

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
(VIRTUAL COURT)
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 598/Asr/2018
Assessment Year: 2018-19

M/s Peer Panchal
Educational And Welfare
Trust, Ward No. 9, Rajouri,
J&K-185131

[PAN: AADTP 1309G]

(Appellant)

V. Commissioner of Income Tax
(Exemptions) C.R. Building,
Sector 17-E, Chandigarh

(Respondent)

Appellant by Sh. Joginder Singh, C.A.

Respondent by Smt. Rajinder Kaur, CIT-D.R.

Date of Hearing : 13.02.2023
Date of Pronouncement : 28.02.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Exemptions), Chandigarh dated 28.09.2018 in respect of Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:

- “1. That on the facts and circumstances of the case and in the law, the CIT(Exemptions) has grossly erred in denying registration to the assessee trust u/s 12AA of the Income tax act, 1961 as claimed.
2. That the Ld. CIT (Exemptions) has not considered completely the information/ evidence brought on record, in correct perspectives while denying the Registration u/s 12AA of the Income Tax Act.
3. That on the facts and circumstances of the case and in the law, the CIT(Exemptions) has grossly erred in denying registration to the assessee trust u/s 12AA of the Income tax act, 1961 on the grounds herein below:
 - a) That the shifting of present provision u/s 10(23C)(vi) to section 12A(a) of the Act is not permissible as per Law.
 - b) That the corpus donation received from trustees is not for specific purpose.
 - c) That the salaries and wages paid to the teaching staff are not as per minimum wages act.
 - d) That the assessee trust earned huge surplus, which is not redeployed into education purpose.
4. That on the facts and circumstances of the case, the order of the Ld. CIT (Exemptions) is bad in law as CIT Exemptions is required to see the objects of the trust and genuineness of the activities and not required to examine the other extraneous considerations.
5. That the appellant craves to leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all of the above grounds are without prejudice to each other.”

3. Condonation of delay of two days in filing the instant appeal is requested to be condoned with the support of an application which reads as under:

“With humble submission may I request your honor that I have preferred an appeal before the ITAT, Amritsar Bench. I'm living in a far flung area of Jammu & Kashmir state i.e. Distt: Rajouri, near the Border. It was impossible for me to handover the Appeal paper personally and accordingly I sent the said Appeal papers through Courier, dated: 30.11.2018 well before the due date of filing of Appeal. However the same has reached Amritsar before your honor late by 2

days as prescribed under rules. The delay was not intentional. Due to this bonafide reason I request your honor to kindly condone the delay of 2 days in my case.”

3.1 Since, there was a short delay of 2 days in filing the appeal

4. The appellant filed an application in form No. 10A in the office of the Principal Commissioner of Income Tax (hereinafter referred to “the PCIT”), on 31.03.2018 seeking registration u/s 12AA of the Income Tax Act, 1961. The application reveals that the trust is an ongoing entity that has been in operation since 16.04.2016. The stated aims and objects of the society are to set up educational institutions to provide education to the deserving people particularly to the children of the deprived sections of the society, to establish, promote, setup, run, maintain, assist, finance, support and/or aid to or help in the setting up and/or maintaining and/or running training centers, research institutions, schools, colleges (Academic & Professional), MCA, MBA, Law, Nursing & Paramedical Colleges, B.ED and M. Ed courses and the elementary teacher training courses and other institutions orphanages, widow houses or other establishment for relief and/or education or training to the persons connected with local administration or public health as well as other institutions, which are not specifically

mentioned. The Ld. PCIT has denied registration to the assessee trust u/s 12AA of the Income tax act, 1961 as claimed by observing as under:

“4. The provisions necessitate examination of two basic conditions for grant of registration u/s 12AA. The same include, apart from the examination of objects of the society, satisfaction of the competent authority in respect of genuineness of activities as well particularly when the applicant is an ongoing entity.

“On perusal of the applicant's submission it is observed that there is an addition of fixed assets to the tune of Rs. 99,51,418/- during the F.Y. 2015-16. Also, the applicant society is having surpluses are consistently in the range of 35 to 40% of the receipts. In order to verify the claims of the applicant society, the following additional queries were asked vide e-mail to arvindjamwal64@gmail.com on 21.09.2018 requesting them to submit the details on 23.09.2018.

6.

- (i) *Please provide the Source of financing of fixed assets of nearly a crore in F. Y. 2015-16.*
- (ii) *Please provide details/evidence of corpus fund addition during F.Y. 2016-17 to the tune of Rs. 20.90 lakhs.*
- (iii) *Please provide details/evidence including purpose behind sundry creditors existing in F.Y. 2015-16 to the tune of Rs. 49.79 lakhs.*
- (iv) *How did the applicant subscribe to the essential condition as existing not for profit during F.Y. 2014-15, 2015-16 & 2016-17 during which the surpluses are consistently seen in the range of 35-40% of the receipts? Please explain the same.*
- (v) *Please provide the bank statements for the last three years.*
- (vi) *Please provide the consolidated of the trust inclusive of the institutions receipt and payment account for the last three years.*
- (vii) *Please provide salary structure along with name and qualification of the teachers vis-a-vis guidelines issued by school education department J&K.*

7. *In response to the additional queries the applicant trust submitted the reply vide e- mail on 24.09.2018. With regard to query regarding source of financing of fixed assets, the applicant society provided the details of additions made during the F.Y. 2015-16. As regards to the reason for shifting from section 10(23C) (iiiad) to section 12AA of the Income Tax Act, the applicant has*

contended that in order to achieve other objects of the trust, 12AA is required because of the reason that although those objects do come under the provisions of section 2(15) of the I.T. Act, 1961, but provisions of 10(23C)(iiiad) or (vi) do not cover those objects. For cases claiming automatic exemption u/s 10(23C)(iiiad) approval u/s 10(23C)(vi) is to be sought on receipts crossing the threshold of Rs. One crore. The applicant had all the reasons to apply for exemption under the provision of section 10(23C)(vi) following the statutory provisions. This issue needs to be seen in light of the fact that numerous years in the past the society has been filing returns and claiming exemption u/s 10(23C)(iiiad). Is it the case that the moment receipts exceeded Rs. One Crore the applicant society has ceased to be existing "solely for educational purposes" and "not for profits"? Here it is also pertinent to mention that Judicial precedents have allowed pursuance of alternative claims either for 12AA or 10(23C) but at the same time haven't allowed shifting from one provision to the other when the applicant has consistently availed benefits for a number of year under section 10(23C)(iiiad). The alternatives had to be chosen from at the beginning a choice that has already been exercised. Natural progression entails and entitles the educational societies to go for 10(23C)(vi) in such cases. It is also the case that if such a shift is allowed the provisions of section 10(23C)(vi) would be rendered redundant and infructuous. This clearly is neither the legislative intent nor scheme of the Act that provisions for two different sets of codes with different parameters as also conditionalities. It's also relevant in the particular case that the character and objects of the applicant have not changed to warrant a change in the code of exemption that has a completely different set of conditions. This contention of the applicant is certainly not acceptable.

8. Further, on perusal of the Balance sheet as on 31.03.2017 it was observed that the applicant trust is showing Rs. 20.90 lakhs/- as corpus fund. To verify the claim, the applicant trust was asked to submit the documentary proof vide e-mail dated 21.09.2018. In response to the same the applicant submitted the list of trustees who have contributed fund towards corpus funds without any documentary evidences. Mere giving the list of persons can't confirm that it was a corpus donation. There is no evidence of any specific direction of the same being given as corpus donation. Without any specific direction & evidences for treating the fund as corpus, tire receipts of Rs. 20.90 lakhs/- should have been reflected as income in the Income & Expenditure Account and don't fall under the ambit of section 11(l)(d) i.e. "income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution".

9. Further, the applicant trust was asked to provide salary structure along with name and qualification of the teachers vis-a-vis guidelines issued by school education department J&K. The applicant trust stated that there are no guidelines issued by School Education Department of J&K regarding salary structure of teachers in private schools however salary is being given to them as per their qualification and services rendered by them. From perusal of the submissions (it has been submitted as a wage sheet) it is observed that the salaries paid to the teachers are very low and there are instances where teachers are being paid lesser than peons, drivers & safai karamcharis. The emoluments are not even what is prescribed under the Minimum Wages Act. Also, the salaries paid are fluctuating from month to month. Even if the possible plea that it's calculated on 'days' basis is taken into consideration the alternate conclusion is that teachers are treated as daily wagers. The diffidence in paying proper salaries to teachers, who are the bulwark of any educational institution, clearly points towards proclivity of the applicant to maximize its surplus which, to further worsen matters, have not been evidenced to have been redeployed in education.

10. During the proceedings of the present case, the applicant has submitted copy of financial statements of the school for F.Y. 2014-15, 2015-16 & 2016-17. Further, on perusal of the Income and expenditure account for the last three years, it was observed that the surpluses of income over expenditure are between 34 to 45% of the gross receipts during the last three years. The table is given as under:-

Financial Year	2014-15	2015-16	2016-17
Gross receipts	92,28,655/-	96,40,601/-	96,66,726/-
Surpluses	41,12,297/-	36,49,284/-	33,48,726/-
Percentage w.r.t gross receipts	44.56	37.85	34.64

Admittedly it needs to be flagged that educational institutions have been allowed to generate reasonable surplus but the same needs to be redeployed into the stated objects of the entity at the time it was established. Permissible reasonableness has further been defined in the order of the Apex Court in the case of Islamic Academy of Education & another vs. State of Karnataka and others (2003) 6 SSC 697 and further reiterated in the case of Visvesvaraya Technological University Vs ACIT in Civil appeal Nos. 4361-4366 of 2016 where the Hon'ble High Court held to be the permissible reasonable surplus at 6% to 15% of the gross receipt. In the present case the applicant spciety has net surplus @ 44.56%, 37.85% and 34.64% during F.Y. 2014-15,2015-16 & 2016-17

respectively as shown in table above. The fact of the case also reveals that the surpluses have not been redeployed into education.

11. In view of above discussions, it is clear that the applicant trusts intent is to generate excessive surpluses much beyond what has been held as reasonable. Also, without any specific direction & evidences for treating the fund as corpus, the receipts of Rs. 20.90 lakhs/- was treated as corpus by the applicant trust. The same should have been reflected as income in the Income & Expenditure Account in the absence of it assuming the character of corpus funds. Non-furnishing of bank statements for three years' despite being specifically asked for further hinders examination of the applicant's claims about its finances. In view of all of the above, no satisfaction about the genuineness of activities can be recorded in the case. The application for registration u/s 12AA of the Act is accordingly rejected."

5. The Ld. Counsel for the appellant submitted that on the facts and circumstances of the case, the order of the Ld. CIT (Exemptions) is bad in law as CIT Exemptions is required to see the objects of the trust and genuineness of the activities and not required to examine the other extraneous considerations. He filed a written submission which reads as under:

"The brief facts of the case are that the assessee Trust had applied for the first time for registration under section 12AA of the Income tax Act, 1961 as per the Trust Deed executed on 16th day of April, 2012 which was duly registered with the competent authority. As per Clause 3 of the said Trust deed, the main aims and objectives of the Trust are:-

- (i) *To set up educational institutions to provide education to the deserving people particularly to the children of the deprived sections of the society.*

(ii) *To establish, promote, set up, run, maintain, assist, finance, support and/ or aid to held in the setting up and/ or maintaining and/ or running training centres research institutions, schools, colleges (Academic & Professional), MCA, MBA, Law, Nursing & Paramedical Colleges, B.Ed and M.Ed courses and the Elementary Teacher Training courses and other institutions orphanages, widow houses or / other establishments for relief and/ or education or training to the persons connected with local administration or public health as well as other institutions which are not specifically mentioned.*

(iii)

(iv) etc.

From the objects as enshrined in the Trust deed, it is clear that the aims and objects are in conformity with the provisions of section 2(15) of the Income tax Act, 1961. The copy of Trust deed is enclosed and is marked as page No 01 to 13.

The purpose of provisions of section 12AA is to enable registration only of such trust or institution whose objects and activities are genuine. Since the section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done and the term activities in the provision includes proposed activities. That is to say, the registering authority is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. The only requirement for granting the registration is that the object of the society should be charitable in nature and its activities were genuine. The Hon'ble Supreme Court in the case of M/s Anand Social and Educational Trust v/s CIT in Civil Appeal No.5437-5438/ 2012 vide order dated 19.02.2020 has laid down the basic principles for allowability of basic registration.

2. While passing the order for rejecting the application for grant of registration filed by the assessee trust, the Ld. CIT(E), Chandigarh had pointed out:-

(i) The Ld. CIT(E) observation on that since the assessee was availing exemption u/s 10(23C)(iiiad) of the Act should have applied registration u/s 10(23C)(vi) of the Act.

The observation of the Ld. CIT is not as per law as the assessee was availing exemption u/s 10(23C)(iiiad) because the receipts of the Trust are less than one crore. The assessee trust forecast that the receipts of the trust will cross one crore and accordingly applied for registration u/s 12AA of the Act. There is no bar in the provisions of the Act which debars the institution to apply for registration u/s 12AA of the Act, if already availing the claim u/s 10(23C)(iiiad) of the income tax Act, 1961.

(ii) The Ld. CIT(E) observation that the corpus donation received from Trustees are not for specific purpose

The corpus donation of Rs.20,90,000/- received from the Trustees of the Trust have been specifically utilized for the construction of building of the Trust for use by the institution.

(iii) That the salaries and wages paid to the teaching staff are not as per Minimum wages Act.

The Ld. CIT(E) has made an observation that salary and wages to the teachers/ staff have been paid at lower rate. In this regard, it is submitted that the observation is not related to the registration of the trust u/s 12AA of the Act, 1961 as the Ld. Authority has to satisfy - about the objects and activities of the trust. No adverse has been pointed out by the Ld. CIT (E) on the objects and activities undertaken by the assessee trust.

(iv) That the assessee trust earned huge surplus, which is not redeployed into education purposes.

The Ld. CIT(E) has rejected the registration u/s 12AA on the ground that the appellant trust has generated excessive surplus much beyond but has been held as reasonable. The finding of the Ld. CIT(E) is factually incorrect and not based on the correct analysis of the accounts. The Ld. CIT(E) while calculating the surplus has not considered the capital expenditure incurred for the furtherance of the objects of the trust. The assessee trust has prepared a chart given below which shows that the assessee has not generated any surplus since assessment year 2015-16 to 2017-18.

Asstt. Year	Total	Revenue Expenditure	Capital expenditure	Total expenditure	Surplus
1.	2	3	4	5(3+4)	6(2-5)
2015-16	92,28,655	51,16,357	55,54,492	1,06,70,849	-)14,42,194
2016-17	96,40,601	59,91,316	99,51,418	1,59,42,734	-)63,02,133
2017-18	96,66,726	63,18,170	40,39,308	1,03,57,478	-)6,90,752

From the above chart it is quite clear that the surplus generated over revenue expenditure is exclusively spent for construction of the trust building for furtherance of the objects of the trust. During the year referred by the Ld. CIT(E) that assessee has generated surplus of 44.46%, 37.85% and 34.64% in the assessment years 2015-16, 2016-17 and 2017-18 is factually incorrect whereas the net surplus generated by the assessee trust is negative in all the assessment years referred in the order. Even under the provisions of section 11, the surplus upto 15% of the total receipts is allowable. Copies of the Balance sheet are annexed herewith page No.14 to 35 of Paper book.

3. The Ld. CIT(E) has not pointed out any adversely on the object and activities of the Trust. The Ld. CIT(E) has to satisfy while granting the registration u/s 12AA of the Act that the objects of the assessee Trust are charitable in nature and the activities are genuine. The objects of the Trust are educational and are covered under the definition of section 2(15) of the Income tax Act, 1961. The Hon'ble Supreme Court in the case of M/s Anand Social and Educational Trust v/s CIT in Civil appeal No.5437-5438/2012 vide order dated 19/02/2020 has laid down the basic principles for allowability of registration. Since the assessee Trust has fulfilled all the requisite conditions as laid down under the said provisions of the Act, it is prayed that the Ld. CIT(E) may kindly be directed to allow registration under Section 12AA of the Income tax Act, 1961 to the assessee trust.

Further, 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 12AA 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. Also reliance is placed on the judgment of the Hon'ble jurisdictional Bench in the case of M/s Shri Swami Shankarnath Parvat Charitable and Welfare Trust v/s CIT(E), Chandigarh vide order dated 21.09.2021 passed in ITA No.602/Asr/2018. The issue in the said judgement is squarely covered to the case of the assessee trust.

In view of all these facts, it is prayed that the Ld. CIT(E) may be directed to allow registration to the assessee Trust."

6. The Ld. DR stands by the impugned order.

7. We have heard rival contentions, perused the relevant material on record, impugned order, written submissions and case law cited before us. Admittedly, the appellant trust main grievance is that the Ld. PCIT has not considered the information/ evidence brought on record, in correct perspectives while denying the Registration u/s 12AA of the Income Tax Act and that PCIT Exemptions is required to see the objects of the trust and genuineness of the activities and not required to examine the other extraneous considerations. Since, the PCIT's quarries regarding the corpus donation received from trustees is being not for specific purpose; that the salaries and wages paid to the teaching staff were not as per minimum wages act and that the assessee trust earned huge surplus, which is not redeployed into education purpose and in furtherance of charitable activities if any besides clarification on surplus funds accumulation incurred on capital expenditure, in turn resulting into negative balance needs examination by the Ld. PCIT(E). We make it clear that since the appellant trust in ongoing activity, the Ld. CIT(E) has been empowered to examine and verify that the activities carried out in lieu of the objects, so as to

examine and verify charitable nature of activities in consonance to the objects of the Trust to Satisfy about the manner, the activities are carried were not profit making or fund generation for purpose of personal/commercial benefit as per the mandate. In view of the matter, we deem it fit to restore the matter back to the file of the Ld. PCIT to adjudicate the matter afresh after considering the information, evidence and submission of the assessee on record and granting sufficient opportunity of being heard. The appellant trust is directed to cooperate in the fresh proceeding by filing all the requisite details in the fresh proceeding before the Ld. PCIT to enable him to decide the matter judiciously. Accordingly, with the aforesaid observations, the case is remanded back to the PCIT(E) with the direction to adjudicate the matter as per law.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 28.02.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

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