

objects of the assessee trust are of charitable nature in terms of provisions of section 2(15) of the Income Tax Act, 1961.

3. That having regard to the facts and circumstances of the case, the CIT (E) has erred in not appreciating that the assessee trust is created for purpose of providing education and various other allied objects as enshrined in the trust deed which are purely of charitable nature and in accordance with provisions of section 2(15) of the Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, Ld. CIT(E) has erred in law and on facts in not appreciating that the benefit of education and training was of charitable nature in accordance with objects of the trust and the CIT(E) was not justified in disputing the same.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : the application moved by the assessee trust in Form No.10A seeking approval for registration under section 12AA of the Income-tax Act, 1961 (for short ‘the Act’) has been rejected by the Id. CIT (E) on the grounds inter alia that perusal of objects of the trust mentioned in the Trust Deed shows that the same appeared to be commercial in nature; that statement of the applicant that the objects pointed out by the Id. CIT (E) are incidental to the main objects of the trust is factually incorrect; that activities of the trust are not genuine.

3. Feeling aggrieved, the assessee trust has come up before the Tribunal by challenging the impugned order passed by Id. CIT (E) by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Trust Deed dated 07.11.2017, available at pages 12 to 31 of the paper book, enumerates following aims and objects of the Trust :-

“Aims and the objects of the Trust

The Trust is being established for the advancement of education. The Trustees shall each year apply the income of the Trust or part thereof and may at their discretion at any time and from time to time apply the Trust funds towards the advancement of one or more of the following objectives in such manner as the Trustees in their absolute discretion think proper. PROVIDED FURTHER THAT NOTWITHSTANDING anything hereinbefore or hereinafter contained, the income as also the corpus of the Trust funds shall be applied and be applicable only to or for such public charitable purpose and objects and subject to such conditions and/or limitations, if any, as may, from time to time be laid down in the Income Tax Act, 1961, or any other Act governing the taxation of income. The aims and objects of the Trust shall be as under :

- a. *establishing, acquiring, operating, managing, maintaining, supporting schools, colleges, training centres, tutorial centres, pre-schools, including kindergartens, nurseries, child care centres, before and after school service centres, enrichments classes, remedial classes, crèches, study centres, research institutes, universities, lecture class or examination room or rooms, office or offices and other institutions and/or granting monetary assistance and establishing endowments at any of the aforesaid establishments or fund the imparting and promotion of education, knowledge and training of students,*
- b. *establishing, acquiring, operating, managing, controlling, maintaining, supporting schools, colleges, training institutes, professional institutes providing formal degrees etc.;*
- c. *establishing and maintaining hostels and/or boarding houses and/or residence quarters and granting free boarding and/or lodging to students, scholars, teachers, staff members, etc., of any school owned or operated by the Trust upon such terms and for such period as the Trustees may deem fit;*

- d. *awarding scholarships, fellowships, grant and monetary assistance by way of loans or otherwise to deserving students on such terms and conditions as the Trustees may deem fit for the purposes of imparting education, training and qualification including academic, learning, professional, vocational, technical and encouraging research, etc. in any branch of knowledge for such period as the Trustees may deem fit;*
- e. *supplying books, food, clothes and fees to students or scholars or grant monetary assistance, etc. to them for such purpose as aforesaid;*
- f. *establishing, maintaining, supporting and providing monetary assistance to libraries, museums, reading rooms, laboratories, research centers and other facilities, for advancement of education and knowledge;*
- g. *developing and conducting workshops, training programs for teachers, non-academic staff, academicians and public on educational technology, processes and methodologies and conducting teacher training activities in all forms and through all mediums;*
- h. *developing and carrying out research in systems processes and methodologies to improve the functioning of schools and higher education institutions, etc. and developing and deploying technologies, equipment, software to achieve this aim and objective;*
- i. *exploring and implementing new vocational areas including in the field of science and technology and/or any other areas;*
- j. *developing and establishing pre-school(s) and out of school activity centres catering to the needs of children in sports, fine arts, cultural and vocational activities, educational trips and other mentally stimulating and personality enriching and enhancing activities;*
- k. *associating, collaborating and raising funds, conducting, managing and controlling events and activities with other societies, trusts or non-profit organizations having one or more aim and object similar to that of this Trust;*
- l. *rendering educational and research services to any such company, association, institutions or organizations in*

academic field as also imparting training and knowledge skills;

- m. undertaking research and experimentation in the field or developing and producing educational material, curriculum, modules, programs, software, in any form and medium, with a view to make the process of learning and teaching more meaningful, educative, interesting and elevating and to promote knowledge and understanding in the education field;*
- n. supporting the initiative of any individual, group or organization in promoting education both formal and informal for adults and children or otherwise associating, subscribing, collaborating, cooperating and/or coordinating with any company, association, organization, society, trust or institution for furtherance of the objectives of the Trust and for all such purposes as incidental thereto;*
- o. establishing help lines and counseling centres for school students including for career counseling and other social issues; and*
- p. promoting education and learning in all branches of knowledge and for all its allied purpose.”*

It is expressly provided that if any one or more of the objects herein above specified are held not to be objects of a charitable nature, the Trustees shall not carry out such object or objects but the validity of the said Trust as a Trust for charitable purposes shall not be affected in any manner.”

6. Perusal of the aims and objects of the assessee trust when examined into totality go to show that the dominant object of the applicant trust is imparting and supporting education by establishing, acquiring and operating schools, colleges, training centers, tutorial centers, study centers, etc. and supplying books, food, clothing and fees to the students, scholars and grant monetary assistance etc. to them. However, applicant trust has inserted a proviso to the main aims and objects that, “*if any one or more of the objects herein above specified*

are held not to be objects of a charitable nature, the Trustees shall not carry out such object or objects but the validity of the said Trust as a Trust for charitable purposes shall not be affected in any manner.”

7. When we examine the impugned order passed by the Id. CIT (E) in the light of the aims and objects of the assessee trust, it leads to the conclusion that the Id. CIT (E) proceeded merely on the basis of assumptions and presumption by recording the finding that following objections mentioned in the Trust Deed seem to be commercial in nature and that the objects mentioned in the Trust Deed are on commercial lines and assessee trust **may deviate** from the charitable activities.

8. Ld. DR for the Revenue filed written submissions containing case laws which are extracted as under :-

“ In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to Section 12AA of I.T. Act and proviso to section 2(15):

1. Rajah Sir Annamalai Chettiar Foundation Vs OIT [2011] 15 taxmann.com 313 (Chennai) / [2011] 10 ITR(T) 424 (Chennai)/[2011] 48 SOT 502 (Chennai) (copy enclosed)

Where Hon'ble ITAT Chennai held as follows:

The principle that the institutions run by the charitable societies may collect fees and service charges does not mean that the institutions can charge fees, etc., at commercial rates from all the people without giving any element of charity to needy people. The charitable purpose defined and manifested as including relief of the poor, education, medical relief, etc., is to protect the basic concept of charity. Presence of real charity cannot be diluted. Charity always means helping the needy supporting the poor, working with compassion and dedication for the society. Running of an institution without any of the above virtues cannot be

considered as a charitable institution. The object of the assessee-trust is to establish a number of educational institutions in a brand name and run it on commercial lines. This cannot be a charitable activity.

2. CIT Vs National Institute of Aeronautical Engineering Educational Society [2009] 181 Taxman 205 (Uttaranchal) (copy enclosed)

where Hon'ble Uttaranchal High Court held that in expression 'charitable purpose', charity is soul of expression and mere trade and commerce in education cannot be said to be a charitable purpose entitling a society to grant of registration under section 12AA. It was held as follows:

"Section 12AA provides procedure for registration clause (a) of section 12AA(1)(a) empowers the Commissioner to call for such documents or information from the trust or an institution, as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or an institute and may also make such inquiries, as he may deem necessary in this behalf. Said provision in section 12AA makes it clear that the Commissioner is not supposed to allow the registration with blind eyes. In the instant case, the order passed by the Commissioner showed that he had considered the income and expenditure account of the society for the financial years 2000-01 to 2002-03, and concluded that the assessee was not carrying on any charitable activity as its dominant object was to earn profits under the garb of 'education'. The Commissioner had further observed that the assessee was charging substantial fee from the students and was making huge profits. The order passed by the Commissioner further disclosed that the surplus had been transferred to the capital fund of the assessee. It had been further clarified in the finding of the Commissioner that no expenditure was made by the assessee for the charitable purpose. [Para 6]

Mere imparting education for primary purpose of earning profit cannot be said to be a charitable activity as interpreted by the Apex Court in Municipal Corpn. of Delhi v. Children Book Trust [1992] 138 ITR 390. In the expression 'charitable purpose', charity is soul of the expression. Mere trade and commerce in education cannot be said to be a charitable purpose."

3. CIT Vs A.R.Trust [2017] 86 taxmann.com 6 (Allahabad)

Where Hon'ble Allahabad High Court held that Tribunal has no jurisdiction in law to direct for registration of trust without there being satisfaction recorded by registering authority as contemplated by section 12AA.

4. G D Singla Charitable Trust Vs CIT [ITA No.594/2013] (Copy enclosed)

Where Hon'ble ITAT Amritsar held that benefit of registration u/s 12AA cannot be granted to a trust that is controlled by a single family."

9. The Id. CIT (E) vide show-cause notice dated 27.12.2018, available at pages 6 & 7 of the paper book, called upon the assessee to furnish plethora of documents/information so as to satisfy himself as to the genuineness of the charitable activities but has not discussed any of the documents whatsoever to prove that he was actually not satisfied as to the genuineness of the charitable activities to be carried out by the assessee rather based the order on the basis of whims and fancies.

10. Impugned order passed by the Id. CIT (E) rejecting the registration u/s 12AA of the Act is wholly and exclusively based upon whims and fancies without examining the aims and objects in totality. One cannot pick up two or three objects to decide the issue in controversy. The Id. CIT (E) has not called upon the assessee to furnish any documents or information, bank statements, to prove extent of the charitable activities carried out so as to satisfy himself about the genuineness of the activities of the trust rather dismissed the application summarily by harping upon four objects picked up from the Trust Deed.

We are of the considered view that the Id. CIT (E) has not satisfied himself as required u/s 12AA of the Act to arrive at the decision rather dismissed the application on the basis of presumptions and assumptions.

11. In view of what has been discussed above, we are of the considered view that to impart the justice once for all, this case is required to be remanded back to the Id. CIT (E) to decide afresh after providing adequate opportunity of being heard to the assessee. Consequently, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 22nd day of July, 2019.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 22nd day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(E), New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**