

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 6449/DEL/2017**

M/s Saint Kabir Education Society Sector-13P, Dabra Road, Hisar Haryana AAFTS2436K  <b>(APPELLANT)</b>	Vs	Commissioner of Income Tax (Exemptions) C. R. Building, 5 <sup>th</sup> floor, Sector-17-E, Chandigarh- 160017  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Gautam Jain, Adv</b>
<b>Respondent by</b>	<b>Sh. S. S. Rana, CIT(DR)</b>

<b>Date of Hearing</b>	<b>06.05.2019</b>
<b>Date of Pronouncement</b>	<b>13.06.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 31/08/2017 passed by Commissioner of Income Tax (Exemptions), Chandigarh vide order dated 31/8/2017 u/s 12AA of the Income Tax Act, 1961.

2. The grounds of appeal are as under:-

“1. That the learned Commissioner of Income Tax (Exemptions), Chandigarh has grossly erred both in law and on facts in rejecting the application for registration of the assessee society u/s 12AA of the Act.

2. That the learned Commissioner of Income Tax (Exemptions) has failed to appreciate the objects of the society and, has arbitrarily on misconceived assumptions of both law and facts concluded that the assessee was not

*pursuing the charitable objects of education.*

*3. That finding that “over the period of time the emphasis of the society is mainly on creation of assets that too mainly on cars and vehicles. Moreover the salary and fee structure of the society is not in sync with the instruction issued by the CBSE while providing affiliation to an entity” is factually incorrect and legally misconceived.*

*4. That further finding that “such facilities cannot be extended to entities that have mis-utilized the provisions of the Act that accord something akin to automatic approval to entities professing to exist solely for education and not for profits and have in the barraging accorded benefits to its members in the shape of luxury items” is not based on correct appreciation of facts, provisions of law and hence untenable.*

*5. That mere holding of cars by charitable trust cannot be a ground to deny a registration u/s 12AA of the Act.*

*6. That the learned Commissioner of Income Tax (Exemptions) has erred both in law and on facts in sustaining the denial of exemption u/s 11 and 12 of the Act.*

*6.1 That the learned Commissioner of Income Tax (Exemptions) has failed to appreciate that section 13(l)(d) of the Act has no application to the facts of the case of the appellant society*

*7. That the various adverse findings and observations recorded by the learned Commissioner of Income Tax (Exemptions) are without any basis and, further based on pure subjective considerations which are contrary to the facts placed on record by the assessee society.*

*It is therefore prayed that the order of the learned Commissioner of Income Tax (Exemptions) be quashed and, it be further directed to grant registration to the assessee society u/s 12AA of the Act.”*

3. An application in Form No. 10A was received by Commissioner of Income Tax (Exemptions) on 23/02/2017 seeking registration u/s 12A of the Income Tax Act, 1961. The Society is an ongoing entity that has been in operation since 26/04/1989. An aims and objects of the society are to run and manage

M/s Saint Kabir Education Society, Hisar to utilize the resources of society for propagation of education; to establish and run education institutions for promotion of modern education in Haryana; to prepare buildings, hostels, sports ground and library for institutes of society. The CIT (Exemption) rejected the application u/s 12A for grant of Registration on the ground that there is no genuineness of activities of the society which can be corporate with the aims and objects of the society. The Commissioner further observed that the activities of the applicant got severely compromised when a society professing to be charitable is seen to utilize its receipt on assets of luxury of personal use that in no manner can qualify for the benefit of general public.

4. Being aggrieved by the order dated 31/08/2017, the assessee filed appeal before us.

5. The Ld. AR submitted that the assessee society was constituted under a Society Registration Act, 1860 on 26/03/1989. Revised certificate of Registration u/s 9(4) of the Haryana Registration and Regulation of Societies Act, 2012 was issued on 30/08/2013. On 23/02/2017 application for registration of charitable or religious trust u/s 12A (a) of the Act in Form No. 10A (1) was filed. On 18/07/2017, questionnaire was issued by Commissioner of Income Tax Act (Exemptions) Chandigarh to the applicant society. The applicant society filed reply on 3/8/2017 as well as on 11/8/2017. On 3/8/2017 order u/s 12AA rejecting the application of the applicant was passed by the Commissioner of Income Tax Act (Exemption). The Ld. AR submitted that it is undisputed fact that the assessee is engaged in running school and providing education. The Ld. AR further submitted that in the instant case, the Commissioner of Income Tax (Exemption) has also admitted that Society has been formed to set up to school which apparently and evidently is an educational activity. The present application and registration is only applicable of Assessment Years 2017-18 & 2018-19. The Ld. AR submitted that in the preceding years from Assessment Year 2011-12 to Assessment Year

2016-17 there is no surplus. However, orders have been made in assessment u/s 143(3) of the Act for the Assessment Year 1996-97, 2003-04, 2004-05 & 2008-09 wherein exemption u/s 10(22)/10(23C) (iiiad) has been availed by the applicant. The Ld. AR further submitted that objects of the society are wholly charitable in as much as main object is of providing education which is covered u/s 2(15) which provides an inclusive definition of the expression charitable purpose. The Ld. AR relied upon the following decisions:

- ❖ 93 ITD 546 (Del) Aryan Educational Society Vs. CIT
- ❖ 104 TTJ 127 (Del) Shavak Shiksha Samiti Vs. CIT
- ❖ ITA No. 5009/Del/2007 M/s Aggarwal Sabha Meham Vs. CIT(A)
- ❖ 27 SOT 331 (Del) Shri Krishna Education and Welfare Trust vs. CIT(A)
- ❖ 212 CTR 394 (All) CIT v. Red Rose School
- ❖ 330 ITR 480 (Kar) DIT v. Garden City Educational Trust
- ❖ 340 ITR 322 (Del) DDDIT v. Shanti Devi Progressive Education Society
- ❖ 127 ITD 164 (Del) O.P. Jindal Global University v. CIT
- ❖ 68 SOT 433 (Delhi) Meritta Welfare Trust v. CIT
- ❖ 212 CTR 394 (All) CIT vs. Red Rose School
- ❖ 9 SOT 636 (Bom) St. George Educational Trust vs. DIT[E]
- ❖ 13 SOT 54 (Del) (URO) Acharya Sewa Niyas Uttaranchal vs. CIT
- ❖ ITA No. 1089/09 in the case of Shri Krishna Education and Welfare Trust vs. CIT
- ❖ 118 TTJ 823 (Del) Dharma Sansthapak Singh (Niyas) vs. CIT
- ❖ Order of Hon'ble ITAT in the case of M/s Aggarwal Sabha Meham vs. CIT in ITA No. 5009/D/2007 dated 29.05.2009 approved by Hon'ble High Court of Punjab & Haryana dated 27.08.2010
- ❖ 117 ITR 284 (AP) Governing Body of Rangaraya Medical College"

6. The Ld. AR further submitted that according to Section 12AA (1)(b) of the

Act, the Commissioner of Income Tax at the time of registration has to restrict to two aspects. Firstly, to see whether objects of the society and secondly genuineness of the activities carried out by the society. The Ld. AR further submitted that the Commissioner of Income Tax cannot go into application of income u/s 11 & 12 of the Act as the same is beyond the scope of registration u/s 12AA of the Act and also alleged infringement of Section 13 are not to be examined at the time of registration. The Ld. AR relied upon the various decisions including the decision of the Hon'ble Supreme Court in case of on Queen's Educational Society Vs. CIT 372 ITR 699 and CCIT Vs. St. Peter's Educational Society 385 ITR 66. The Ld. AR further submitted that from the activities of the trust some surplus is generated, the same will not disentitle the trust for the claim of exemption u/s 11 & 12 of the Act. The Ld. AR further submitted that so long no trustees is entitled to benefit of surplus and surplus is utilized for promotion of objects of the trust. Therefore, exemption cannot be denied. The Ld. AR submitted that both during the existence of society and on dissolution of the society, the income and property shall be applied towards the object of the society and no fund shall be distributed/transferred directly /indirectly to the member of the society. Thus, the Ld. AR submitted that the order of the Commissioner of Income Tax (Exemptions) be quashed and direct the Commissionerr to grant registration to the applicant society u/s 12AA of the Act.

7. The Ld. DR submitted that despite giving adequate opportunity, the applicant did not furnish details called for by the CIT (E). No details were filed regarding computation of income to verify eligibility of assessee u/s 10(23C)(vi) of the Act. In past three years, despite turnover being more than Rs. 1 crore, the applicant claimed deduction u/s 10(23C) (vi) of the Act. The society has shown cars like BMW & Endeavour in its financial statements but the cars were found to be registered in the name of Shri K. S. Saini, Director and Sh. Ujjal Singh. Thus, it is a clear violation of provisions to Section 13(1) (c) (ii). The Ld. DR relied upon the following decisions:

- Navodaya Education Trust Vs. Union of India 2018-TIOL-261-H.C-KAR-IT
- Rajah Sir Annamalai Chettiar Foundation vs. DIT [2011] 15 taxmann.com 313 (Chennai)/[2011] 10 ITR (Chennai)/[2011] 48 SOT 502[Chennai]
- CIT Vs. National Institute of Aeronautical Engineering Educational Society [2009] 181 Taxman 205 (Uttaranchal)
- Self Employers Service Society Vs. CIT(A) [2000] 113 Taxman 703 (Kerala)/[2001] 247 ITR 18 (Kerala)/[2000] 164 CTR 449 (Kerala)
- Navodaya Education Trust Vs. Union of India (2018-TIOL-261-KAR-IT
- Shri Nathji Educational Foundation Vs. CIT(A) ITA No. 809/LKW/2014
- Islamic Academy of Education Vs. State of Karnataka and others 6SCC (697)
- Kirti Chand Tarawati Ch. Trust vs. DIT [1999] 105 Taxman 686 (Delhi)/[1998] 232 ITR 11 (Delhi)/[1999] 152 CTR 322 (Delhi)

8. We have heard both the parties and perused the material available on record. The Ld. DR's submission that no details were filed regarding computation of income to verify eligibility of assessee u/s 10(23C)(vi) of the Act. But the requirement of Section 12AA registration is only to the extent that the Commissioner has to satisfy himself about the objects of the trust or institution and the genuineness of its activities. Further, it is of great importance that the activities of such institutions be looked at carefully whether the activities are genuine or not. The Revenue authorities also have to look into the said activities whether the same are carried out in accordance with law or not. In the present case, the applicant society is not deviating from its main object to utilize the resources of society for propagation of education, to establish and run education institutions for promotion of modern education

in Haryana, to prepare buildings, hostels, sports ground and library for institutes of society. The Commissioner of Income Tax, at no point of time has pointed out that the applicant society is not doing these activities. The case laws referred by the Ld. AR are apt in the present case. Thus, Commissioner of Income Tax has not followed the proper guidelines given by Section 12AA when should be applied. Therefore, we are of the opinion that registration should have been granted u/s 12AA of the Act to the Applicant Society as the objects are charitable in nature and as there are no violations of either sec. 11(5) or Sec. 13 during this year or in the next year and possibility of the applicant society contravening the provisions is not a ground to reject the registration. Therefore, we direct the Commissioner of Income Tax (Exemption) to grant the registration to the Applicant Society u/s 12AA of the Act. Hence, appeal of the applicant society is allowed.

9. In result, the appeal of the assessee/appellant is allowed.

**Order pronounced in the Open Court on 13<sup>th</sup> June, 2019.**

**Sd/-  
(R. K. PANDA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 13 /06/2019  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	06.05.2019
Date on which the typed draft is placed before the dictating Member	07.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	13.6.19
Date on which the fair order is placed before the Dictating Member for pronouncement	13.6.19
Date on which the fair order comes back to the Sr. PS/PS	13.6.19
Date on which the final order is uploaded on the website of ITAT	13.6.19
Date on which the file goes to the Bench Clerk	13.6.19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	