

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE – VIRTUAL COURT**

BEFORE SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER AND  
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

**आयकर अपील सं. / ITA No.201/PUN/2021**

Eden Education and Research Institute, Shop No.3, G.No.140, Delux Bazar, Satara, Aurangabad – 431001. PAN : AAATE 7724 P	Vs	The CIT, Exemption, Pune.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Kishor Phadke – AR
Revenue by	Shri Naveen Gupta - DR
Date of hearing	15/02/2022
Date of pronouncement	15/03/2022

**आदेश / ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the assessee against the order u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 ('the Act') passed by the Commissioner of Income Tax (Exemption), Pune on 30.03.2021.

2) The Grounds of Appeal raised by Assessee are as under :

- “1. *The learned CIT, Exemption, Pune; erred in law and on facts in not granting registration u/s 12A of the ITA, 1961 to appellant trust.*
2. *Appellant contends that, appellant made detailed submissions upon all the issues raised, whereas, the learned CIT, Exemption, Pune; declined the registration u/s 12A of the ITA, 1961 on altogether erroneous and incorrect analogies without affording any further opportunity to appellant, to make a SAY in the matter and as such, vitiated principle of natural justice.*
3. *The learned CIT, Exemption, Pune erred in law and on facts in making following erroneous and fallacious observations:*

- *Appellant is engaged in business activity along with education activity.*
- *Substantial component of fees include charges other than tuition fees.*
- *Profit of appellant is in range of 12% to 15%.*
- *Fees structure is planned in a way to earn huge profits.*

*The learned CIT, Exemption, Pune erred in law and on facts in denying registration u/s 12A of the ITA, 1961 on the basis of above observations.*

*4. Appellant craves leave to add, alter, clarify, explain, modify, delete any of the grounds of appeal, and to seek any just and fair relief.”*

3) The only issued involved in this case is that the Commissioner of Income Tax(Exemption) Pune has rejected the application of the appellant filed u/s 12AA of the Income Tax Act for registration of the appellant u/s 12AA of the Income Tax Act(here onwards referred as Act).

4) The appellant had filed an application u/s 12AA in form 10A on 06/08/2020. The appellant had submitted copy of Memorandum of association, note on activities, copy of certificate of registration under Bombay Trust act, note on activities , audited financial statements for three years ,details of expenditure for three years, sample list of students admitted under the Right to Education, etc.

4.1 The Commissioner of Income Tax (Exemption) rejected the application of the appellant. The Commissioner of Income Tax (Exemption) had recorded statement of the President of the appellant u/s 131 of the act during the proceedings. The Commissioner of Income Tax (Exemption) had given

proper opportunity to the appellant before rejecting the application u/s12AA of the Act.

4.1.1 The Id.Commissioner of Income Tax (Exemption) mainly rejected the application u/s 12AA on the following grounds:

-(A) appellant has shown other income of Rs.7,08,500/-for FY 2018-19 . The said income was generated from Rent from conference hall, Rent received from stalls placed in the school premises during festivals like Diwali, Christmas etc. The Id.Commissioner of Income Tax (Exemption) conclude that these are business activities. These activities are not incidental to the educational activities.

\_(B) Appellant have received donations in cash and appellant failed to provide details of the donors to prove identity of the donors.

The para graph 4 of the Order of The Id.Commissioner of Income Tax (Exemption) is reproduced here as under :

*“4. It is also noticed that the applicant has shown donation receipts of Rs.6,09,400/- during F.Y. 2017-18. As per the list of donors submitted by the applicant, the entire receipts are in cash. The applicant has not furnished the PAN / complete postal address of the donors. Thus, the applicant has failed to furnish any details so as to prove the identity of the donors. Therefore, the exact nature of the receipts remains unverified.”*

-(C) The appellant has earned 12 to 15% profit from educational activity. The relevant para 5.1 of the order of The Id.Commissioner of Income Tax (Exemption) is reproduced here as under :

*“5.1 It is seen from the above that the fee structure includes various charges other than tuition fees, mainly as activity fee and fees for meal. The percentage of such other fee component to the total fees is 17.37% for toddler’s section, 11.90% for pre-primary and 27.58 for Primary section. Further, the applicant is generating substantial surplus from these receipts and activity. The details submitted by the applicant in this regard are as under:*

<b><i>Financial year</i></b>	<b><i>Total receipts</i></b>	<b><i>Expenses</i></b>	<b><i>Surplus</i></b>	<b><i>% surplus to receipts</i></b>
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2017-18	78,86,450	78,78,320	8,129	0.10%
2018-19	1,41,56,605	1,21,38,305	20,18,299	14.25%
2019-20	2,06,47,133	1,81,68,433	24,78,699	12.00%

*Thus, it is seen that the receipts from the activity are increased almost three fold in just 3 years from the start of the educational activity and the surplus by many folds. The applicant is generating a substantial surplus @ 12% to 15% from the activity. The fees structure include various components other than tuition fees. The fees structure of Rs.58,000/- for primary section in a place like Aurangabad is also found to be much higher.”*

The Id.Commissioner of Income Tax (Exemption) in para 5.2 to 6 held as under:

*“5.2 Incidentally, a survey action was carried out in this case on 10-07-2019. During the course of said survey action, the applicant voluntarily agreed to pay tax on the amount surplus generated from the activity at Rs.20,18,300/- and Rs.24,78,700/- for the F.Y. 2018-19 and 2019-20, respectively. The facts of the case remained the same. The applicant has not furnished any different facts now during the present proceedings. The nature of overall activity of the applicant has also not changed to hold the same type of income as exempt.*

*5.3 In view of the above, it is seen that although education is a charitable purpose as per section 2(15) of the Act, the applicant found to be also engaged in business activities along with the educational activity. A substantial component of fees structure fixed by the applicant include charges other than tuition fees. The fees structure itself is planned in such a way that there would be a sizable profit. The profit of the applicant is increasing year-to-year and is in the range of 12% to 15% of receipts. Thus, it is not a case that after meeting expenditure, a surplus is generated incidentally from the activity carried on by the institution but the same is planed in such a way that there would be a huge profit. Therefore, considering the overall facts of the case, the activity of the applicant cannot be termed as a charitable activity but a pure business model.*

*6. Considering the above facts, I am not satisfied about the genuineness of the activities of the trust / institution and hence, the request for grant of registration u/s 12AA of the Income-tax Act, 1961 cannot be accepted.”*

5. The learned AR of the appellant submitted that the appellant is running a CBSC school in the name “Royal Oaks World School, Aurangabad”. The

school was started in 2017. The AR explained that the premises was utilized during festivals and rent was collected from the stalls. The entire income earned from this activity has been utilized for the educational activity. The AR also submitted that the Commissioner of Income Tax is not empowered to examine the activity at the time of registration of the trust. AR relied on the decision in the case of Shree Balaji Educational Trust 88 taxmann.com 358 (Delhi Trib), Pr.CIT v/s Shri Nathji Giverdhan Nathji Charitable Trust 423 ITR 69(Calcutta) dt.28/02/2020, CIT v/s Vijay Vargiya vani Charitable Trust 369 ITR 360 (Rajasthan) dated 18/08/2014. The AR further submitted that the objects of the trust are charitable and the Commissioner has not disputed this fact.

6. The Ld.DR relied on the order of the ld.Commissioner of Income Tax (Exemption). The ld.CIT(DR) specifically submitted that there are two situations during the registration procedure u/s 12AA. In one case the Trust has applied for the registration u/s 12AA immediately after the formation of the trust, hence there are not much activities carried out by such trust. In this scenario the ld.Commissioner of Income Tax (Exemption) has to verify whether the Objects are charitable or not!. However, there is another situation, where the trust has applied for registration u/s 12AA of the Act, few years after the commencement of activities of the trust. In such scenario, the ld.Commissioner of Income Tax (Exemption) has to verify the genuineness of the activities carried out by the trust. In this scenario the Commissioner has to verify the application of funds, whether it has been applied for the purpose of

the objects mentioned in the trust deed etc. The learned CIT(DR) invited our attention to the para 14 of the Hon'ble Calcutta High Court's decision in the case of Pr.CIT v/s Shri Nathji Goverdhan Nathji Charitable trust (supra) observed as *“Any prudent trustee would not carry out the substantial activities of the trust for a length of time and then apply for registration under section 12AA, for the simple reason that the income of the trust would be chargeable to income tax during that period. On the other hand, a donor would be reluctant to make donations to the trust unless it was registered. In those circumstances, it is a little unrealistic to think of two situations. First, on creation of the trust the trustees apply for registration under section 12AA. In that case, they would have to demonstrate the genuineness of the objects of the trust, only, before the Commissioner. Secondly, the other situation where the trustees carry on activities for sometime and then apply for registration. In that case, the genuineness of the objects as well as the genuineness of its activities have to be proved to the Commissioner. In the second situation, practically speaking, any activity of the trust carried out without registration and without any tax benefit would likely to be insignificant.”*

7. We have heard both the parties at length, perused the order u/s 12AA and written submissions, case laws relied upon. We find that it is a fact that the appellant is running a CBSC school in Aurangabad Maharashtra. This fact has not been disputed by the DR or the Commissioner of Income Tax (Exemption). There was a survey u/s 133A of the act in the case of the appellant on 10.07.2019. The ld.Commissioner of Income Tax (Exemption)

has not observed any activity which is in violation of the objects of the trust being carried out. The only objection of the Id.Commissioner of Income Tax (Exemption) is that during festivals the premises were used for stalls and rent was earned. The Commissioner of Income Tax (Exemption) has not stated that the said income has not been applied for the educational activity carried out by the appellant. Lets examine the Income and Expenditure accounts of the appellant which were submitted before us and stated that it was also submitted before the Id.Commissioner of Income Tax (Exemption).

As on	Donation in cash	Other Income	School fee	Expenditure for the objects	Surplus fund
31/3/2017	22,500/-	Nil	Nil	8852/-	(852)
31/3/2018	6,09,400/-	Nil	72,77,050/-	76,82,555/-	8,12,904/-
31/3/2019	Nil	7,08,500/-	1,34,48,105/-	1,13,25,652/-	20,18,299/-
31/3/2020	6500	77833/-( includes interest Rs.68333/-)	2,05,69,300/-	1,74,94,920/-	24,78,699/-

7.1 From the above chart one can understand that there is hardly any income from other sources, i.e. rent from stalls. Main income of the appellant is school fee and main expenditure is also towards the running of the schools. The Surplus is maximum 15 % as mentioned by the Commissioner of Income Tax (Exemption) in the order.

7.2 The Hon'ble Supreme Court in the case of **Islamic Academy of Education Vs. State of Karnataka (Writ Petition (civil) No.350 of 1993, dated 14.08.2003** has observed, "*While this Court has not laid down any fixed guidelines as regard fee structure, in my opinion, reasonable surplus*

*should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of Education”, Also the Hon’ble Supreme Court in the case of Addl. CIT v. Surat Art Silk Cloth Manufacturers Association reported in [1980] 121 ITR 1, has held that “the test of predominant object of the activity is to be seen whether it exists solely for education and not to earn profit”.*

7.3 Thus, in the case of the appellant, the activity is running education which is a charitable activity as defined u/s 2(15) of the Act. The Surplus is in the range of 10-15% .The Id.Commissioner has not alleged that the surplus has been used for non charitable activities. It means surplus has been used for the objects mentioned in the trust deed. After analysing all these facts, we are of the opinion that the appellant trust is eligible for registration u/s 12AA of the Act. Accordingly, the Id.Commissioner of Income Tax (exemption) is directed to grant registration u/s 12AA of the Act, to the applicant.

7. In the result, the appeal of the Assessee stands Allowed.

Order pronounced in the Open Court on 15<sup>th</sup> March, 2022.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
JUDICIAL MEMBER

Sd/-  
**(DR. DIPAK P. RIPOTE)**  
ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 15<sup>th</sup> March, 2022 / SGR\*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT, Exemption, Pune;
4. DR, ITAT, ‘A’ Bench, Pune;
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// TRUE COPY //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune