

FIT FOR PUBLICATION

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AS ANM
(J.M.) (A.M.)

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No:- 5952/Del/2016

M/s Nav Bharat Shiksha Samiti, Ward No. 13, Siwani Mandi, Bhiwani (Haryana).	Vs.	Commissioner of Income – tax(E), Sector-17E, C.R. Building, Chandigarh.
PAN No: AAAAN7755L		
APPELLANT		RESPONDENT

Assessee by : Shri K. Sampath, Adv. and
Shri V. Raja Kumar, Adv.
Revenue by : Ms. Pramita M. Biswas, CIT(DR)

ORDER

PER ANADEE NATH MISSHRA, AM

(A) This appeal has been filed by the Assessee against impugned order dated 27.09.2016 of Learned Commissioner of Income Tax (Exemption) Chandigarh [“Ld. CIT(E)”, for short), denying registration to the assessee under Section 12A read with Section 12AA of Income Tax Act (“I.T. Act”, for short). The appeal has been filed on the following ground:

"On the facts and in the circumstances of the case and in law the order of the learned Commissioner of Income Tax (Exemption), Chandigarh rejecting the application for Registration u/s 12A of the Income-tax Act, 1961 is arbitrary, misconceived, fallacious and illegal and having been done on imaginary, fictitious and unsubstantiated grounds must be quashed with further directions to grant the registration as sought."

(B) The Assessee filed application for registration under Section 12A of I.T. Act read with Section 12AA of I.T. Act on 30.03.2016. Vide the aforesaid impugned order dated 27.09.2016, the Ld. CIT(E) rejected the assessee's application seeking registration under Section 12A of I.T. Act read with Section 12AA of I.T. Act. The Ld. CIT(E), in his aforesaid impugned order dated 27.09.2016 noted that the assessee had paid salary partly through Bank and partly in cash, but had not deducted tax at source in case of any of the employees. The Ld. CIT(E) further noted that the application filed by the Assessee for registration under Section 12A read with Section 12AA of I.T. Act is a change of mind because for three preceding years before that, the assessee had filed return as a purely business entity. The Ld. CIT(E) observed that the assessee claimed exemption under Section 10(23C)(iiiad) of I.T. Act from Assessment Years 2008-09 to 2011-12, as long as the receipts of the assessee were below Rs. 1 crore. However, once the receipts exceeded Rs. 1 crore, the assessee filed return as a business entity for three years, and it is only because of the change of mind, according to the Ld. CIT(E), that the assessee has now applied for registration under Section 12A read with Section 12AA of I.T. Act. Taking adverse view of the aforesaid, the Ld. CIT(E) held that the stand taken by the assessee (seeking registration under Section 12A read with 12AA

of I.T. Act) is not commensurate with scheme of the Act; and he rejected assessee's application for registration under Section 12A read with Section 12AA of I.T. Act.

(B.1) During appellate proceedings in Income Tax Appellate Tribunal, ("ITAT", for short) a Paper Book containing the following particulars was filed from the assessee's side:

1. *Copy of ITRA-5 & ITR-7 for AY 2016-17 with Instructions*
2. *Copy of affiliation certificate granted by the Haryana School Education Board*
3. *Copy of Certificate Registration of Society*
4. *Copies of Bye-Laws and Memorandum of Association of the Society with English Translation*

(C) At the time of hearing before us, the Ld. Counsel for assessee submitted that for the purpose of registration under Section 12A read with Section 12AA of I.T. Act, it is of no relevance whether or not tax was deducted at source from salary of the staff. He also contended that it was of no relevance for the purposes of registration under Section 12A read with Section 12AA of I.T. Act, that salary was paid partly by cheque and partly in cash. He further submitted that it is of no relevance that the assessee changed mind and sought registration under Section 12A read with Section 12AA of I.T. Act after three years and contended that there was nothing in law to prevent the assessee from seeking registration under Section 12A read with Section 12AA of I.T. Act, at a later stage, if such registration was not sought by the assessee for earlier years. He submitted that what is of relevance is whether the conditions prescribed under Section 12A read with Section 12AA of I.T. Act are fulfilled by the assessee when the application for registration under Section 12A read with Section 12AA of I.T. Act is

made. He submitted that it was not in dispute that the assessee was engaged in charitable activity of education which qualifies as "charitable purpose", within the meaning of Section 2(15) of I.T. Act. He further submitted that the impugned order dated 27.09.2016 of Ld. CIT(E) contains no reference whatsoever to any facts and circumstances which can be said to be violative of provision of Section 12A read with Section 12AA of I.T. Act. In view of the foregoing, the Ld. Counsel for Assessee pleaded that Ld. CIT(E) be directed to grant registration under Section 12A read with Section 12AA of I.T. Act. The Learned Commissioner of Income Tax (Departmental Representative) ["Ld. CIT(DR)", for short) relied on the impugned order dated 27.09.2016 of the Ld. CIT(E). She could not bring any facts or circumstances to our attention to show how any of the requirements under Section 12A read with Section 12AA of I.T. Act are not fulfilled by the assessee.

(D) We have heard both sides patiently. We have also perused the materials available on record. It is not in dispute that the assessee is engaged in the activity of education which qualifies as "charitable purpose" within the meaning of Section 2(15) of I.T. Act. It is also not in dispute that there is no reference in the impugned order dated 27.09.2016 of Ld. CIT(E), whatsoever, to any facts and circumstances which can be said to be violative of provision of Section 12A read with Section 12AA of I.T. Act. No materials have been brought to our attention from the Revenue's side either in the impugned order dated 27.09.2016 of Ld. CIT(E) or in the submissions made by the Ld. CIT(DR), at the time of hearing before us; to show how any of the provision under Section 12A read with 12AA of I.T. Act are not fulfilled by the assessee. In the facts

and circumstances of this case, we agree with the contention of the Ld. Counsel for assessee that **it is of no relevance, for the purposes of registration under Section 12A read with Section 12AA of I.T. Act, whether or not tax was deducted at source from salary of the staff.** In the facts and circumstances of this case, we also agree with the contentions of Ld. Counsel for assessee that, **it is of no relevance, for registration under Section 12A read with Section 12AA of I.T. Act, if salary has been paid partly in cash and partly by cheque.** We also agree with the contention of the Ld. Counsel for assessee that **there is nothing in law to prevent the assessee from applying for registration under Section 12A read with Section 12AA of I.T. Act, at a later stage, if such registration was not sought for by the assessee in earlier years.** The conclusion of Ld. CIT(E), that the stand taken by the assessee was not commensurate with the scheme of the Act, has been reached in vacuum without any speaking order to justify and without mention of any relevant factor to warrant this drastic conclusion. Such a conclusion is unsustainable. The reasons mentioned by Ld. CIT(E) in his impugned order dated 27.09.2016, rejecting assessee's application for registration under Section 12A read with Section 12AA of I.T. Act, are totally irrelevant considerations as far as decision granting registration under Section 12A read with Section 12AA of I.T. Act is concerned. **Assessee's application for registration under Section 12A read with Section 12AA of I.T. Act cannot be rejected by Ld. CIT(E) relying on irrelevant considerations, merely on the basis of an unsustainable conclusion. Any rejection of assessee's application for registration under Section 12A read**

with Section 12AA of I.T. Act has to be supported by a speaking order stating in clear terms in what manner the requirements under Section 12A read with Section 12AA of I.T. Act have not been fulfilled by the assessee. As

Ld. CIT(E) has failed in these respects, his impugned order dated 27.09.2016 cannot be upheld. In view of the foregoing, we direct the Ld. CIT(E) to grant registration to the assessee under Section 12A read with Section 12AA of I.T. Act.

(E) In the result, appeal filed by Assessee is allowed.

Order pronounced in the open court on 10/02/2020.

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 10/02/2020
Pooja/-

Copy forwarded to:

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

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI

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