

**आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

**आयकर अपील सं./ ITA No. 5808/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2018-19)

The New Shreyas Education society, 25, Dadyseth Lane, Bandstand, Chowpatty, Babulnath, Mumbai-400 007	बनाम/ Vs.	Commissioner of Income Tax (Exemptions), Piramal Chambers Mumbai-400 012
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./ PAN No. AAATT9166A</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Rajan Vohra, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri M Dayasagar, CIT DR

सुनवाई की तारीख / <b>Date of hearing:</b>	08.07.2019
घोषणा की तारीख / <b>Date of pronouncement:</b>	04.10.2019

**आदेश / ORDER**

**महावीर सिंह, न्यायिक सदस्य/**  
**PER MAHAVIR SINGH, JM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax(Exemptions)-Mumbai, dated 28-08-2018 under section 12AA(1)(b)(ii) r.w.s. 12A of the Income Tax Act, 1961 [herein after referred to as 'Act'].

2. The only issue in this appeal of assessee is against the order of CIT(Exemptions), Mumbai, denying the grant of registration u/s.12AA of the Act by rejecting the application for

the reason that the activities of the assessee-Trust are not genuine and not in accordance with the objects. The assessee has challenged the action of the CIT(Exemptions) by the following grounds:

*"On the facts and in the circumstances of the case and on applicable legal provisions, the Learned Commissioner of Income Tax (Exemption) [CIT(E)] has:*

*Rejection of application for registration u/s 12AA of the Act*

*1. erred in denying grant of registration under section 12AA of the Act by rejecting the application filed by the Appellant under section 12A(1)(ab) of the Act. which was tiled pursuant to amendment in objects of the Trust;*

*Treatment of activities as not genuine and not in accordance with objects*

*2. erred in holding that the activities of the Trust are not genuine and not in accordance with the objects of the Trust, as the CIT(E) is not satisfied with genuineness of objects and activities of the Trust, without appreciating the facts and legal provisions;*



Genuineness of activities of the Trust

3. erred in asking for 50 year old information in piecemeal, without giving sufficient time to reply, and without considering information furnished proceeded to pass the order by mentioning that circumstances create doubts about genuineness of activities.

4. should have appreciated that activities of the Trust are genuine and all the conditions/requirements of law have been duly complied with;

Activities in accordance with objects of the Trust

5. erred in holding that the activities of the Appellant Trust are not in accordance with objects of the Trust on the ground that principal object of the Trust was to run school, and till now Appellant has never run school nor took permission to run school, without appreciating that building premises has been used by Charitable Trust for running school for over 42 years;

6. should have appreciated that Appellant has carried out its charitable activities in

*accordance with object of the trust and has used properties held under the trust only for its charitable objects pertaining to education;*

*Initiation of proceedings under section 12AA(3) in respect of existing registration*

*7. erred in mentioning that action under section 12AA(3) of the Act in respect of the earlier registration under section 12A of the Act is initiated, on the ground that the activities of the Appellant Trust are not genuine and not in accordance with the objects of the Trust;”*

3. Briefly stated facts are that the assessee is a public charitable society constituted by the Memorandum of Association and Rules and Regulations dated 26.05.1964. The assessee-society is registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act 1950 vide Registration No. F-1165(Bombay). The assessee has filed a copy of Memorandum of Association and Registration Certificate in its Paper Book (Pages 4 to 52). The assessee-charitable society was granted registration u/s.12A of the Act by the CIT(Exemptions) vide Registration No.12000 dated 28.09.1977. The assessee-society is filing regular return of income since its creation and accepted the returned income. Even in some of the



cases, returns have been scrutinized u/s 143(3) of the Act. The assessee has filed copies of assessment order passed u/s 143(3) for AYs 2014-15 & 2015-16, which are enclosed at Pages 268 to 278 of the assessee's Paper Book. The assessee claimed that the said Trust was created for the purpose of doing charitable activities by way of providing education, spreading awareness and imparting education etc. The assessee stated the fact that the BMC has given a plot of land on lease in the year 1968 for utilizing and providing education, including setting up of school. The Trust on receiving land from BMC on lease, constructed a building of Ground + 4 floors for the purpose of providing and imparting education. To fulfil the object of the Trust, the assessee-Trust in the year 1975, entered into an agreement vide which gave its premises to Bhagini Kala Mandir (in short 'BKM'), a society registered under the Societies Act, 1860 for providing education. The said premises were given to BKM for carrying out the school activity on a monthly rent of ₹3,94,096/-. It was claimed by assessee-Trust that from 1976 till 1994 even after giving their best efforts, the old trust could not start the school or entered into an agreement with schools, except giving first floor of schools to BKM. Therefore, the old trustees viz., Shri Bayabhai Patel and others expressed their desire to retire from the Trust and invited new trustees, who have rich experience and expertise and could raise resources for school building etc. Therefore, old trustees by resolution passed in the year 1994, retired from the Trust and the Board accepted the appointment of new trustees, who joined the Board for



fulfilling the object for which the Trust was created. Accordingly, new trustees proposed modification of the object and as per the relevant guidelines and law applicable to the Trusts, the amended objects were submitted with the Registrar of Societies for accepting the new revised objects of the Trust. The registrar raised certain observations and asked the Trust to modify few clauses and objects. Accordingly, the objects of the Trust were modified as per the approval received from Registrar and filed an amended Object Deed, which as accepted by the Deputy Registrar of Societies, Greater Mumbai Region, Mumbai, vide order dated 28.12.2017. This copy of order of Registrar, accepting the amendments is enclosed at pages 69 to 72 of the assessee's Paper Book. The amended objects of the Trust are enclosed at pages 73 to 99 of assessee's Paper Book. The assessee has also enclosed comparative statement of the objects as appearing between the old and new Trust Deeds, the comparative statement is enclosed at pages 100 to 129 of the assessee's Paper Book. The assessee in view of the change in the objects of the Trust and as per the requirement of the provisions of Section 12A(1)(ab) of the Act, which was inserted with effect from 01.04.2018 vide Finance Act, 2017, made an application u/s 12A(1)(ab) of the Act on 12.02.2018 along with relevant details for issuing a fresh certificate u/s 12AA of the Act. However, the CIT(Exemptions) vide order dated 28.08.2018, rejected the application and denied registration certificate u/s.12AA on the amended object, stating that the objects of the assessee cannot be held to be charitable and

there are various known compliances which have created doubts regarding genuineness of the activities. The CIT(Exemptions) also raised doubts regarding carrying on of the existing activities and also initiated proceedings for cancelling the existing registration u/s.12AA(3) r.w.s.12A of the Act.

4. The CIT(Exemptions) after going through the details and activities carried out finally observed in para 13(a)(b) as under:

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*"(a) The activities of assessee trust, which is in existence for 44 years are not in accordance with its objects.*

*(b) the genuineness of activities of assessee are also seriously doubtful and assessee, by omitting to furnish the details as discussed above, has not been able to give enough material on the basis of which such satisfaction about their genuineness could be derived. The same is based on brief discussion of facts and evidence discussed in subsequent para.*

*14.1 Let us first examine and analyse the object the purpose for which the society was treated:*

*The object of the society are as under:*



- (1) *To start a Girls or Boys school, High School or College or to take over the existing educational institutions or to take over hostess, library, including Book etc, and to impart male or female education and mould youths into good of citizens.*
- (2) *To propagate, facilitate and cheapen education amongst all classes of the Society.*
- (3) *To change and improve the present methods of education in accordance with the latest thesis of education.*
- (4) *To inculcate new ideals of citizenship of a democratic country and to build up character of the youths in accordance with social and political ideas of the country.*
- (5) *To encourage the development of physique of the coming generation by starting physical cultural institution.*
- (6) *To encourage amongst the students the spirit of comradeship and self-help,*

(7) *To erect, conduct and run hostels and recreational centers for students.*

(8) *To start Teachers Training Course for men and women.*

(9) *To publish books, journals and organize practical courses, lectures, exhibition, demonstrations, museums, cinema-films, radio programmes and other means and ways of diffusion of education”.*

5. Thereafter, the CIT(Exemptions) gone through the objects as noted in para 14.4 to para 15.4 that the objects of the Trusts have not been followed and hence genuineness of the objects and activities of the Trust are in doubt. Finally, the CIT(Exemptions) held in para 16.4 to 19 his decision and denied the registration u/s 12AA of the Act. Aggrieved, now assessee is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the trust is created for the purpose for doing charitable activities by way of providing education, spreading awareness and importance of education etc. BMC has given plot of land on lease around 1968 for utilizing and providing education including for setting up of school. The trust on receiving the land from BMC on lease, constructed a building of ground plus four floors for the purpose

of providing and imparting education. The assessee has enclosed copy of the agreement entered between BMC and assessee at page no. 342 to 370 of the assessee paper book. In year 1975, in order to fulfil object of the Trust and to provide education, the assessee trust entered into an agreement by which it gave its premises of the 1<sup>st</sup> floor to Shagini Kata Mandir (BKM) School.

7. Therefore, Shri Bayabhai Patel and others, old trustees of the Trust expressed their desire to retire from the Trust and invite new trustees as the new trustees who have rich experience and expertise and who could raise resources for renovating, reconstruction, refurbishing of school building etc. New Trustees were keen on getting platform where they can carry on charitable activities and accordingly agreed to join the Trust. Therefore, old trustees by resolutions passed in 1994 retired from the trust and the board accepted the appointment of new trustees, who joined the board for fulfilling the objects for which the trust was created. The new trustees, thereafter, raised the funds/organized resources and carried out renovation/refurbication to this premises. Accordingly, the new trustees proposed modification of the objects and as per the relevant guidelines and law applicable to the trust, the amended objects were submitted with the Registrar of the societies for accepting the new revised objects of the trust. The Registrar, however, raised certain objections and had asked the trust to modify few clauses/objects. Thereafter, the objects of the Trust were modified as per the approval received from the registrar

and filed a change report and the said amended objects were accepted by the Deputy Registrar of Societies of Greater Mumbai Region, Mumbai vide order dated 28.12.2017 with some changes. The Ld Counsel for the assessee referred to the following documents: -

- *Copy of the order of Registrar accepting the amendments (page no. 69-72 of the paperback)*
- *Amended objects of the Trust (page no. 73-99 of the paperback)*
- *Comparative statement of the objects as appearing between the old and new trust deeds (page no. 100-129 of the paperback)*

Since, there was change in the objects of the trust and as per the requirement of section 12A(1)(ab) of the Act, which was inserted with effect from 01.04.2018 vide Finance Act, 2017 the Trust made an application under section 12A(1)(ab) on 12.02.2018 in the prescribed form along with relevant details for issuing 12AA certificate. Copy of the application along with relevant annexures filed with the CIT(E) is enclosed at page 1 to 54 of the assessee's paper book.

8. The CIT(E) issued show cause notice and questionnaire asking for various details. The details which were available with the new trustees (as of some details were not available due to

the change in board of trustees) were submitted with the CIT (E). Copy of the notices and replies filed by the assessee are enclosed at pages 130 to 204 of the assessee's paper book. However, CIT(E), vide order dated 28.08.2018 rejected the application and denied the registration under section 12A of the Act on the amended objects stating that the objects of the assessee cannot be held to be charitable activities and stated that there are various non-compliances which has created doubts regarding the genuineness of the activities. Further, CIT(E) had also raised doubts regarding carrying on the existing activities and also initiated proceedings to take action under section 12AA(3) to cancel the existing registration under section 12A of the Act.

9. The CIT(E) while denying amendment in the object of the Trust have made the following observations: -

- *Following documents and details called for were not submitted by the Appellant (para 12.1 of the Order)*
  - *Books of account and minutes books*
  - *Copies of letter of allotment of land to the society - For the purpose of verifying for what purpose the land was allotted*
  - *Copy of agreement with DB School and 6KM School*

- *Details of actual rent received and actual expenditure on repairs, renovation*

- *When and in how many stages the budding was constructed and details of year-wise expense on construction and source of the same*

- *Whether procedure for renovation, making additional floor and awarding contract was followed and evidence/explanation in this regard*

- *What was done with remaining 5 floors before it was given to DBS school*

• *CIT(E) held that Appellant has never run a school, nor has obtained any permission for the same. Giving premises to a school is different that running a school. Before giving the floors to DBS school, what was being done with such floor is not explained. Therefore, it cannot be verified whether property was being used for personal benefit of the trustees. (para 12.2 of the Order)*

• *From the perusal of the expenses, it is seen that objects of which expenses are incurred may also be on education, but they*

*are not on object of the trust, i.e. running a school. Scholarships granted etc. cannot be considered as object of the trust, which is running a school. Otherwise also. Appellant is not able to spend 85% of the Net income year after year (para 12.3 of the Order)*

- In view of the above, for 44 years, activities of the Appellant are not in accordance with objects, and, genuineness of the activities is also seriously in doubt. (para 13 of the Order)*

- Principal object of the trust is to run a school. Appellant has never run a school in 44 years, nor has obtained any permission for the same. Therefore, the activities of the Appellant for years after years, are not in accordance with the objects of the trust. (para 14 of the Order)*

- By way of amendment, primacy of the object of running school has itself been removed. The activities of the Appellant are not genuine. (para 15 of the Order)*

- If the Appellant is not following the objects. then in any case activities cannot be said to be genuine. Activities not being*

*carried out in accordance with objects is itself a ground for cancellation of existing registration u/s 12A.A(3). (para 15.2 of the Order)*

- *As per CIT(E). other factors, which create doubts as to genuineness of the activities are*

*(para 15.3 of the Order).*

- *Trust has changed hands No documents or even minutes book have been submitted,*

- *Construction of building on prime land at Marine Drive is apparently in phases, but no details of expenses submitted. Expenses shown in Balance sheet are merely Rs. 26 lacs.*

- *Documents to show whether various rules & regulations are followed, have not been submitted*

- *Not clear as to what was done with 5 floors before giving the same to DBS School*

- *The reason given for not starting school is shortage of funds. If the Society had funds to construct a building, no reason as to why it could not start a school, specially when*

*once building is created, activity of running school is self-sustaining.*

*- Permission for running school was also never obtained, creating doubts over intention of running a school.*

*Objects have been revised in such a manner that primacy of object of running school is done away with.*

Against the said order of the CIT(E), the assessee filed appeal before the Tribunal.

10. It was contended that CIT(E) has not granted sufficient opportunity of being heard and passed the order against the assessee. The Ld Counsel stated that the CIT(E) has asked various document in the personal hearing on 17.08.2018 (please refer pages 194 to 196 of the assessee paper book) and the same could not be submitted due to paucity of time. In this respect it was stated that certain documents which could not be submitted before CIT(E), during the proceedings was due to reason that the some of the documents were pertaining to very old period, various documents were not handed over by earlier trustees in 1994 (so it took time to obtain those documents) and certain documents could not be compiled due to paucity of time as CIT(E) has given very short time for preparation and compilation of documents required. Thereby entire order passed



by CIT(E) is against the principle of natural justice and liable to be quashed on this ground itself.

11. The learned Counsel stated that various old document which were not available with the New Trustee, which could not be compiled due to shortage of time has been compiled and titled as additional evidence before the Tribunal vide letter dated 05.06.2019 as per Rule 29 of the Income tax Appellate Tribunal Rules, 1963. The CIT(E), at the stage of registration or modification in object, is not supposed to inquire into the conduct of charitable or other activities to be performed by a trust or institution which has submitted application for registration. It was contended that the CIT(E)'s powers during the time of granting registration or modification of object is restricted and CIT(E) shall only examine whether the application has been submitted in accordance with the requirement of the statute. The CIT(E) cannot inquire into conduct of charitable activities performed by the Trust, which is to be done subsequently by the AO. During the FY 2017-2018 there was change proposed in the objects of the trust and as per the requirement of section 12A(1)(ab) of the Act, which was inserted with effect from 01.04.2018 vide Finance Act, 2017, the Trust was required to obtain approval of the CIT(E) on change in object of the Trust. The relevant section 12A(1)(ab) of the Act is reproduced as under.

*"(ab) the person in receipt of the income  
has made an application for registration of*

*the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA".*  
*(emphasis supplied)*

12. The learned CIT DR on the other hand relied on the order of CIT(E) rejecting the registration under section 12AA(1)(b)(ii) read with section 12A of the Act. However, he stated that the evidences produced were new evidences and hence matter at the best can be remanded back to the file of the CIT(E) for consideration of the evidences and to decide the matter afresh.

13. Further as per section 12AA of the Act, the CIT(E) while granting approval for registration or for granting approval for change in object of the trust has to follow certain procedure and the relevant provision of section 12AA is reproduced as under:

*"12AA. (I) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) for clause [(or clause (ab))] 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—*

*(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" (emphasis supplied)*

14. From the combined reading of section 12A(1 )(ab) read with section 12AA, the CIT(E) while granting approval for amendment in the object of the trust can only examine, whether amendment made in the object of the Trust is genuine or not. Therefore, scope of proceeding and power given to CIT(E) is very limited to examining of the object of trust and to verify whether the same is genuine or not. Therefore, it was contended that the order passed by the CIT(E), wherein doubt has been raised over conduct of the trust (which was carrying out its objection from last 44 years) and also made various remarks over existing object of the trust is without any authority and thereby the order passed to deny the registration of amended object solely on the basis of past activities is bad in law. Reliance is placed by Ld Counsel on the decision of Allahabad High Court in case of Yamuna Expressway Industrial Development Authority (298 CTR 127) wherein the High Court has held as under: -

*30. For the purpose of registration, Commissioner has to examine whether application has been submitted in accordance with requirement of statute. Commissioner cannot examine whether the income derived by the person concerned is from the activities which are charitable in nature or not.*

*31. Reverting back to pivotal issue, we find that CIT (E) at the stage of registration, is not supposed to inquire into the conduct of charitable or other activities to be performed by a trust or institution which has submitted application for registration. That is an investigation to be gone subsequently at the time of assessment by Assessing Authority. In this regard, reliance is placed on Kerala High Court in Sree Anjaneya Medical Trust v. CIT [2016] 382 ITR 3991239 Taxman 229167 taxmann.com 230 and Karnatka High Court in CIT v. Sri Gururaja Seva Samithi (I.T Appeal No. 411 of 2009. dated 2-7-2015] and some other authorities which we may discuss in detail at appropriate stage." (Emphasis supplied)*

15. Further reliance is also placed on the following decisions wherein it has been held that as per the provisions of Section 12AA of the Act, the CIT(E) while granting approval for the registration must satisfy himself about the objects of the trust and the genuineness of activities and not other factors such as application of income, stage for application of income, initial contribution, nature of expenditure etc.

- *People Education and Economic Development Society (100 ITD 87) (Chennai Trib.)(TM)*
- *Acharya Sewa Niyas Uttaranchal (105 TTJ 761) (Delhi Trib.)*
- *Dharma Sansthapak Sangh (Niyas) (118 TTJ 823) (Delhi Trib.)*

16. Accumulation of surplus cannot lead to conclusion that the trust is making profits and it cannot be the ground for rejection of application of the assessee. The same has been held by the Hon'ble Chennai Tribunal in case of St. Mary's Christian Charitable Trust (29 CCH 221) (Chennai Tribunal). Moreover, the activities of the trust have been accepted to be genuine by the AO from last several years and as latest as in 2017, wherein while passing assessment order for AY 2015-16 the AO has accepted as activity of the Trust to be genuine and in accordance with the object of the Trust. Further reliance is placed on the following documents, wherein order has been passed after accepting the genuineness of trust and activities of trust which is in line with object of the trust

- Copy of the 8013 certificate (enclosed at page 267 of the paper book);
- Copy of assessment order for AY 2014-15 dated 19 September 2016 (at page number 268 to 274)
- Copy of assessment order for AY 2015-16 dated 27 November 2017 (at page number 275 to 278)

17. The assessee further states that when the AO has not made any allegation in all the concluded assessment regarding genuineness of the objects of the trust in the Assessment order, the CIT(E) cannot raise such allegation regarding the genuineness of the objects of the trust.

18. Further, it was decided by the trust that instead of keeping the premises vacant, it is better to give it other institutions on leave & license basis until the OC is received and premises are renovated and moreover, the rental income earned from the said letting out the premises could be used for donation to needy children, scholarships etc. Meanwhile, after various discussions with all the Trustee till the time fire exit and evacuation facility was not ready, it was finally agreed to give the premises to VFS Global for internal training and back office operations like back office Data Processing Unit/training centre, and in 2009 the premises were given on leave & license basis to VFS Global so that the vacant part of premises could be utilized until the OC is received. Copy of the minutes of meeting is enclosed at pages 304-317 of the assessee's paper book, wherein the discussion on the same was held in the Board meeting. Accordingly, to run the school, the trust over a period of time constructed/modified building to create fire-escape emergency staircase for safety of children of the school and then obtained OC on 19.10.2011 for the same Copy of the minutes of meeting is enclosed at pages 309-312 of the assessee's paper book, wherein the discussion on the same was held in the Board meeting. Post receipt of OC, it was decided to

approach the schools and institutions for running school and educating the children in the said premises. Copy of the minutes of meeting is enclosed at pages 318-321 of the assessee's paper book, wherein the discussion on the same was held in the Board meeting.

19. The trustees held discussions with different schools like Deutscher Schulverein in Bombay (DBS) School, for starting of school for fulfilling objects of its trust and also for purpose of raising funds/resources for utilizing it for charitable objects. Discussion with DBS school materialised and Trust let out on leave and license basis its premises to DBS school for running school on Ground and from 2nd to 5th Floor for imparting education to children and it was also agreed with the DBS School that to meet their requirement and specification they could refurbish the 2nd to 4<sup>th</sup> floor and then 5th floor (Copy of the agreement entered into with DBS School with trust is at pages 391 to 446 of the assessee's paper book) and agreement entered into by DBS School with Umiya Enterprises for refurbication of premises as per their requirement is at pages 384 to 390 of the assessee's paper book).

20. The object clauses are required to be considered in total and not in isolation as stated above, one of finest charitable activities undertaken by the assessee is giving the premises on a very long lease to BKM School on overall basis for a meager monthly rent. This BKM School is imparting education to almost 700 number of children from the premises of assessee and is

running the same very proficiently and now also given its premises to DBS school for imparting education. Further, all the existing object (before amendment) were main object and equally valid and there was no distinction vis-à-vis main object and ancillary object of the Trust. All the objects of the Trust were pertaining to education and essence of all objects was to promote education and imparting of education. In last 44 years, Trust has undertaken various activity to promote education and as explained above, though trust is not running any school but has given its premises to two charitable institutions to run school to BKM school from 1976 till date and to DBS school from 2013-14 till date; thereby the activity undertaken by the assessee is well within its existing as well as amended object of imparting education and hence amendment in the object of the Trust cannot be denied only on the ground that Trust has not run school in last 44 years.

21. Reliance in this regard was placed on the decision of the Jurisdictional High Court in case of Lala Lajpatrai Memorial Trust (383 ITR 345) wherein it was held that exemption u/s 11 of the Act cannot be denied to an educational trust if it lets out its building consisting of its auditorium for educational activities. Relevant portion of the judgement is as under:

*"15. We may observe that the premises of the assessee were let out to Lala Lajpatrai Institute to conduct junior college, senior college, Law College and a management*

*Institution which is indisputably an educational purpose. This is also in consonance with the objects of the assessee-trust which is to conduct colleges and schools and achieve 'advancement of education. In our opinion, considering the facts, this conclusion of the CIT (E) is not well founded. The DIT (E) has overlooked that the principal purpose for which the premises were let out was for conducting an educational activity namely the Management Institution. There is no material before the CIT (E) to show that the 6th and 7th floors were used for purposes other than the Management Institution or for any other purpose which is not an educational purpose. First Proviso to section 2 (15) of the Act would also not be attracted in this situation.*

*17. The revenue's contention that the tribunal has overlooked the provisions of section 11(4A) is unfounded. We have noted above that the service charges received in respect of 6th and 7th floor were clearly on account of educational purpose. Letting out was incidental and not the principal activity of the assessee trust*

*Thus in our opinion, section 11(4A) which require separate account to be maintained would not be attracted in view of our conclusion that the said amounts as received by the assessee for the assessment year have been received from educational activity which is the dominant activity of the assessee-trust In our opinion, if this be the case, separate books of accounts cannot be insisted upon as the said activity becomes part and parcel of the educational activities carried out by the assessee-trust In such a case, the benefit of exemption under section 11(4A) of the Act cannot be denied...."*

22. Further, decision of Delhi Tribunal in case of R.B. Seth Jessa Ram & Bros (ITA No. 1721/Del/2008) dated 31.07.2009 allowed the exemption under section 11 of the Act, wherein Trust has entered into 'operation and management' agreement with Fortis Healthcare Limited ('Fortis') and by virtue of this agreement the Fortis was entitled for 35% of gross billing of the Trust, which was running the hospital in background of this fact, with the following observation:

*"The overall management of the Trust continues to remain with the trustees and all the decisions taken by Fortis Healthcare*

*Ltd are subject to approval and consent of trustees. No material has been brought or' record by the assessing officer for the year under consideration so as to suggest that provisions of section II and 13 have been vitiated. In the absence of any such material, in our considered view, exemption u/s. 11 of the Act cannot be denied to the assessee. We, accordingly, do not find any infirmity on the order passed by learned CIT(A) directing the Assessing officer to allow the exemption u/s. 11 of the Act".*

23. Thus, letting out the premises to education institution for imparting education assisted the Trust in achieving its objective and in view of the above, decision of the Hon'ble Bombay High Court and various other Courts and Tribunal, the activity carried out by the Trust is genuine and within its object and hence, modified object could not have been rejected. In the present case, once the object of Trust (i.e. to run school) is accomplished on its premises (either on its own or through some other charitable trust, the genuineness of the Trust cannot be doubted. Therefore, the order of the CIT(E) is bad in law in view of the decision of Karnataka High Court in case of AS Kupparaju Brothers Charitable Foundations Trust reported in 69 DTR 315, wherein it is held that once it is admitted that in pursuance of the trust deed and in terms of the objects set out

therein, schools and colleges are being run and education institution are being run, nothing more requires to be established to show that the trust in question is a genuine trust.

24. We noted that the proviso to section 2(15) of the Act do not apply to Educational Trust. It was claimed that the proviso to section 2(15) of the Act introduced by Finance Act 2008 w.e.f 01.04.2008 regarding excluding organizations where there is profit motive from the definition of charitable purpose applies only to the category of trusts which has its object of "advancement of any other object of general public utility". It does not apply to the other categories of charitable purpose viz., relief to poor, education and medical relief. The assessee has placed reliance on the following judgments: -

- *American Hotel & Lodging Association Educational Society (301 ITR 86) (SC)*
- *Queen's Education Society (372 ITR 699) (SC)*

25. CIT(E) in its order has stated that the assessee has by way of amending the objects has removed its primary object of Starting of School and activities not being carried out in accordance with objects is itself a ground for cancellation of existing registration under section 12AA (3). Which is factually incorrect and Trust has enlarged its object to provide other charitable activities including imparting of education.



26. We noted the facts in entirety and gone through the provisions of section 12(1)(ab) and 12AA of the Act. We noted that for registration of trust only genuineness of the trust is to be gone into. As noted above, we are of the view, after going through the facts of the case, that the trust is a genuine trust registered long back but due to amendment in various objects dated 28.12.2017, certain details were not filed before CIT(E) as admitted by the assessee. Hence, we remand this matter back to the file of the CIT(E) to go into the amended objects or modified objects and verify the same and then decide the issue in the light of the discussion carried out above by us. In case, the amended clause of the Trust is genuine, the CIT(E) will register the trust. In any case, the exemption under section 11 is hit by any of the provisions i.e. the subject matter of assessment and not the subject matter of registration of trust. In term of the above, we remand the matter back to the file of the CIT(E) for granting of registration subject to verification of amended objects.

**27. In the result, the appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 04.10.2019

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.10.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)



**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. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai