	<u>2,70,00,000</u>

- 10. The trust runs a school from 3rd class to plus two with hostel and day boarding and is purely educational institute.*
- 11. The assessee claims deductions u/s 10(23C)(iiiab) of Income Tax Act since it is 100% financed by Govt.*
- 12. The details of cash deposits in bank for a period from 08.11.2016 to 31.03.2017 the deposits pertains to the fee of the students.*
- 13. The salary details for the last three years are attached as Annexure 'E' along with the deduction of TDS.*
- 14. The copies of financial statements for the last 3 years are attached as Annexure 'F'.*
- 15. No donation has been received during the Asstt. Year 2016-17.*
- 16. The trust is pi-rely and educational institute.*
- 17. The assessee has filed application u/s 11&12 in 1981, being explained earlier in para No. 7.*
- 18. The copy of the Asstt. Orders u/s 143(3) of Income Tax Act for the Asstt, Year 2012-13 is attached as Annexure 'G'.*
- 19. There is no branch of the trust.*

I hope the documents and information are in order.

Thanking you

Yours Sincerely,

Sd/-

(CA. SANJEEV -MEHAN)

For & on behalf of Assessee

“16th June, 2017

The Asstt. Commissioner of Income Tax (Exemptions)

CHANDIGARH

*Re : Application u/s 12AA of Income Tax Act
In the case of Sri Dashmesh Academy Trust*

Dear Maam',

This refers to the previous hearing, the desired information and documents are as under:-

- 1. The original documents with regard to Memorandum & Certificate of Registration are produced for your verification.*
- 2. The Affiliation Certificate of CBSE is attached as Annexure 'H'.*
- 3. The list of bank accounts is attached as Annexure I.*
- 4. The salary to staff is being paid as per the CBSE guidelines.*
- 5. The trust/society runs a school from 3rd class to +2 level with the facility of hostel and day boarding for the defence people and the poor students of the area. The concessional fee is charged to all the deserving and poor students. The school is open to all the applicants/students desirous to be claimants under the RTE Act.*
- 6. The assessee is claiming deduction u/s 10(23) (iiiab) of Income Tax Act as the entire capital cost (100%) of the school / academy has been met by the Ministry of Defence and the Govt of Punjab. Further they regularly send the grants for all specific needs to meet the capital or revenue expenditure. The trust has not been accepting any grants or donations from the other parties except at one time SGPC had sent certain grant for specific capital expenditure. Since the trust is substantially finance by the Central & State Governments thus being eligible for the said deductions. Further I wish to add that there were two income tax assessments u/s 143(3) where the deduction has been allowed u/s 10(23) (iiiab) of Income Tax Act.*
- 7. The Memorandum of the trust incorporated in financial year 1977-78 and there was no specific requirement of the dissolution clause at that time. Since the said trust is the baby of the central and state Govt. and most of the Governing body members are Ex-officio members viz. Chief Minister of Punjab, one member of Punjab Defence & Security Committee, three Administrative secretaries of Punjab Govt (Education, Finance & Defence) etc. This constitution clarifies and justifies that the trust is being run by the Governments and in case of dissolutions no body shall be able to draw any share or benefit from the trust/ society. Further the trust shall take a note to change the Memorandum with a dissolution clause at the earliest "that in case of the dissolution of the trust/society it shall be taken over by any other society with similar object or the Govt shall have the right to take it over".*
- 8. Now the government advised trust to be self-sufficient without the*

Govt grants and thus a need has been arisen to get the trust registered u/s 12AA of Income Tax Act.

In view of the above it is hereby prayed that the trust be registered u/s 12AA of Income Tax Act.

Thanking you

Yours sincerely,

Sd/-

(CA. SANJEEV MEHAN)

For & on behalf of

Assessee”

14. However, in the letter dated 5.2.2018 addressed to the Registrar of Firms and Societies, it has been mentioned that the last meeting of the Board of Governors was held on 15.5.2007 and thereafter the term of Board of Governors was not extended further by the members of ‘Sri Dashmesh Academy Trust’. The above contents of the letter dated 05.2.2018 reveals that there is no Board of Governors formed after 15.5.2007 and even the intimation regarding the above is given to the Registrar, Firms and Societies after 11 years i.e. vide letter dated 5.2.2018, only when the Trustees got awoken up to add the dissolution clause, when pointed out by the Ld. CIT(E) in the impugned order.

The facts on the file clearly reveals that originally the trust was formed with 100% aid and finances from the Government of Punjab as well as from the Union Government and that it was taken as a baby of the Government (as itself pleaded by the trust itself) and further that its management and affairs were supposed to be entrusted to the governing body, the chairman of which was supposed to be the Chief Minister of Punjab, apart from that, one member of Punjab Defence & Security

Committee and other Ex-officio members who are government officials of high rank of Secretary to the government of Punjab like, three Administrative Secretaries of Punjab Government (Education, Finance & Defence) etc. It had always been represented as a Government organization however, after accumulating land and building and funds from the State and Central Government, the members of the trust conveniently captured the control of the trust by not further extending the term of Board of Governors, clearly against the objects of 'MOA' of 1978 as well as the amended regulation attached with it and even against the alleged amended 'MOA' of 2017.

15. It is pertinent to mention here that as on the date, Sardar Parkash Singh Badal is not the Chief Minister of Punjab. In fact Caption Amrinder Singh has assumed the office of Chief Minister of Punjab on 16.3.2017 and he is supposed to preside over the meeting of the Board of Governors. Further, as per clause 4(e) of the original 'MOA' as well as amended 'MOA', the governing body to which management of the affairs of the trust are entrusted has to be constituted has to include one member to be nominated by Punjab Defence and Security Relief Fund Committee, three Administrative Secretaries of Punjab Government (Education, Finance and Defence Services Welfare Deptt.) as Ex-officio Members, two eminent educationists to be nominated by the Trust besides Secretary of the Trust and the Director of the Academy. However, a perusal of letter dated 5.2.2018 reveals that Members of the Trust have conveniently by not further extending the term of Board of Governors have entrusted unto themselves the control and management of the Trust.

16. Now, another particular fact on the file is that in the written pleading of the assessee trust made before the Asst. Commissioner of Income Tax (E) vide letters dated 12.6.2017 and 16.6.2017, it has been pleaded that the land to the Trust has been allotted by the Government of Punjab by way of Special Gazette Notification. That the assessee Trust was formed by Ministry of Defence and Government of Punjab to educate the children of serving and Ex-Defence personnel and the poor children of the area. That the trust receives / received grants from the Punjab Govt. and Ministry of Defence. That the assessee has been claiming deduction u/s 10(23C) (iiiab) of the Income Tax Act since it is 100% financed by the government. That the entire capital cost (100%) of school / academy has been met by Ministry of Defence & Government of Punjab and further that they regularly send the grants for all specific needs to meet the capital and Revenue expenditure. That the trust has not been accepting any grants or donations from the other parties, except at one time SGPC has sent certain grant for specific capital expenditure. That the trust is 100% financed by the Central and State Government. It has also been pleaded in the letter dated 16.6.2017 that the trust is baby of the Central and State Government and the most of the Governing Body members are Ex-officio members viz. Chief Minister of Punjab, one member of Punjab Defence & Security Committee, three Administrative Secretaries of Punjab Government (Education, Finance & Defence) etc. It has been further stated that the constitution of the Trust clarifies and justifies that the trust is being run by the Government and in case of dissolution, nobody shall be able to draw

any share or benefit from the trust /society. However, the trust will incorporate the dissolution clause.

When the aforesaid 'MOA' and letter dated 5.2.2018 are read together with the 'Original MOA' of the trust, the facts speak that the trust has been supposed to be governed by the officials of the Government under the Chairmanship of Chief Minister of Punjab as pleaded by the assessee society, itself, before the CIT(E) but has now given its control to the private persons who are no more in the Government. This fact has been conveniently concealed from the CIT(E) that the term of Board of Governors has not been extended since 15.5.2007 and that after year 2007, there is no control of the Government or any official of the Government on the trust after the year 2007 and that the Members of the trust, who are private persons, themselves have established control over the Trust. A totally false and wrong pleadings have been made by the assessee Trust before the Income Tax Authorities that it is a Government controlled organization . The facts on the file speaks that the trustees in violation of the 'MOA' and 'Regulations' of the trust have shifted control & management of the Trust from the state and central government officials unto themselves. Under the circumstances, the Ld. CIT(E) had a valid and reasonable apprehension that in case of dissolution, the properties of the trust, which admittedly have been created and constituted out of 100% grants given by the State and Central Government and have now been attempted to be shifted in the hands of the private management, may be distributed amongst the private individual members of the trust. The

above facts and circumstances also cast doubt about the functioning and genuineness of the objects of the trust.

In view of this, we do not find any infirmity in the order of the CIT(E) in rejecting the application of the trust for registration u/s 12A of the Act.

17. We are further pained to note here that identical contentions as were raised by the representatives of the Trust before the lower authorities that the Trust is controlled and managed by the Government or that its funds and properties otherwise belong to the Government, have been raised by the counsel for the assessee Trust before us also and further that even otherwise, dissolution clause has been added vide the amended resolution. This, in our view, is a clear and visible attempt on behalf of the trust to mislead this Bench of the Tribunal by way of concealing the real and true facts that the Members of the Trust have, by not extending the term of Board of Governors, conveniently entrusted unto themselves the control and management of the Trust. Had the case of the Trust been not carefully examined, these important and relevant facts would have remained wrapped under the carpet, and the Trust could have managed to get the relief of exemption from taxation by presenting wrong and false facts. This is a clear case of an attempt to play fraud not only with the lower Income Tax authorities, but also upon this Tribunal, which is deemed to be a Civil Court for the purpose of discharging its functions and the proceedings before this Appellee Tribunal are deemed to be judicial proceedings within the meaning of sections 193 & 228 for the purpose of section 196 of Indian Penal Code. In view of this, any attempt to play fraud on the Court by way

of conveying wrong and false facts and pleadings is required to be strictly dealt with. Hence, the appeal of the assessee is hereby dismissed with exemplary costs of Rs. 1,00,000/- to be recoverable as arrears of tax Revenue by the Department.

Order pronounced in the Open Court on 30.10.2018.

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 30.10. 2018
“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar