

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

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

I. T. A. No. 598/Asr/2016

Assessment Year: N.A.

Guru Ram Dass Educational
Society,
100 ft. Road,
Near Clock Tower, Bathinda

[PAN: AAAAG 5652R]

(Appellant)

vs. Commissioner of Income Tax
(Exemptions), Chandigarh

(Respondent)

Appellant by : Sh. Vineet Krishan (Adv.)

Respondent by: Sh. Alok Kumar, CIT-DR

Date of Hearing: 14.03.2019

Date of Pronouncement: 04.06.2019

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee-applicant contesting the denial of registration u/s. 12AA of the Income Tax Act, 1961 ('the Act' hereinafter) by the competent authority, being the Commissioner of Income Tax (Exemptions), vide order u/s. 12AA (1)(b)(ii) of the Act dated 29.9.2016.

2. The background facts of the case are that the assessee-society, registered under the Societies Registration Act, 1860 on 08.4.2008 (PB pg. 1), and in operation since, sought registration u/s. 12AA by moving an application u/s. 12A on 30.3.2016. The stated aims and objects per the Memorandum of Association (MOA) (PB pgs. 2-9) were duly noted by the competent authority (at para 2 of the impugned order). The same included imparting primary/secondary and higher

education, etc., through opening of schools/colleges and institutions in the backward areas of the state so as to serve the children/youth of the area, enabling them to seek productive employment in life and, thus, integrate in the nation building process. It, besides running an engineering college by the name 'Guru Ram Dass Institute of Engineering and Technology', affiliated to the Punjab Technical University, Jalandhar, was found to have adopted a school by the name 'Harbhajan International School' (at Lehra Bega), being a run by Dasmesh Educational and Welfare Society (DEWS), during, as it appears, financial year (fy) 2011-12. The assessee was, accordingly, in examination of its' application u/s. 12AA, enquired of the legal steps adopted for the purpose, i.e., in the take-over of the said school. The assessee, which had been till then claiming exemption u/s. 10(23C), had reported losses at Rs.55.90 lacs and Rs. 26.72 lacs for the previous years relevant to assessment years (AYs.) 2015-16 and 2014-15 respectively, filing its' returns under ITR-5, i.e., as applicable to a business enterprise, claiming business losses per the same, also furnishing an audit report in the requisite form along with. This was clearly inconsistent with the assessee's claim of being a charitable institution, eligible for tax exemption on its' income u/ss. 11 and 12 of the Act on being applied for charitable purpose/s.

3. The competent authority did not find the assessee's claim for registration as meriting acceptance for the following reasons (paras 7-11 of the impugned order):

(a) the take-over of Harbhajan International School (HIS) is without adopting the necessary legal steps. In fact, the balance-sheet of the DEWS as filed nowhere mentions the affairs of HIS. DEWS is not shown to have any exemption certificate or even shown to be filing returns. That the taken over is 'absolutely fuzzy';

(b) the assessee's returns for the last three years are as applicable to a business concern, i.e., the assessee-society considers itself as a business entity, which now wishes to declare itself as a charitable institution, i.e., in the garb of running a school;

(c) carrying on educational activity cannot by itself be as regarded as a 'charitable purpose'. The concept of charitable purpose must involve taking care of the welfare and interest of the public, particularly the poor sections thereof. Running of schools and colleges by charging high fees, accumulating huge assets, could not be regarded as charitable activity. The institutions could not be allowed to grow richer and richer by extending exemption, thereby converting them into tax-exempt organizations.

The present case, it was opined by him, was of a society whose activities, though involved education, but were, at the same time, for profiteering and creation of assets. The registration being accordingly denied, the assessee is in appeal.

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

4.1 The competent authority is to allow or, as the case may be, disallow registration on the basis of his satisfaction (or not so) about the objects of the trust and genuineness of its' activities. In the instant case, no fault has been stated *qua* the objects of the society. It is the activities of the appellant-society, which have been found not genuine, for the reasons afore-stated (para 3 supra). It is therefore the validity in law of these reasons, that shall determine the sustainability or otherwise in law of the impugned order, i.e., in the facts and circumstances of the case.

4.2 In this regard, the first issue that confronts us is if educational activity could be regarded as 'charitable purpose' (as defined u/s. 2(15)), where undertaken in a manner that results in profit, i.e., an excess of income over expenditure. That is, the education is so priced that it not only covers all costs, but also yields adequate operating surplus, sufficient to meet the financing cost as well as finance expansion (growth), which we observe to be the case, and which the Id. CIT(E) refers to as 'profiteering'. It would be relevant to present the working results for the only year (fy 2014-15) for which data is on record (PB pgs. 16-30):

(Amt. in Rs. lacs)

<u>Particulars/</u>	<u>College</u>	<u>Schools</u>	<u>Misc.</u>	<u>Total (%)</u>
Receipts	540.83	18.23	-	559.06 (100.00)
Operating cost	(288.21)	(30.30)	-	(318.51) (56.97)
Operating surplus	252.62	(12.07)	-	240.55 (43.03)
%	(46.71)	(66.21)		
Interest			(110.65)	(110.65) (19.79)
Other adjustments			1.54	1.54 (0.28)
Cash surplus				(131.44) (23.51)
Other Depreciation	(64.15)	(0.16)	-	(64.31) (11.50)
Net surplus	188.47	(12.23)	(109.11)	(67.13) (12.01)

(figures in brackets represent negative figures & % age)

The operating parameters, which are very healthy, clearly exhibit the educational institutions to be run on commercial basis, i.e., as alleged by the Revenue. The balance-sheet as at 31.3.2015 reflects accumulated loss (inclusive of depreciation) at Rs.263.44 lacs, implying it to be at Rs.330.58 lacs as at 31.3.2014 (i.e., prior to recoupment through surplus of Rs.67.13 lacs for fy 2014-15). In fact, the accumulated depreciation of college (as on 31.3.2014) is itself Rs.238.31 lacs (that of school being not reflected in its' annual accounts), so that the deficit is largely on account of non-recovery of depreciation. The balance loss, as it appears, is to the account of the school, HIS, taken over. Rather than, therefore, the school adding to the profit and, thus, asset-base, it has depleted it's' – the assessee's, reserves, the operating loss for the latest year (i.e., for which figures are available) being at Rs.12.07 lacs. No immovable property, i.e., land and/or building, has been taken-over (PB pg. 29), so that it cannot be alleged that the school was taken over with the view to acquire land and building in the guise of 'adopting' a school.

Rather, the ld. counsel for the assessee, Sh. Vineet Krishan, would explain that the taking over of the school, affiliated to CBSE, was for the reason that some problems with regard to the housing of the school arose, which is being now run accommodating the students under the existing land and building of the college. The affiliation with CBSE, he would, with reference to the balance-sheet of the society, clarify that the FDRs (held jointly with CBSE) continue to be with the assessee (PB pgs. 16, 27). This, in fact, has also been clarified by the assessee at para 10 of its' letter dated 01.8.2016 (PB pgs. 10-11). The school was situate at Lehra Bega (para 7 of the impugned order), which is a backward area. There is nothing to suggest that the students had left and now comprise, or at least in the main, students from the non-backward area/s. In fact, as explained, the main purpose was not to leave the students in lurch. We are, thus, unable to appreciate as to how the take over has been regarded as fuzzy or not in advancement of the objects of the society. The continuing affiliation with CBSE, not doubted, and *qua* which we have reasonably satisfied ourselves, including the no takeover of any land (immovable property), put pays all doubts with regard to the acquisition of a running school or, rather, adoption of a running school.

4.3 The engineering college, *qua* which no adverse comments have been made, is located, as it appears, in Bathinda, which is not stated to be a backward area. The college, charging for transportation, has vehicles (at Rs.91.03 lacs) and, besides, offers hostel facility. It is thus clear that it serves students of the surrounding areas, providing accredited educational courses. Whether the same is of an acceptable and standard quality, as Sh. Vineet Krishan would emphasize, seeking to justify the cost charged to the students on that basis, is difficult to say. *Prima facie*, the affiliation to a recognized university, which is not in doubt, should allay any doubt in the matter. In fact, 'quality' is an aspect which, though integral to education, as

it indeed is to any other human endeavor, is something the assessment of which is outside the scope of the instant proceedings. Then, it would raise a question as to whether any 'education' can be regarded as not so on account of poor quality, besides the issue of its' definition, i.e., as to what constitutes 'quality education'. We, therefore, though recognize the aspect of quality of education as an area of serious concern; the students passing out of the educational institutions, which have mushroomed in the recent past, being, generally speaking, not properly trained and equipped, and find it difficult to secure placement in the job market, which provides imminent relevance to education, more so to that of technical nature, yet are of the view that the same cannot be factored into our adjudication, particularly considering that the courses offered are accredited. The matter is left to be considered by the regulatory authorities, i.e., besides the market forces.

4.4 The only issue that survives is if the educational activity carried out in pursuance of its' objects by the assessee-society, could be, on account of its pricing, discounted, i.e., not regarded as 'education', given its' definition u/s. 2(15). Education is a service, as any other. Where charged for, as it admittedly is in the instant case, why should it be regarded as 'charitable', particularly considering that the pricing yields a healthy profit. This is the question we need to address. In the facts of the present case, the society has assumed secured loans at a cost, so that it is clearly and, rather, aggressively, pursuing growth in-as-much as the revenue generated is toward not only meeting the costs, including financing costs, but also retire debt. We are, however, in agreement with the Id. counsel, Sh. Vineet Krishan, that education, as defined u/s. 2(15), makes the same an irrelevant consideration. One could argue for a need for effecting some change/s in law, which has to be read, and given effect to, as expressed. The issue, i.e., education being pursued as an economically sound and prosperous activity, has been

extensively considered by the Tribunal in *Lord Shiva Educational Welfare Society v. CIT(E)* [2018] 72 ITD 429 (Asr), holding, with reference to judicial precedents, that the activity of ‘education’ cannot be impugned on account of it being carried out on commercial basis. It may be relevant to reproduce the relevant part of the said decision:

‘4.2 The question, therefore, is whether the earning of profits, i.e., in a regular and systematic manner – on which there could hardly be any doubt, even as the Id. CIT(E) was at pains to emphasize, by managing its affairs adopting standard and well accepted/recognized business management practices and principles, on commercial or market driven basis, could be said to exclude an activity geared to achieve an object otherwise constituting a charitable purpose. The Hon’ble Apex Court has, per a series of decisions, as in *Sole Trustee, Loka Shikshana Trust v. CIT* [1975] 101 ITR 234 (SC); *Indian Chamber of Commerce v. CIT* [1975] 101 ITR 796 (SC); *Dharmadeepti v. CIT* [1978] 114 ITR 454 (SC); *CIT v. Surat Art Silk Cloth Manufacturers’ Association* [1980] 121 ITR 1 (SC); *Aditanar Educational Institution v. CIT (Addl.)* [1997] 224 ITR 310 (SC); *American Hotel & Lodging Assn. Educational Institute v. CBDT* [2008] 301 ITR 86 (SC); and *Queens’ Educational Society v. CIT* [2015] 372 ITR 699 (SC), the last also approving the decision by the Hon’ble jurisdictional High Court in *Pine Grove International Charitable Trust vs. Union of India* [2010] 327 ITR 273 (P&H), settled the law, explaining that on an overall view of the matter the object should not be to make profit, i.e., ‘profit-making’ should not be the predominant object, as where the charitable purpose gets submerged by the profit motive, the latter masquerading under the guise of the former. As long as it is not so, so that the activity carried on does not have profit-making as its’ predominant object, it is not excluded. However, these decisions, again, are all rendered in the context of the charitable purpose being ‘the advancement of an object of general public utility’, qualified by the defining provision of law itself by a bar with reference to profit, or in the context of sec. 10(23C)(iiiad)/(vi), specifically providing for the educational institution, income from which gets exempt there-under, to be ‘existing solely for education and not *for* profit’, so that the Apex Court found it useful to refer to the elucidation of and the connotation of the preposition ‘*for*’ per its earlier decisions, which is the reason for our enlisting its’ decisions over time, which thus document the progression of law in the matter. *For the other objects constituting a charitable purpose, the genuineness of the purpose gets tested by the obligation created to spend the income exclusively or essentially on charity, i.e., its’ charitable objects.* We, therefore, fully endorse the assessee’s stand that profit-making, or running the school on business or commercial principles, would not exclude it from being regarded as existing for a charitable purpose. Why, even regarding it as a business; education admittedly being a service that has become increasingly competitive and professional over time, which rather gets borne out by the fact of the same being provided through franchisee units, paying a franchise fee and royalty, so that it may not be incorrect to regard it as so,

would not though bar the profits and gains from it as being regarded as income liable for exemption u/s. 11(1)(a) where the 'business' is incidental to or subserves the charitable purpose (refer s. 11(4A)). The restriction, prior to sec. 11(4A), was spelt out u/s. 13(1)(bb), since omitted, stipulating a more stringent requirement of the business being carried on in the course of carrying out the primary purpose of the trust or institution, which is also satisfied in the present case as the education is being provided only through the school. The Hon'ble Courts, as a reading of the various decisions in the matter shows, have refrained from providing a quantitative test for the income generated from the activity carried on in pursuance of or for achieving a charitable purpose/object. Nothing, therefore, turns on the assessee stating before us of its' expenditure exceeding income; the expenditure including a handsome component of depreciation (Rs. 37 lacs for AY 2015-16), so that there is substantial cash profit and, two, the depreciation stands provided on an accelerated (WDV) basis at the rates prescribed under the Act for determining business income, which inflates the charge for the initial years, as against being applied uniformly over the life of the asset. Before us, the ld. counsel sought to justify the fees which, on an annual basis, ranges from Rs. 40,000/- to Rs. 50,000/-, with reference to the quality of the education; the school also providing training in Robotics, a new discipline. Without doubt, the cost of education, as of any other service, can not be properly compared without taking into account its' quality; rather, the quality of both the input resources as well as the output. We have, however, already clarified that no quantitative tests (viz. the rate of profit; the rate of return on investment, etc.) in this regard have been laid down, which the Hon'ble Courts have eschewed for perhaps precisely this reason, i.e., as a number of variables impinge thereon, and which aspect is therefore best left for the regulating authority (as CBSE) or the market place to decide. Our decision in this regard is thus consistent with the decisions by the Tribunal cited before us in respect of similar schools run as franchisee units (of Zee Learn Ltd.)'

It would be a different matter where the capitation fees, which dubious practice is also rampant in the education sector, is resorted to, to grant admission to educational institutions. In fact, this issue again arose, in the context of non-grant of section 80(G)(vi) approval, in *Adesh Foundation* (in ITA No. 665/Asr/2017, dated 18/3/2019), where the tribunal, after an extensive discussion in the matter, held that inquiry into the need for donations is not precluded and, indeed, relevant, taking into account the entirety of the facts and circumstances. However, the denial of approval could only be on some firm footing, i.e., where it is a distinct possibility, and not a mere possibility of capitation fees, strongly denied by the applicant, emphasizing on it's past conduct. The approval was granted subject to a

legal undertaking toward non-acceptance of any capitation fee in the garb of donation.

4.5 Finally, the assessee may have returned its' income as a business enterprise in the past. Where assessed as a business loss, the assessee cannot claim set-off against income for the years for which it is regarded as a charitable institution, claiming exemption u/s. 11 on the application of income for charitable purpose/s from property held under trust. Even as we may not be construed as having issued any factual finding in the matter – the said aspect having not been argued, there does not appear to be any bar for set off against income that is not subject of exemption, as, for instance, assessable u/s. 11(4A). The import of the fore-going observation, however, is that the same by itself cannot be held against the assessee so as to deny it registration, where otherwise eligible.

5. In our considered view, no case for non-grant of registration is made out. We, accordingly, for the fore-going reasons, direct registration u/s. 12AA of the Act. We decide accordingly.

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

Order pronounced in the open court on June 04, 2019

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

Sd/-
(Sanjay Arora)
Accountant Member

Date: 04.06.2019

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Guru Ram Dass Educational Society, 100 ft. Road, Near Clock Tower, Bathinda
- (2) The Respondent: Commissioner of Income Tax (Exemptions), Chandigarh
- (3) The CIT(Exemptions), Chandigarh
- (4) The CIT concerned

(5) The Sr. DR, I.T.A.T.

True Copy

By Order