

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.244/Lkw/2018
Assessment Year:2014-15

Feroze Gandhi Institute of Engineering & Technology, Ratapur, Raebareli. PAN:AAATF1692B (Appellant)	Vs.	A.C.I.T. (Exemption), Lucknow. (Respondent)
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Appellant by	Shri P. K. Kapoor, C. A.
Respondent by	Shri Harish Gidwani, D.R.
Date of hearing	20/09/2021
Date of pronouncement	02/11/2021

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned CIT(A)-4, Lucknow dated 23/01/2018 pertaining to assessment year 2014-2015. In this appeal the assessee has raised the following grounds of appeal:

"1. BECAUSE the "CTT(A)" has erred in law and on facts in upholding the addition of Rs. 34,96,460/- made by the assessing officer by denying the claim of exemption under section 11 of the "Act" on the ground that the assessee was neither registered before the Registrar of Societies nor registered u/s 12A of the "Act".

2. BECAUSE on a due consideration of the peculiar facts and circumstances of the case and on a proper appreciation of

material and information on record the appellant's claim of exemption under section 11 of the "Act" could not have been denied merely on the ground that the registration under section 12A of the "Act" had been granted/obtained in the name of Raebareli Polytechnic Association ('RPA').

3. BECAUSE on a due consideration of the fact that "appellant"/"FGIET" was not only established/set up but was also owned and run by Raebareli Polytechnic Association and as such "appellant"/"FGIET" being integral/ inseparable part of Raebareli Polytechnic Association, its claim of exemption under section 11 of the "Act", on the basis of certificate of registration under section 12A in the name of 'Raebareli Polytechnic Association', deserved to be allowed.

4. BECAUSE the "appellant's" claim of exemption under section 11 of the "Act" did not get defeated even if the registration under section 12A was granted in the name of Raebareli Polytechnic Association (which itself had established/set up the appellant institution as its integral part) as the said registration was obtained by Raebareli Polytechnic Association specifically for the "appellant"/"FGIET", which fact is clearly evident from the material and information already on record.

5. BECAUSE in any case and otherwise also, as per the information and evidence available on record, Raebareli Polytechnic Association (who had obtained the registration under section 12A) neither obtained PAN for its own nor filed any return of income for its own separately so as to claim exemption under section 11 on the strength of certificate of registration granted to it, and on a due consideration of this fact alone the claim of exemption made by the "appellant"/"FGIET" could not have been denied.

6. BECAUSE without prejudice the aforesaid grounds, looking to the fact that the benefit of registration under section 12A (although in the name of 'RPA') was not claimed by 'RPA' but the same was claimed only by the "appellant"/"FGIET", the "CIT(A)" ought to have held that the "appellant" was eligible for claim of exemption under section 11 of the "Act".

7. *BECAUSE in the peculiar set of facts and circumstances of the case, the doctrine of 'substance over form' was applicable and consequently "CIT(A)" should have upheld the "appellant's claim of exemption under section 11.*

8. *BECAUSE on the same set of facts the benefit of exemption under section 11 of the "Act" had successively been granted to the "appellant"/"FGIET" in the preceding assessment years and in view of decision of Apex Court in the case of Radhasoami Satsang Vs. CIT reported in (1992) 193 ITR 321, the exemption under section 11 of the "Act" was liable to be considered and granted in the year under appeal also and "CIT(A)" was not correct in distinguishing the same by holding that the facts in the year under appeal were new.*

9. *BECAUSE the adverse view taken by the "CIT(A)" is on a complete misreading of the decision of Apex Court in the case of Radhasoami Satsang (supra).*

10. *BECAUSE the case laws relied by the "CIT(A)" are distinguishable on facts and as such they are not applicable on the facts of the present case.*

11. *BECAUSE for claiming exemption under section 11 of the "Act" it is not mandatory that the assessee should be registered under the Societies Registration Act and on this score also the denial of claim of exemption is not justified.*

12. *BECAUSE denial of exemption under section 11 of the "Act" by the authorities below is due to non appreciation of the peculiar facts and circumstances of the case and detailed submissions, evidences and explanations furnished during the course of proceedings before them.*

13. *BECAUSE in any case the authorities below were not justified in denying/upholding the denial of claim of exemption under section 11 on the ground of technical/venial fault as the said claim was otherwise available.*

14. *BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice."*

2. Learned counsel for the assessee, at the outset, submitted that the assessee is engaged in imparting education in Engineering and Technology and it was established in the year 2004 by the Society named as 'Raebareli Polytechnic Association' in pursuance of resolution passed in their managing committee meeting held on 12/09/2002. It was submitted that the assessee was established in pursuance of and in line with aims and objects of Raebareli Polytechnic Association as one of the objects of the society was to impart education in the field of agricultural, technical, vocational, industrial technology and other allied scientific subjects. Learned counsel for the assessee submitted that soon after the establishment of assessee, the parent society applied to All India Council of Technical Education vide letter dated 26/9/2002 for affiliation and on this application of Raebareli Polytechnic Association, the assessee got affiliation subject to completion of certain formalities and upon completion of various formalities, the parent society was granted approval for conducting under graduate courses in Engineering and Technology with effect from academic year 2004-05. It was submitted that the parent society did not obtain PAN number and the assessee institute obtained its PAN on a wrong professional advice and continued to file its return of income and also continued to claim exemption u/s 11 of the Act and which was granted by the Income Tax Department also. Learned counsel for the assessee submitted that the parent society Raebareli Polytechnic Association was duly registered u/s 12A of the Act but the returns were being filed in the name of Feroze Gandhi Institute of Engineering & Technology and it was only in the year 2014-15 that parent society obtained its own PAN. Learned counsel for the assessee submitted that the assessee has been filing return of income under the name and style of Feroze Gandhi Institute of Engineering & Technology, Raebareli, using its own PAN and claiming exemption u/s 11 on the basis of registration u/s 12AA granted to Raebareli Polytechnic Association which was a parent

society of the institution. It was submitted that the parent society Raebareli Polytechnic Association and the present assessee are one and the same as the parent society had established its institution and had been running this institution. Learned counsel for the assessee submitted that since the assessee continued to be granted exemption u/s 11 of the Act by the Assessing Officer in the orders passed u/s 143(3), year after year and therefore, keeping in view the judgment of Hon'ble Supreme Court in the case Radhasaoami Satsang Vs. CIT reported in (1992) 193 ITR 321 the denial of exemption u/s 11 in the assessment year under appeal by the authorities below is not justified. On the query put forth by the Bench as to when the PAN number for the assessee was applied, what documents were enclosed in support thereof, Learned counsel for the assessee submitted that he had collected the information under the Right to Information Act (RTI) and according to the information received under that Act, a copy of PAN application in the name of the assessee has been provided and in the application for PAN, the certificate of society under the Societies Registration Act was filed in support of its existence which establishes the fact that in fact the parent society as well as the institute was one and the same and there is only a technical breach which had happened due to an ill professional advice under which the assessee has been filing returns and claiming exemption u/s 11 in its own name whereas returns should have been filed in the name of society Raebareli Polytechnic Association for which the said society had already been granted registration u/s 12A of the Act. In view of these facts and circumstances and in view of the substantial justice, it was submitted that the denial of exemption u/s 11 of the Act is not justified.

3. Learned CIT, D.R., on the other hand argued that the assessee as well as the Raebareli Polytechnic Association are two different assessees and

the PAN number allotted to the assessee is different than the PAN number allotted to the society. It was submitted that the exemption u/s 12A was available to the society which did not file any return of income and instead the assessee filed return and claimed exemption and was wrongly allowed the exemption in earlier years and therefore, when it was observed that the assessee and the society were two different assessees, the authorities below have rightly rejected the claim of the assessee. Regarding the reliance placed by Learned counsel for the assessee on the judgment of Hon'ble Supreme Court in the case of Radhasaoami Satsang (supra), it was submitted that a wrong claim allowed to an assessee, by mistake, cannot be allowed to be continued in the succeeding year when the mistake is found. Therefore, it was prayed that the authorities below have rightly rejected the claim of the assessee and therefore, the appeal filed by the assessee may be dismissed.

4. We have heard the rival parties and have gone through the material placed on record. We find that there is no dispute that the assessee itself was not registered u/s 12A of the Act but the society Raebareli Polytechnic Association was duly registered u/s 12A of the Act. It is also undisputed fact that assessee is engaged in providing education which is also one of the aims and objects of the parent society. It is also undisputed fact that the only source of income of society is from the running of the institute "Feroze Gandhi Institute of Engineering & Technology". The society was formed in the year 2000 as is apparent from the copy of certificate of registration under the Societies Registration Act. The society has been granted registration under section 12A of the Act on the directions of Tribunal vide order of CIT (Exemptions) dated 01/11/2010. This society formed, as per its objects, a college for imparting education under the name and style M/s Feroze Gandhi Institute of Engineering & Technology and started imparting

education from academic year 2004-05. The said society, i.e., Feroze Gandhi Institute of Engineering & Technology, applied for PAN number and while applying for PAN, had enclosed with the application for PAN, a copy of registration certificate of the society, issued under the Societies Registration Act, and Societies Registration number has also been mentioned on the PAN application form. These documents have been obtained by the Learned counsel for the assessee, under the RTI Act, on the directions of the Bench as the Bench wanted to know as to when the application for PAN of the assessee was filed, what were the documents filed with the Department for supporting the existence of such institution. We find from the documents filed by the assessee, obtained through RTI, that the PAN application of the assessee was filed on 24/08/2005 and as proof of identity and proof of address, the society registration certificate, in the name of Raebareli Polytechnic Association i.e. the parent society, was enclosed. The Revenue, on this application for PAN allotment, allotted the PAN to the assessee and accepted the proof of identity and proof of address i.e. the copy of certificate granted by Registrar of Societies in the name of Raebareli Polytechnic Association. On the PAN application, the name of Feroze Gandhi Institute of Engineering & Technology has been mentioned whereas in the proof of its existence, certificate granted to Raebareli Polytechnic Association by the Registrar of Societies has been enclosed. When Department allotted PAN to the assessee on the strength of a certificate of registration in the name of Raebareli Polytechnic Association, it becomes apparent that the society and the institution are one and the same. Even the status of assessee in the PAN application has been ticked as Association of Persons. For the sake of completeness, the copy of PAN application and certificate of registration under Societies Act has been made part of this order, which are reproduced below:

117795 4

Form No. 49A Form No. ITS 49A

Ack No. 0111170100016364

Application for Allotment of Permanent Account Number
Under Section 139A of the Income-Tax Act, 1961
(To avoid mistake(s), please follow the accompanying instructions and examples carefully before filling up the form)

To: The Assessing Officer		Area Code	AO Type	Range Code	AO No.
Ward/Circle	<u>Raebareli</u>	<u>L</u>	<u>R</u>	<u>W</u>	<u>623</u>
Range	<u>Sultanpur</u>				
Commissioner	<u>faizabad</u>				

Only 'Individuals' to affix recent photograph (3.5 cm x 2.5 cm)

Sir,
I/We hereby request that a permanent account number be allotted to me/us.
I/We give below necessary particulars:

1. Full Name (Full expanded name : Initials are not permitted) :
Please tick as applicable: Shri Smt Kumari M/s

Last Name/Surname: FEROZE First Name: GANDHI
Middle Name: INSTITUTE OF
ENGINEERING & TECHNOLOGY

2. Name you would like printed on the card F G I E T RAEBARELI

3. Have you ever been known by any other name? Please tick as applicable Yes No
If yes, please give that other name (Full expanded name : Initials are not permitted) Shri Smt Kumari M/s
Last Name/Surname: _____ First Name: _____
Middle Name: _____

4. Father's Name (Only 'Individual' applicants: Even married women should give father's name only)
Last Name/Surname: _____ First Name: _____
Middle Name: _____

5. Address:
R. Residential Address :
Flat/Door/Block No. _____
Name of Premises/Building/Village _____
Road/Street/Lane/Post Office RATAPUR
Area/Locality/Faluka/Sub-Division RAEBARELI
Town/City/District RAEBARELI State/Union Territory UTTAR PRADESH Pin 229316
O. Office Address : (Name of Office) _____ (Indicating PIN is mandatory)
Flat/Door/Block No. _____
Name of Premises/Building/Village _____
Road/Street/Lane/Post-Office: e RATAPUR
Area/Locality/Faluka/Sub-Division RAEBARELI
Town/City/District RAEBARELI State/Union Territory UTTAR PRADESH Pin 229316
(Indicating PIN is mandatory)


6. Address for communication: Please tick as applicable R or O (Indicating PIN is mandatory)

7. Tel. No.	STD Code 0535	Tel. Number 2217269	e-mail ID fgietrps@rediffmail.com
8. Sex (For 'Individual' Applicants only) Please tick <input checked="" type="checkbox"/> as applicable	Male <input type="checkbox"/>	Female <input type="checkbox"/>	
9. Status of the Applicant : Please tick (✓) as applicable	Individual <input type="checkbox"/>	Firm <input type="checkbox"/>	Body of Individuals <input type="checkbox"/>
	Hindu Undivided Family <input type="checkbox"/>	Association of Persons <input type="checkbox"/>	Local Authority <input type="checkbox"/>
	Company <input type="checkbox"/>	Association of Persons (Trusts) <input checked="" type="checkbox"/>	Artificial Juridical Person <input type="checkbox"/>
10. Date of Birth/Incorporation/Agreement/Partnership or Trust Deed/Formation of Body of Individuals/Association of Persons	30 09 1976 D D M M Y Y Y Y		
11. Registration Number (In case of Firms, Companies etc.)	1264/1975-76		
12. Whether citizen of India ? Please tick <input checked="" type="checkbox"/> as applicable	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
13. (a) Are you a salaried employee ? If yes, indicate :	Government <input type="checkbox"/>	Others <input type="checkbox"/>	
Name of the Organisation where working _____			
(b) If you are engaged in a business / profession, indicate nature of business or profession and fill the relevant code. _____			
(c) If you are not covered by (a) or (b) above, indicate sources of income, if any _____			
14. Full Name, address of the Representative Assessee, who is assesable under the Income Tax Act in respect of the person, whose particulars have been given in column 1 to 13			
Full Name (Full expanded name : initials are not permitted) Please tick <input checked="" type="checkbox"/> as applicable:			
Shri <input type="checkbox"/> Smt <input type="checkbox"/> Kumari <input type="checkbox"/> M/s <input type="checkbox"/>			
Last Name/ Surname:		First Name	
_____		_____	
Middle Name _____			
Address: Flat/Door/Block No. _____			
Name of Premises/Building/Village _____			
Road/Street/Lane/Post Office _____			
Area/Locality/Taluka/Sub-Division _____			
Town/City/District		State/Union Territory	Pin
_____		_____	_____
(Indicating PIN is mandatory)			
15. I/We have enclosed <u>Society Reg. certificate</u> as proof of identity and <u>Society Reg. certificate</u> as Proof of address.			
I/We <u>R. P. Sharma</u> , the applicant, do hereby declare that what is stated above is true to the best of my/our information and belief.			
Verified today, the		DIRECTOR Terose Ganphi Institute of Engg. & Technology RAJ RAJPLI 228081 Signature/Left thumb impression of Applicant (inside the box)	
24 - 08 - 2005 D D M M Y Y Y Y			


Fixed Fee 12,000/-

6.

संख्या 5439
18/10/2000

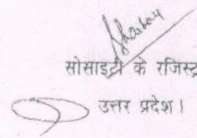


सोसाइटी के नवीकरण का प्रमाण-पत्र

 नवीकरण संख्या 22 2000
फाइल संख्या 36785

एतद्वारा प्रमाणित किया जाता है कि शम्भूदेवी पाणी टेक सिका
एसोसिएशन - शम्भूदेवी (उ.प्र.)
को दिये गये रजिस्ट्रीकरण प्रमाण-पत्र संख्या 1264/1975:76
दिनांक 30-9-1975 को दिनांक 30-9-2000 से पांच वर्ष
की अवधि के लिए नवीकृत किया गया है।
200 रुपये की नवीकरण फीस सम्बन्ध रूप से प्राप्त हो गयी है।

दिनांक 18/10/2000


सोसाइटी के रजिस्ट्रार,
उत्तर प्रदेश।

सी.एस.टी.एन.पी.सी.-एन.पी.सी.-9 कांच निबन्धक-5,10,93-(1754)-80,000-(कम्प्यूटर/ऑफिसर)

4.1 The parent body Raebareli Polytechnic Association has been granted the registration u/s 12A of the Act vide order of the CIT, Faizabad dated 01/11/2010, a copy of which is placed at page 46 of the paper book. This registration u/s 12A to the society has been given on the direction of the Tribunal and the CIT, Faizabad, while allowing registration to the assessee, has mentioned in the order that the registration granted to the assessee is subject to the outcome of order of the appeal filed by the Revenue in the Allahabad High Court. The society had no other institution other than the present assessee. The society on its own has not claimed any exemption u/s 12A of the Act and in fact had not filed any income tax return separately until it got separate PAN from the assessment year 2015-16. Therefore, the society and the present institution are one and the same and therefore, the assessee is eligible to get benefit u/s 11 of the Act on the basis of registration granted to the society under section 12A of the Act. Moreover, we find that the assessee has been getting exemption u/s 12A from assessment year 2010-11 onwards. The copies of assessment orders, passed u/s 143(3) of the Act, are placed in paper book pages 56 to 69. Such exemption has been granted to the assessee on the strength of registration granted to the society u/s 12A of the Act. Therefore, keeping in view the fact of consistency also, the assessee is entitled to exemption u/s 11 of the Act. In view of the above facts and circumstances, the Assessing Officer is directed to allow exemption to the assessee u/s 11 of the Act.

5. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 02/11/2021)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:02/11/2021
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar