

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.167/Asr/2019
Assessment Year: 2014-15**

M/s Choudhary Charitable Trust, J.P. World School Kunj Wani Vill. Thanar, Bye Pass Road, Jammu. [PAN: AAATC7730P] (Appellant)	Vs.	Pr. Commissioner of Income Tax, (Central), Ludhiana. (Respondent)
--	------------	---

Appellant by	Sh. Joginder Singh, CA.
Respondent by	Sh. HitendraBhauraojiNinawe, CIT. DR

Date of Hearing	22.12.2022
Date of Pronouncement	17.02.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Pr.Commissioner of Income Tax (Central), Ludhiana,[in brevity the 'PCIT'] bearing appeal F.No. Pr. CIT(C)/LDH/JB-II/2018-19/2911, date of order 28.12.2018, order passed u/s 12AA (1)(b)(ii) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2014-15.

2. Brief fact of the case is that the assessee society is a trust was constituted as per the trust deed executed on 7th March, 2005 which was duly registered before the Sub Registrar-1st Additional Munsif, Jammu on 25.04.2005 the object of the trust is running the educational institution under the name and style of J.P. World School. The assessee trust vide application No. 10A dated 22.05.2014 had applied the registration u/s 12A of the Act before the Id. PCIT. The order was passed and the application was rejected on the following grounds:

- “a. That the trust is not registered with the Registrar of Firms & Societies or under Registration of Trust Act, or any other appropriate Act.*
- b. Application for the registration of the trust has been made by the trust u/s 12A (a) of the IT Act, 1961 on 22.05.2014 which is not applicable after 01.06.2007.*
- c. That objects of the trust include objects to promote the educational activities not only in India but also outside India and as per provision of section 11(1)(c) of the IT Act,1961, if a trust applies its income on activities outside India it will not be eligible for exemption.”*

Against the order of the Id. PCIT, the assessee filed an appeal before the ITAT, Amritsar Bench. The bench by its order dated **31.12.2015 in ITA No. 748/Asr/2014** has allowed the appeal of the assessee and remanded back to the Id. PCIT. The Id. PCIT further passed the order on the ground that there is no activities or in connection which has not similar with main object for contravening

section 11(1)(c) of the Act for non-pursuing of any activities outside India for charitable purpose. Aggrieved assessee by challenging the order of PCIT, further filed an appeal before us.

3. During hearing before the ITAT the ld. counsel had filed a brief synopsis and written submission which has reproduced here as below:

2. *“Against the said order of the Ld. CIT(Central), Ludhiana, the assessee Trust preferred an appeal before the Hon'ble ITAT, Amritsar Bench, Amritsar on 12.12.2014. The Hon'ble ITAT, Amritsar bench, Amritsar vide its order dated 31.12.2015 in ITA No. 748(Asr)/2014 has allowed the appeal of the assessee with its finding as under:-*

"The assessee was not provided sufficient opportunity of being heard to explain its object of promotion of education activities abroad, therefore, in view of the above, the case is remitted back to Ld. CIT who should pass the order after granting assessee a reasonable opportunity of being heard".

Keeping in view the directions of the Hon'ble ITAT, the case was fixed for hearing and it was clarified before the Ld. CIT(Central) that the trust has not carried out any educational activity outside India and further stated that the Trust is only having one educational institution namely JP World School, Kunjwani, Jammu and other than the said, the Trust has no branch or any other educational institution in India or in abroad. However, the Ld. CIT(Central) Ludhiana vide his order dated 28.12.2018 passed u/s 12AA(l)(b)(ii) refused to allow the registration sought for u/s 12AA(l)(b)(i) on the ground that the object

of the trust under consideration with regard to conducting of educational activities through schools and colleges outside India are contrary to the intention of the legislature and provision of the Section 11(1)(c) of the Income tax Act, 1961 and further that the explanation of non-pursuing of any activity outside India cannot be a justification for the purpose of allowing registration u/s 12AA(1)(b)(i) as an object to this effect continues to exist in the aims and objects of the trust.”

4. The Id. CIT DR vehemently argued and submitted written submission and relied on the order of the Id. PCIT. The relevant para of the Id. PCIT is extracted as below:

“7. The intention of the legislature allowing exemption to the charitable institutions under the Income Tax Act was that the Indian public at large would be benefiting from the charitable and welfare activities being undertaken by the non-government organizations. Thus, the charity aims & objects and activity of any institution seeking relief under the provision of the Income Tax Act, should be India specific and the benefit of their activities should be limited to the Indian public. Keeping in view the facts material to this case it is evident that the object of the trust under consideration with regard to conducting of educational activities through schools and colleges outside India are contrary to the intention of the legislature and provision of the section 11(1)(c) of the Income Tax Act, 1961. The explanation of non-pursuing of any activity outside India

cannot be a justification for the purpose of allowing registration u/s 12AA(1)(b)(i), as an object to this effect continues to exist in the aims and objects of the trust. The Registration sought for u/s 12AA(1)(b)(i) of the Income Tax Act, 1961 is, therefore, refused to the Trust.”

5. The ld. CIT DR has also filed a written submission which is reproduced as below:

“Written Submission:

It has been argued by the counsel for appellant that though the object for imparting education abroad is there, but it has never been put to practice. It is important to emphasize here that all objects even if not put to practice need to be considered before grant of registration. Registration u/s 12AA is interlinked with grant of exemption u/s 11; hence should not be seen separately.

In the case of Commissioner of Income Tax Vs Kamla Town Trust (1996)84 Taxman 248, it has been clearly decided that one has to go by the express words employed in Trust Deed.

In the case of Dharmaposhanam Co., Kerala Vs Commissioner of Income Tax, Kerala (114 ITR 463) it has been held as under:

“It has been urged on behalf of the appellant that what should be taken into consideration is the activity actually conducted by the assessee, and not what is open to it under the provisions of its Memorandum of Association. We do not agree. Whether a trust is for charitable purposes falls to be determined by reference to all the objects for which the trust has been brought into existence. See

Tennent Plays, Ltd. v. Commissioner of Inland Revenue and Incorporated Council of Law

Reporting for England and Wales v. Attorney- General and Commissioners of Inland Revenue. In Rex v. The Special Commissioners of Income-Tax, it was pointed out by the Court of Appeal in England that if the settlor reserves to himself the power of appointment under which he might appoint to non-charitable purposes, the trust cannot claim exemption even though the power of appointment is in fact exercised in favour of a charitable object. It would be a different case where one or more of the objects mentioned in the Memorandum of Association although included therein were never intended to be undertaken. If there is evidence pointing to that conclusion clearly the Court will ignore the object and proceed to consider the case as if it did not exist in the Memorandum. In C.I. T. Kerala v. Dharmodayam Co. (Supra), it was that basis on which this Court proceeded when it observed that the assessee had never engaged itself in any industry or in any other activity of public interest. ”

From above it is clear the appellant cannot hide away from the object of imparting education abroad, which violates provisions of section 11 (i) (a) and 11 (i)(b) of the IT Act. Even of the counsel for appellant pleads that education abroad is covered u/s 11(i)(c) of the IT Act; then there is nothing on record to show that it shall promote international welfare in which India is interested.

Hence it is pleaded that the appeal be dismissed.”

6. We heard the rival submission and relied on the documents available in the records. The reasons of rejection of application for registration is only for contradicting activities u/s 11(1)(c). For application of registration the assessee is bound to comply the doubts in relation to establishment of the trust and the main object related to the activities. The assessee is an educational institution and running school in India. The Id. Council for assessee respectfully placed reliance on the Hon'ble Delhi High Court in the case of **M/s M.K. Nambyar SAARC Law Charitable Trust v/s Union of India & Others ((2004) 269 ITR 556 (Del)** which is squarely covered the issue in hand wherein the Hon'ble Court has held:- *registration of charitable trust under S.12A and application of Income outside India cannot be a ground for declining registration under section 12A.*

Further reliance is also placed by the Id Counsel on the judgment of the Hon'ble Income tax Appellate Tribunal, Chandigarh bench, Chandigarh in the case of **SarbatTheBhalaGurmat Mission Charitable Trust v/s CIT(E) 189 ITD 353(CHD)**, the relevant paragraph is extracted as follows: -

“14. Further as rightly pointed out by the Ld. Counsel for the assessee, the provisions of section 11(1)(c) of the Act, which the Ld..CIT(E) has relied upon for holding that only activities carried out in India will qualify as charitable for grant of registration, is only for the purpose of determining the income which qualifies for exemption u/s 11 of the Act. The said section comes into operation only once registration is granted u/s 12A of the Act and therefore cannot be relevant for the purposes of granting registration u/s 12A of the Act. The scheme of the Act is that all entities carrying out charitable activities, as defined in

section 2(15) of the Act, qualify to be registered as charitable entities subject to satisfaction of the concerned officer vis-a-vis their objects and activities, but the exemption is provided/restricted only to the extent of income which is applied for charitable purpose in India.”

Further, the reliance is made on the order of the Hon'ble Delhi Bench 'G' Delhi in the case of **Sanatan Dharam Sabha Durga Bhavan Hissar Road, Rohtak v/s CIT(E) Chandigarh ITA No.2468 & 2469/2017** held that *we may observe at the stage of grant of registration u/s 12AA of the Act what is required to be seen, whether activities of the Trust or institution are genuine and secondly, objects are of charitable in nature. At the stage of granting registration u/s 12A of the Act, authority concerned should not assume the role of AO to examine whether the conditions for availing the exemption u/s 11 of the Act are fulfilled or not. These aspects certainly can be looked into at the stage of assessment. In any case of the matter, even after grant of registration u/s 12AA, if in future, it is found that the activities of the trust are in genuine and the trust is deviating from the objects based on which registration was granted, the authority concerned can proceed to cancel the registration.*

The issue we find, is squarely covered in favour of the assessee by the decisions relied upon by the Ld. Counsel for the assessee before us. In the case of M.K.Nambyar SAARC Law Charitable Trust (*supra*)& SarbatTheBhalaGurmat Mission Charitable Trust(*supra*). We find that the application for grant of registration was rejected on the ground that the lack of activities outside India is not acceptable before the bench. The Hon'ble High Court held that the application of income outside India is not a relevant criteria for rejecting the application for

grant of registration u/s 12AA of the Act and the officer has to only restrict himself to the satisfaction about the objects and genuineness of the activities of the trust while granting registration with no restriction on the activities being carried out inside or outside India. The grievance of the Id.PCIT is that the assessee has no registration from society & firm. But available documents are recognising the registration was made as Trust through Sub Registrar-1st Additional Munsif, Jammu on dated 25.04.2005. In view of the above, the order passed by the Ld. PCIT denying registration u/s 12A of the Act is set aside and the Ld. PCIT is directed to grant registration as applied for by the assessee.

7. In the result, the appeal of the assessee bearing **ITA No. 167/Asr/2019** is allowed.

Order pronounced in the open court on 17.02.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order