

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

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

ITA No.470 (Asr)/2016
Assessment Year:2016-17

Baba Farid Public Welfare Society,
Village Ubha, Mansa, Bathinda. Vs. CIT (Exemption),
Chandigarh.

[PAN:AAAAB 5557C]

(Appellant)

(Respondent)

Appellant by: J.K.Gupta (Ld. Adv.)

Respondent by: Smt. Abha Rani Singh (Ld. CIT-DR)

Date of hearing: 05.03.2019

Date of pronouncement: 04.06.2019

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Appellant against the order dated 27.07.2016 passed by the Ld. CIT(Exemptions), Chandigarh, u/s 12AA(1)(b)(ii) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The Appellant Society has raised the following grounds of appeal.

- "1. That on the facts and in the circumstances of the case and law, the learned CIT (Exemption) has erred in denying the registration u/s 12A of the Income tax Act, 1961.*
- 2. That on the facts and in the circumstances of the case and in law, the learned CIT (Exemption) has erred in giving a finding that the trust is not doing charitable objects when assessee is running a higher secondary school on no profit basis.*

3. *That on the facts and in the circumstances of the case and in law, the learned CIT(Exemption) has erred in giving a finding that no activity least of saying any charitable activity is being carried out in view of above.*
4. *That on the facts and in the circumstances of the case and in law, the learned CIT (Exemption) has erred in giving a finding that the society is not registered as the same is registered with Additional Registrar of Society, Mansa at Serial No. 420 Dated 14.03.2005 and the original was produced on 19.07.2016 before DCIT (E), Chandigarh during the course of hearing for registration u/s 12A of the Act.*
5. *That on the facts and in the circumstances of the case and in law, the learned CIT (Exemption) was only required to see if the objects are charitable and whether the trust is genuine and nothing more.*
6. *That any other relief may kindly be granted to the assessee to whom it is found entitled at the time of hearing of appeal.”*

3. Brief facts of the case are as under:-

As per facts, the Assessee/Society is an ongoing entity and has been in operation since 14.03.2005 with the aims and objects to promote education, in several fields primary, secondary, technical, industrial, electronics, managerial and pharmaceutical so as to enable the students seek job-oriented and self employment, by opening institutions for boys and girls without any restrictions of caste, creed, community and faith of the student. The Assessee society is mainly running a school in the name and style of "Baba Farid Academy Public School, Ubha" and has been claiming exemption of income under section 10(23C)(iiiad) in the past.

The Assessee Society while filing an application on dated 21.01.2016 sought registration u/s 12AA of the Income Tax Act, 1961. The application of the assessee was taken into

consideration by the Ld. CIT(E) and in order to examine the rationale behind the claim for registration under the relevant section, questionnaire/letter dated 23.02.2016 was sent by the Ld. CIT(E), which was responded by the assessee on dated by 22-04-2016 by filling reply. Thereafter vide letter dated 08.07.2016, the assessee was accorded another opportunity to furnish, on the basis of material available with the application and subsequent submissions, certain details and clarifications as mentioned in Para no. 5 of the impugned order, which was also responded on dated 19.07.2016 by filling written replies to the queries raised vide letter dated 08.07.2016. However still the Ld. CIT (E) rejected the Assessee's application for grant of registration under section 12A of the Act.

4. Aggrieved against the order impugned herein, the assessee preferred the instant appeal. The Ld. AR in addition to raising many issues and controverting the findings of the Ld. CIT(E) in the order, also submitted that the instant case is squarely covered by the decision of the Co-ordinate bench at Amritsar in the case of the Managing Committee, Arya High School vs. CIT(E), Chandigarh (ITA No. 469/Asr/2016, decided on dated 11.08.2017) which has been affirmed by the Jurisdictional High Court in ITA No.51/2018 vide its order dated 16.05.2018 and the Apex Court in the case titled as Commissioner of Income Tax (Exemptions) vs. The Managing Committee, Arya High School [2019] 102 taxman Com 44 (SC).

5. On the contrary the Ld. DR vehemently refuted the claim of the assessee and submitted that the order

under challenge has been passed in peculiar facts and circumstances and in accordance with law, therefore, does not require any inference.

6. Having heard the parties and perused the material available on record. The Ld. CIT(E) denied the registration to the society by observing as under :

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(i) It is brought out the applicant has done no addition to the school and building premises over a period of 5 years except in the last year despite generating large scale surpluses. It has further accumulated large scale cash in hand balances which clearly show that not only has the applicant generated large scale surpluses but also not utilized the same in betterment of facilities of the school. It is also relevant that the cash in hand balances do not fit in the prescribed modes as envisaged by section 11 of the I T Act a condition it should have been adhered to given that it has been claiming exemption under section 10(23C)(iiiad).

A.Y.	Cash in Hand	Building A/c	
		Opening Balance for the F.Y	W.D.V. at the end of F.Y.
2015-16	37,84,395	11,67,965 (3,69,250 added)	14,01,956
2014-15	16,21,766	12,97,739	11,67,965
2013-14	12,20,078	14,41,932	12,97,739
2012-13	8,10,674	16,02,147	14,41,932 I
2011-12	7,92,894	15,40,543	16,02,147

(ii) Another relevant issue that emerges from the audit report is the fact that said reports are in form no. 3CB applicable to entities running on commercial basis (barring audit report for AY 2015-16 that seems to have been prepared as per the requirements of exempted entities or those seeking exemption). The previous returns and the associated statements of accounts also exemplify that the same is being run on commercial principles. For e.g. ratios

w.r.t net profit compared to turnover have been arrived at and exemplified in the audit reports. Ratios of 13.68% for the year 2011-12 and 15.63% for 2012-13 are instances showing the same.

(iii) The applicant society has been claiming exemptions u/s 10(23C)(iiiad) of the Act for the last three years and yet has chosen to seek registration u/s 12AA of the Act whereas the natural progression should have been claim under section 10(23C)(vi) in the event of its receipts crossing the 1 crore mark. Judicial principles lay down that exemption under the two sections could be claimed alternatively. However it has not been laid out that entities who have enjoyed the benefits of a particular section suddenly decide to switch to another where the conditions of applicability are entirely different. Does it mean in the instant case that an entity that was claiming to exist hitherto as 'solely for education' and 'not for profits' has changed its character overnight? The findings mentioned above do not lend credence to the altruistic intent of the applicant. In fact what have been brought out are large scale generation of cash and no redeployment of the profits towards improving the avowed purpose of education (running of school).

(iv) No corroborative evidence in respect of assets/property in the name of the society income from which was sought to be exempted was brought on record either.

(v) Originals of the papers evidencing the formation of the society registration of the by e-laws were not furnished. It is seen from the papers filed that 'rules and regulations' are not registered. Neither has any evidence been appended in support of any resolutions etc to this effect.

8. In the instant case, given all of the above, there is no way the genuineness of activities of the society can be corroborated with the stated aims and objects. Moreover the discussions also reveal that the entity has been generating surpluses in cash that have not been redeployed for the purpose of education. It is also the case that the present application under section 12AA, given that the applicant has pursued no other object apart from running a school, is misconceived. The application under section 12A for grant of registration is accordingly rejected.

6.1 Let us to peruse the relevant provisions of law , which deals with the consideration of application for registration u/s 12A of the Act.

Section 12AA

(1) The Chief Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1)] of section 12A, shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he -

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

From the provisions, it is clear that before deciding the application u/s 12A of the Act, the commissioner is at liberty to call for such documents or information from the society or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the society or institution and may also made such enquiries as he may deem necessary in this behalf. Further before passing an order, the Ld. CIT(E) is empowered to satisfy himself about the aims and objects of the society or institution and the genuineness of its activities.

6.2 While coming to the instant case as observed by Ld. CIT(E) itself that that assessee society is availing exemption u/s 10(23C)(iiia) of the Act in the past. At

this juncture the assessee society had applied for registration u/s 12AA therefore, the question arises as to whether the assessee society is entitled to switch over from the provisions of 10(23C)(iiiad) to 12A of the Act. It is well accepted propositions of law, as held in various cases including by the Co-ordinate Bench in the case of the Managing Committee, Arya High School vs. CIT (Exemptions), Chandigarh, ITA No.469/Asr/2016 decided on 11.08.2017 to the effect that choice for claiming the benefit in either of the provisions i.e. u/s 10(23C)(iiiad) or u/s 12 of the Act is the prerogative of the assessee and the Revenue Department cannot deny the benefit only on the basis of switching over from the provisions of Sec.10(23C)(iiiad) to Sec.12 of the Act because there is no embargo in statute or law. No doubt the Revenue Department is at liberty to consider the other relevant criteria as prescribed by law but not otherwise. Hence, in our considered view this ground of rejection that earlier the assessee was claiming exemption u/s 10(23C) (iiiad) of the Act that is why the assessee is not entitled to get registration u/s 12AA of the Act, is not sustainable.

6.3 Further, the Ld. CIT(Exemptions) while declining the registration also focused that the assessee has done no addition to the school and building premises over a period of five years except in the last year despite generating large scale surpluses. It has further accumulated large scale cash in hand balances which clearly show that not only has the assessee generated large scale surpluses but also not utilized the same in

betterment of facility of the school. It was further observed by the Ld. CIT(E) that it is also relevant that the cash in hand balances do not fit in the prescribed modes as envisaged by Sec.11 of the I.T. Act, a condition that it should have adhered to give that it has been claiming exemption u/s 10(23C)(iiiad).

We note that the Ld. CIT(E) while considering application for registration u/s 12A of the Act, is not empowered to act like Assessing Officer . If the assessee has not been following the prescribed modes as envisaged by Sec.11 of the Act then certainly the Assessing Officer is empowered to take appropriate action for declining the benefit to the assessee. In the order, the Ld. CIT himself has admitted that the assessee has done addition to the school building premises in the last year which goes to show utilization of the funds generated by the assessee society. Further with regard to the objection of the Ld. CIT(E) to the effect that the assessee has accumulated large scale cash in hand balances which clearly show that not only the applicant has generated large scale surpluses but also not utilized the same in betterment of facility of the school. This identical facts have also been dealt with by the Co-ordinate Bench in the case of *The Managing Committee, Arya High School vs. CIT(Exemptions)* (supra) wherein the Co-ordinate Bench while respectfully following the principles laid down in *Queen's Education Society vs. CIT* [2015] 372 ITR 699 (SC) held that excess accumulation has been applied for the objects of the society itself therefore, there is

no hesitation to allow the registration to the assessee society. For the sake of ready reference and brevity, the principles laid down by the Apex Court in Queens Education Society vs. CIT (Supra) are reproduced herein below.

"11. Thus, the law common to section 10(23C)(iiad) and (vi) may be summed up as follows.

1. *Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.*

2. *The predominant object test must be applied—the purpose of education should not be submerged by a profit making motive.*

3.

4. *A distinction must be drawn between the making of a surplus | and an institution being carried on 'for profit'. No inference arises ' that merely because imparting education results in making profit, it becomes an activity for profit.*

5. *If after meeting the expenditure, a surplus arises incidentally from the activity carried only the educational institution, it will not; cease, to be one existing solely for educational purposes.*

6. *The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons."*

6.3 In the instant case it is not in controversy that assessee society has made the addition to the school building in the last year (2015) itself as observed by the Ld. CIT(E) which goes to show the addition to the school building is certainly for the benefit of the public at large. As it reflects from the balance sheet as on 31.03.2015 (Page 31 of the PB) the assessee has

invested Rs.18,72,224/- in fixed assets and various expenses have been incurred for smooth running of the school, as it appears from the income and expenditure account of the year ending 31st march, 2015 (page 32 & 33 of the PB). Further as per Annexure-A to the income and expenditure as on 31.3.2015 (Page No.34 of PB), the assessee has incurred the various amounts such as Rs. 3,69,250/- for making addition in building, Rs.2,00,000/- in installation of CCTV Camera, Rs.20,000/- for installing RO System, Rs.33,000/- for LED, Rs.17,500/- for invertors and Rs.13,000/- for furniture and fixture, which again goes to show that the assessee society is doing certain works in pursuance to its aims and objects. As it is well settled by Apex Court in the case of Queens Education Society (supra) that a distinction must be drawn between the making of a surplus and an institution being carried on for profit. Further if after meeting the expenditure, a surplus arises incidentally from the activity carried by the educational institution, it will not ceased to be one existing solely for education purposes. Further the ultimate test is whether on an overall view of the matter in the **concerned assessment year** the object is to make profit as opposed to educating persons. In the instant case, as reflects from the income and expenditure account for the ending 31st March, 2016 for the assessment year relevant to the financial Year 2005-16, the total gross receipts which includes fees from the students, interest income, miscellaneous income, miscellaneous funds and standard scholarship was Rs.86,56,943/-, whereas total expenditure for running the school was Rs.83,10,282/-

and the assessee incidentally earned the income of Rs.3,46,661/- only. Hence, in view of the dictum of Queen's Education Society (supra) it can-not be construed that the assessee is involved in making the profit and thus opposed to the educating persons. Further the inference also cannot be drawn that the assessee society incidentally accumulated large scale cash, therefore, the society is running school for non-charitable purposes and/or for commercial purposes.

6.4 The Ld. CIT(E) also observed that in the instant case, given all of the above, there is nowhere the genuineness of the activities of the society can be corroborated with the stated aims and objects. As we have already observed above that the society is claiming exemption u/s 10(23C)(iiiad) which can only be claimed by the University or other educational institution existing solely for educational purposes and it is not the case of the Revenue that the benefit of section 10(23C)(iiiad) has ever been denied to the assessee, therefore in our considered opinion, strengthen the case of the assessee that the activities of the society are corollary to the stated aims and objects of the society and while departing education, the assessee is continuing with its aims and objects. On this aspect we also found support from the decision of co-ordinate bench in the case of The Managing Committee, Arya High School vs. CIT(E), Chandigarh (Supra).

6.5 From the order, it also reflects that the Id. CIT(E) also observed that the applicant has persuaded no other object apart from running school is misconceived. We realized that this observation of the Ld. CIT(E) is based on the conjecture and surmises without any basis.

6.6 Further, the Ld. CIT(E) also observed that original of the papers for formation of the society registration and the bye laws were not furnished. It was further observed that it is seen from the paper files, that Rules and Regulations are not registered neither has any evidence been appended in support of its dissolution under this effect. In our considered view this observation of the Ld. CIT(E) is right as he is entitled to satisfy himself about the objects of the trust or institution and the genuineness of its activities.

6.7 Therefore, in the peculiar facts and circumstances and on the aforesaid observations and analyzations, for substantial justice, we direct the Ld. CIT(E) to grant the registration to the society from the date of application, within 90 days from this order, however order shall be subject to the production of the originals and registered Memorandum of society and Rules and Regulations of the society.

We clarify that the assessee shall co-operate in the proceedings and shall submit the documents as referred above to the Ld. CIT(E) within 30 days of the receipt of this order, failing which the Ld CIT(E) shall be at liberty to draw adverse inference if any.

7. In the result, the appeal filed by the Assessee Society is allowed for statistical purposes.

Order pronounced in the open Court on 04.06.2019.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:04.06.2019

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Copy of the order forwarded to:

- (1) Baba Farid Public Welfare Society, Bathinda.
- (2) The CIT (Exemption), Chandigarh.
- (3) The SR DR, I.T.A.T., Amritsar

True copy

By order