

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Camp Bench at Jalandhar**

**Before Shri N.K. Saini, Vice President  
and Shri Ravish Sood, Judicial Member**

**ITA No. 600/Asr./2018**

Sanatam Dharam  
Educatoinal Charitable  
Society, Phagwara.

Vs.

CIT(Exemptions),  
Chandigarh.

PAN – AANAS4672G

**(Appellant)**

**(Respondent)**

Appellant by: Shri Y.K Sud, A.R.  
Respondent by: Shri Lalit Mohan Jindal, D.R

Date of Hearing: 16.01.2019  
Date of Pronouncement: 05.04.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(Exemptions), Chandigarh under Sec. 12AA(1)(b)(ii) of the Income Tax Act, 1961 (for short 'IT Act'), dated 28.09.2018. The assessee assailing the order of the CIT(E) has raised before us the following grounds of appeal:

- “1. That the CIT(E) was not justified in refusing the Registration u/s 12AA of the Income Tax Act.
2. That the CIT(E) while passing the order has failed to apply his mind to the objects of the society which were charitable in nature and further the proceedings were conducted by DCIT(HQ)(E) which are against the provisions of the law.
3. That the registration has been rejected by looking into the application of income which are to be examined only at the time of assessment.

4. *That the order of the CIT(E) is against the law and facts of the case."*

2. Briefly stated, the assessee is a society registered with the Registrar of Societies, District Kapurthala, vide registration certificate dated 11.02.2015. As is discernible from the aims and objects, the assessee society which was formed with the object of providing quality education to the public is running a school viz. SD Model Senior Secondary School at Phagwara. The assessee society which is an ongoing entity in operation since 11.02.2015, had filed an application in Form No. 10A for registration under Sec. 12AA of the IT Act.

3. The CIT(E) in order to verify as to whether the activities of the assessee society were in conformity with the stated aims and objects, called upon the assessee to furnish certain details/clarifications. Apart there from, the CIT(E) also directed the assessee to submit copies of the financial statements of the school for F.Y(s). 2014-15, 2015-16 and 2016-17. On the basis of the details and the financial statements placed on record by the assessee the CIT(E) was not satisfied with the genuineness of the activities of the assessee society for multiple reasons viz. (i) that the assessee society had shown the advance fees on the current liability side of its balance sheet for the F.Y(s) 2014-15, 2015-16 and 2016-17 with the intention of reducing its gross receipts below Rs. 1 crore; (ii) that the security deposit of Rs. 14 lacs taken by the assessee society on account of shops situated at Guru Nanak Market, Phagwara which were given on rent to S/sh. Rajiv Jain and Raj Kumar Nayyar had not been routed thorough its income and expenditure account; (iii) that the amount of Rs. 14 lacs received by the assessee society from S/sh. Rajiv Jain and Raj Kumar Nayyar was towards advance rent for the shops given on rent to them; (iv) that the inconsistency between the advance rent of Rs. 14 lacs and

the annual rental income of Rs. 10,000/- and Rs. 14,000/- shown by the assessee in its accounts for F.Y. 2015-16 and F.Y. 2016-17, respectively, impinges on the 'genuineness of activities' of the assessee society; (v) that though the assessee had purchased additional land which was though claimed for constructing a new building, however, what necessitated purchase of the additional land and whether the same was for educational purpose had not been evidenced; and (vi) that as the surplus of income over expenditure in the case of the assessee society (without considering depreciation) during the last three years was highly pitched at 20% to 30% of its gross receipts, therefore, it revealed the emphasis of the assessee society on generating excessive surpluses. On the basis of the aforesaid deliberations the CIT(E) not being satisfied with the genuineness of the activities of the assessee society declined to grant registration under Sec. 12AA of the IT Act.

4. Aggrieved, the assessee has carried the matter in appeal before us. The Ld. Authorized Representative (for short 'A.R) for the assessee took us through the facts of the case. It was submitted by the Ld. A.R that the issue which had primarily weighed in the mind of the CIT(E) while declining to grant registration under Sec. 12AA to the assessee society was that it had generated surplus in the preceding years. It was averred by the Ld. A.R that the CIT(E) while disposing off the application of the assessee for grant of registration under Sec. 12AA of the IT Act, has as a matter of fact traversed beyond the scope of his jurisdiction. It was the contention of the Ld. A.R that the CIT(E) at the time of considering the application of the assessee for grant of registration under Sec. 12AA of the IT Act was supposed to confine himself to the objects of the trust/society and the genuineness of its activities and was not vested with any jurisdiction at the said stage to

examine as to whether the income of the trust or the institution was applied for charitable or religious purposes, or not. In support of his aforesaid contention the Ld. A.R. relied on the judgment of the Hon'ble High Court of Punjab & Haryana in the case of CIT Vs. Surya Educational and Charitable Trust (2013) 355 ITR 280 (P&H) and the order of the ITAT, Amritsar in the case of M/s Arya Shikhsha Mandal Vs. CIT(Exemptions) (ITA No. 522/Asr/ 2016; dated 27.03.2017). In sum and substance, it was the contention of the Ld. A.R that the CIT(E) by exceeding the arena of his jurisdiction had rejected the application filed by the assessee for grant of registration under Sec. 12AA.

5. Per contra, the Ld. Departmental Representative (for short 'D.R') relied on the order of the CIT(E). It was submitted by the Ld. D.R that as the CIT(E) remaining well within the realm of his jurisdiction was not satisfied about the genuineness of activities of the assessee society, therefore, he had rightly declined to grant registration under Sec. 12AA of the IT Act.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, as per the settled position of law the registering authority at the time of considering the application of a trust or institution seeking registration under Sec. 12AA of the IT Act has to confine himself as regards satisfaction about the objects of the trust or institution and genuineness of its activities. At the stage of considering an application filed by a trust or an institution the registering authority cannot traverse to examination of the aspect as to whether the income of the assessee had been applied for charitable or religious purposes or not. In our considered view, the stage for considering as to whether the income of the trust or the institution

had been applied in conformity with its aims and objectives for charitable or religious purposes would be as and when a return of income is filed by such trust or institution. In fact, if subsequent to the registration the commissioner is satisfied that the activities of the trust are not carried out in accordance with its objects, then he is duly empowered to cancel the registration by taking recourse to sub-section (3) of Sec. 12AA of the IT Act. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Punjab & Haryana in the case of CIT Vs. Surya Educational and Charitable Trust (2013) 355 ITR 280 (P&H).

7. We shall now in the backdrop of the aforesaid settled position of law advert to the observations drawn by the CIT(E) for declining the grant of registration to the assessee society under Sec. 12AA of the IT Act. Insofar the adverse inference drawn by the CIT(E) that the assessee had in the last three preceding years by accounting for the 'advance fees' on the current liability side of its 'balance sheet' had manoeuvred and managed to keep its gross receipts below Rs. 1 crore is concerned, we are unable to persuade ourselves to subscribe to the said view so arrived at by him. In our considered view the aforesaid aspect of accounting of the gross receipts by the assessee society will have no bearing for adjudicating the genuineness of its activities. Apart there from, in our considered view as the 'advance fee' received by the assessee society during the year would not form part of its 'total income' for the year under consideration, therefore, no infirmity can be attributed to the assessee society which is maintaining its accounts as per the mercantile system of accountancy for the reason that it had shown the same under the head 'current liability' in its respective balance sheets for the said preceding years. As regards the adverse inference drawn by the CIT(E) in respect of the 'security deposit' of Rs.

14 lacs received by the assessee from its tenants i.e. S/sh. Rajiv Jain and Raj Kumar Nayyar for the shops situated at Guru Nanak Market, Phagwara which had been let out to them, we are unable to endorse the same. Before proceeding further, we may herein record our observations in context of the issue under consideration on the basis of the facts as are discernible from the balance sheet of the assessee society as on 31.03.2016 viz. (i) that the assessee society during the F.Y. 2015-16 was in receipt of an amount aggregating to Rs. 13,87,000/- from its tenants (i.e. Sh. Rajiv Jain : Rs. 3,87,000/- and Sh. Raj Kumar Nayyar : Rs. 10,00,000/-) and not an amount of Rs. 14 lac as stated by the CIT(E) in his order passed under Sec. 12AA(1)(b)(ii); (ii) that the aforesaid amount of Rs. 13,87,000/- was received by the assessee society as a 'security deposit' from its tenants S/sh. Rajiv Jain and Raj Kumar Nayyar, and not towards advance rent as find mentioned in the order passed by the CIT(E) under Sec. 12AA(1)(b)(ii). As observed by us hereinabove, the CIT(E) had traversed beyond the scope of his jurisdiction and instead of confining himself to the aspect of the genuineness of the activities of the assessee society, had rather embarked upon the issues which though would be relevant at the stage of framing of assessment but would have no bearing to the extent judging of the genuineness of the activities of the assessee society are concerned. Be that as it may, even otherwise as the 'security deposit' received by the assessee society from S/sh. Rajiv Jain and Raj Kumar Nayyar in the F.Y. 2015-16 could not be included in the 'total income' of the assessee for the F.Y. 2015-16, thus no infirmity as regards the manner in which the aforesaid amount has been reflected by the assessee in its final accounts for said year is liable to be drawn. Insofar the observations of the CIT(E) that the inconsistency between the annual rental income of Rs. 10,000/- and Rs. 14,000/- shown by the assessee in F.Y. 2015-16 and F.Y. 2016-17

on the one hand and the advance rent of Rs. 14 lacs is concerned, we are unable to subscribe to the said observations of the CIT(E), which as observed by us hereinabove is based on misconceived facts. As observed by us hereinabove, as the amount of Rs. 13,87,000/- (*sic* Rs. 14 lac) is the amount received by the assessee society as a 'security deposit' from its tenants, therefore, no feasible comparison between the rent received by the assessee society and the said security deposit can be drawn. Be that as it may, in our considered view the quantum of rent received by the assessee society from its tenants would not have any bearing for verifying the genuineness of the activities of the assessee society. As regards the observations of the CIT(E) that as to what necessitated the purchase of additional land by the assessee society in F.Y. 2015-16, and that there was no evidence as to whether the same was for educational purposes, we find it beyond our comprehension as to how the same would have any bearing for verifying the genuineness of the activities of the assessee society. In our considered view, if subsequently the said land which had been purchased by the assessee society in furtherance of its objects of providing education is used for any purpose which is not as per the objects of the assessee society, then the CIT(E) is vested with the powers under sub-section (3) of section 12AA to cancel the registration so granted to the assessee society. However, in our considered view no adverse inference as regards the genuineness of the activities of the assessee society could have validly been drawn for the reason that it had purchased additional land for the furtherance of its objects. We shall now advert to the observations of the CIT(E) that as the surplus of income over expenditure (without considering depreciation) of the assessee society was between 20% to 30% of its gross receipts during the last three years, therefore, it substantially proved that the emphasis of the assessee society was on generating excessive

surpluses. In our considered view, in order to characterize a trust or an institution as one which has as its object profit making, it must be shown that the predominate object of the activity in the case of such trust or institution was that of making of a profit. In fact, where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would be incorrect to describe it as an activity for profit. However, on the other hand where the activity is carried on with the predominate object of earning profit, it would be an activity for profit, though it may be carried on in advancement of the charitable purpose of the trust or institution. In sum and substance, the predominate object of a charitable trust or institution is to carry on activities to sub serve the charitable purpose and not to earn profit. Rather, the charitable purpose should not be submerged by the profit making motive. Fairly stating, the purpose of a charitable trust must be essentially charitable in nature and it should not be a cover for carrying on an activity which has profit making as its predominate object. In our considered view, it would indeed be difficult for a trust or institution to so carry on its activity that the expenditure balances the income and there is no resulting profit. As observed by the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust (1975) 101 ITR 234 (SC), if the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. It was observed that the test now is the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity. In terms of our aforesaid observations, we are of the considered view that an activity involved in carrying out the charitable purpose must not be motivated by a profit objective, but must be undertaken for the purpose of advancement or carrying out of the charitable purpose. Rather, as

observed by the Hon'ble Supreme Court in the case of CIT Vs. Surat Art Silk Cloth Manufactures Association (1980) 121 ITR 1 (SC), in order to ascertain as to whether a trust or an institution is carried on with the object of making profit or not, it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to objects for which such trust or institution had been established. In our considered view, where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus would not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit. We are further of the view that in the case of an educational institution where the surplus generated during the year is ploughed back for education purposes, it can safely be concluded that the educational institution exists solely for educational purposes and not for the purposes of profit. In the case before us, we find that except for the fact that the assessee society in furtherance of objects of providing education had consistently generated surplus during the last three preceding year, nothing is discernible from the records of the lower authorities which would irrefutably prove that generation of such surplus and not rendering of the education was the predominate object of the assessee society. In fact, we find that the surplus in the hands of the assessee society (after claim of depreciation) ranges from 15% to 23%. The aforesaid surplus we find had been ploughed back by the assessee society for the furtherance of its object. We thus in terms of our aforesaid observations are of the considered view that the generation of surplus by the assessee society in furtherance of its predominate object of rendering education can in no way help to arrive at a conclusion that the emphasis of the assessee society was on generation of excessive surplus and not rendering of education. We thus in terms of our

aforesaid observations are unable to subscribe to the view taken by the CIT(E) that the genuineness of the activities of the assessee society was not proved. In terms of our aforesaid observations, we are of the considered view that the CIT(E) had erred in declining to grant registration under Sec. 12AA to the assessee society. We thus set aside the order of the CIT(E) and direct him to grant registration under Sec. 12AA to the assessee society.

8. The appeal of the assessee is allowed.

Order pronounced in the open court on 05/04/2019

Sd/-  
(N.K. Saini)  
VICE PRESIDENT

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Place : Chandigarh; Dated 05.04.2019  
Ps. Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. DR, ITAT, Camp Bench, Jalandhar
6. गार्ड फाईल / Guard file.

**सत्यापित प्रति //True Copy//**

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण/ITAT, Camp.  
Bench, Jalandhar**