

**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. 286/Asr/2017
Assessment Year: NA

M/s Santosh Foundation
H. No. 2, Friends Enclave,
Near Star Resorts, Bye Pass
Road, Rampura Phul.

[PAN: AAQTS1243M]
(Appellant)

Vs. Commissioner of Income Tax
(Exemptions), Chandigarh

(Respondent)

Appellant by: Sh. Sudhir Sehgal & Sh. P.N. Arora, Adv.

Respondent by: Sh. Hitendra Bhauraoji Ninawe, CIT DR

Date of Hearing: 08.08.2023

Date of Pronouncement: 12.09.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Exemptions), Chandigarh dated 28.04.2017 challenging therein the rejection of its application for registration u/s 12AA of the Act.

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

- “1. That the learned CIT (Exemptions) has erred in law and on facts in not allowing the registration under section 12AA of the I.T. Act whereas as per material placed on record, the assessee appellant fulfils all the conditions required for granting registration under section 12AA of the I.T. Act. Therefore, the registration under section 12AA of the I.T. Act be allowed.
2. That the learned CIT (Exemptions) has erred in law and on facts in not allowing the registration under section 12AA of the I.T. Act by holding that the applicant trust has been formed to implement the CSR activities and not amenable to public charity whereas as per explanation filed and material placed on record and in view of section 135(1) and Schedule VII of the Companies Act, 2013 read with Companies (Corporate Social Responsibility Policy) Rules, 2014, the company as well as trust duly qualifies all the conditions as laid down under the Companies Act and Income Tax Act. As such, the trust is entitled to registration. The same be allowed.
3. That the appellant craves to add or amend the grounds of appeal.”

3. The assessee has filed application in Form No. 10A in the office of the Commissioner of Income Tax (Exemptions) 17.10.2016 for seeking registration u/s 12AA of the Act, 1961. The applicant society claimed to be in operation since 14.10.2015 which has been claimed to be created by the Board of the Company for the objects and activities as per Schedule-VII of the Companies Act. The Ld. CIT exemption while rejecting the exemption under section 12AB of the Income Tax Act, has observed as gender under:

2. The stated aims and objects of the society are to establish, develop, maintain and grant aid in cash or in kind to hospitals, medical institutions, nursing institutions, dispensaries, maternity homes, child care and welfare centres and/or such other similar institutions for benefit and use of the general public; to establish, run, support and grant aid or other financial assistance to schools, colleges, libraries, reading rooms, universities, laboratories research and other institutions of the like nature for use of the students and the staff and also for the development and advancement of education and diffusion of knowledge amongst the public in general; to grant relief and assistance to the needy victims during natural calamities such as famine earth quake, food, fire pestilence etc and to give donations and other assistance to institutions, establishment or persons engaged in such relief work; to construct and give assistance in cash or kind viz. Freezers/ morgue to the marghats, cemeteries and burial grounds; to establish, maintain or grant aid for the establishment and / or maintenance of parks, gardens, gymnasiums and sports clubs for use by public in general; to undertake activities and provide assistance to the institutions promoting programs and awareness against female foeticide and drug menace; to undertake, promote and provide assistance in cash or king to all programs of environmental sustaining including plantation of trees conservation of forests, diverse ecosystems and biodiversity ; to p maintain or grant aid to institutions for the promotion of science, literature, music drama and fine arts, for the preservation of historical values and ; lo establish, maintain and provide scholarships schemes and render other kind of aid to students including supply of books, stipends, medals and other incentives to study, without any distinction as to caste, colour, race, creed to sex. **None of these so called ostensible objects have seemingly been pursued by the applicant trust. It is brought out from the financial statements for F.Y. 2015-16 that the trust has advanced donations to other entities to the tune of Rs. 1.57 lakhs. This in no way can be construed as pursuing the claimed, objects as stated in the Memorandum of Objects of the Trust.**

6. Applicant submitted the reply to the show-cause on 21.04.2017 and 26.04.2017. The reply alongwith the documents on record has been perused in the light of requirements of section 12A of the I.T. Act. It has been revealed that the trust is constituted by a company named "Stelco Limited" as settler with a sum of Rs. 5,00,000/- where the trustees are either the directors of the settler company or their relatives. It has been projected by the applicant trust that the trust has been created to fulfil the liabilities of corporate social responsibility of the settler company. **There is no concurrence between the expenditure incurred as reflected in the financial statements of the applicant trust and**

the aims & objects incorporated in the Trust deed. Neither has any note on activities of the trust been submitted nor any evidence supporting its claim has been produced. The formation of the trust is evidently to help the settler company redeem its CSR obligation by creating a captive trust. The applicant is established for working solely on the funds provided by its main contributors and settler M/s Stelco Ltd. as part of fulfilment of their CSR obligation. What the applicant has done is not pursue any of the stated objects. It has been claimed that donating to other entities amounts to pursuing its objects.

From the above it is clear that the objects narrated regarding other charitable activities being claimed are ostensible addendum to the main activity which is proposed to conduct CSR in case of the parental company which in its obligation to spend CSR amount in the limited company has tried to give cover to the activities of the applicant company as a charitable one.

7. It has been emphasized in the provisions of CSR that the amount spent under the head CSR will not be deductible under Income Tax Act in the hands of the Company. In order to work around the provisions, the M/s Stelco Limited has created a trust where the Managing Directors or their family members are the Trustee of the applicant Trust. This is a close arrangement whereby a Limited company is not only able to redeem its CSR obligation but also at the same time able to control the finances of the Trust. Indirectly by seeking exemption the money that would not have been otherwise deductible as expenditure is now being claimed exempt. The composition of trust and Settler company- M/s Stelco Ltd is as under-

Sr. No.	Members of the trust	Directors of the M/s Stelco Ltd (Settler)	Remarks
1.	Sh. Om Parkash Jindal	-	Sh. Om Parkash is grandfather of Sh. Gaurav Jindal
2.	Sh. Rajinder Jindal	-	Sh. Rajinder Jindal is father of Sh. Gaurav Jindal
3.	Smt. Saroj Jindal	Smt. Saroj Jindal	Director of company
4.	Sh. Gaurav Jindal	Sh. Gaurav Jindal	Director of the company
5.	Smt. Nidhi Jindal	-	Wife of Sh. Gaurav Jindal

The arrangement is clearly to create a stranglehold both over the operations & finances of the trust. It is pertinent to mention that for clauses beneficial to the assessee the onus lies entirely on them to project and establish the case. The trust by restricting the composition only to the directors and their immediate family members has not been able to prove that its composition is wide enough to ensure participation of other stakeholders in the field of social & charitable activities. Its composition also suffers from complete lack of participation from amongst the intended beneficiaries. It also suffers from lack of independence within the trust to undertake activities that could be decided upon separately from the settlor company.

9. With this background behind the rationale that went into creation of the applicant it would also be worthwhile to examine the provisions of other Acts in this regard.

9.1 It is pertinent to examine, at this juncture, the reasoning behind the inclusion of CSR in the case of corporates as a necessary concomitant of the Government's efforts at nation building. The Corporate Social Responsibility has been incorporated through Section 135(1) of Companies Act, 2013 in which 2% of average NP for the last 3 years of some large companies has to be spent on C.S.R. **There is no specific tax exemptions available on expenses incurred on C.S.R.** However, there are several activities, part of Schedule VII of the Companies Act, 2013, that enjoy exemptions under the Income Tax Act.

9.2 **The amount spent by a Company cannot be claimed as business expenditure.** The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

9.3 The companies have been mandated to spend 2% of the NP on social causes. It is also to be borne in mind that the corporates, as a group, had waged a sustained campaign at the time of inclusion of CSR provisions in the enactment of 2013 to elicit two concessions from the government i.e. allow tax exemption on expenditure incurred as a part of CSR and also allow them a leeway to have a control over the way their contributions are spent by the Government.

9.4 It reiterated that as per the provisions of CSR that the amount spent under the head CSR will not be deductible under Income Tax Act in the hands of the Company. In order to work around the provisions, M/s Stelco Ltd. has created a trust where the members are same as that of the parent/associated companies. This is a close arrangement whereby a corporate entity is not only able to redeem its CSR obligation but also at the same time able to control the finances of the applicant company. **Indirectly by seeking exemption the money that would not have been otherwise deductible as expenditure is now being claimed exempt.**

9.5 The discussion above reveals a method adopted by the applicant, which is controlled/ financed by single company i.e M/s Stelco Ltd and managed through Directors who are simultaneously members of the applicant trust, to serve as an in-house captive company ostensibly for doing C.S.R. activity so that the amount, which is compulsorily to be spent by the parent company remains within their control. **The attempted tack is (i) to create a trust which in the present case is controlled by M/s Stelco Ltd (ii) seek exemption from taxation by taking recourse to purported charitable activity u/s 2(15) of I.T. Act (iii) to retain control over money, invested in a closely held trust, that has otherwise been precluded from being claimed as business expenditure by the Finance Act of 2014.**

10. Considering all of the above it is safe to conclude in the present case (i) that the main aim appears to be forming a trust merely for complying to C.S.R requirements by the holding company, (ii) that the applicant trust has been stated to be formed to implement the CSR activities of the Financing/ parental company, (iii) that the composition of the applicant company is restrictive and to that extent not amenable to public charity, (iv) that additionally, it is reiterated to be a mere instrument to carry out the CSR functions of the holding company self confessedly and given its restrictive composition it surely doesn't enure to the benefit of general public nor does it partake the meaning of a public charitable company, and (v) that none of the stated objects of creating and establishing entities in the charitable arena have been pursued.

4. The learned counsel for the assessee has reiterated the submissions made before the Ld. CIT exemption. He submitted that the learned CIT

Exemption has erred in law and on facts in not allowing the registration under section 12AA of the I.T. Act whereas as per material placed on record, the assessee appellant fulfils all the conditions required for granting registration under section 12AA of the I.T. Act and that he was wrong in holding that the applicant trust has been formed to implement the CSR activities and not amenable to public charity whereas as per explanation filed and material placed on record and in view of section 135(1) and Schedule VII of the Companies Act, 2013 read with Companies (Corporate Social Responsibility Policy) Rules, 2014, the company as well as trust duly qualifies all the conditions as laid down under the Companies Act and Income Tax Act. Therefore, the trust is entitled to registration and the same has to be allowed. The Ld. AR has filed a written synopsis in support which reads as under:

1. *The Worthy CIT(Ex.) has himself stated the condition as per the provisions of section 12AA for granting registration to an institution which is:- to check the aims and objects of the new trust and to correlate such objects with the activities of the institution in case the same is an ongoing entity, however, the CIT(Ex.) has wrongly applied the said provisions in the instant case.*
2. *The CIT(Ex.) has failed to interpret the meaning of ongoing entity as quoted in the impugned order, by ongoing entity it means the entity which has been in existence since long and carrying out the activities which are claimed to be charitable in nature. Whereas, the appellant trust came into existence only a few months before filing of application for registration.*

3. During the impugned proceedings, the Appellant has furnished the Financial Statements for the year ending 31.03.2016 and the Trust came into existence on 14.10.2015 and such financial statements were not even for the complete year, So, for a trust so new, the conclusion of the CIT(Ex.) as the trust being an ongoing entity is wrong to its entirety.

4. Therefore, now coming to the actual position of the case, it is crystal clear that the trust cannot be treated as an ongoing entity, so, for the purpose of granting registration to the trust, the only factor to be considered is the charitable nature of the aims and objectives of the trust and its intention of carrying out charitable activities for the public at large.

5. For this condition, the CIT(ex.) has himself agreed to the charitable nature of the aims and objectives of the trust as evident from the quoted para 6 on the other side of this table.

6. It is also a settled law that no application can be rejected for the want of activities and only the nature of the aims and objectives is to be considered:

- a) **CIT(Exemption)vs. Shri Shirdi Sai Darbar Charitable Trust (Dharmshala), Barnala**[2017] 81 taxmann.com 49 (Punjab and Haryana) (placed at Page No. 55-58 of Judgment Set)
- b) **CIT vs. Surya Educational & Charitable Trust** [2011] 15 taxmann.com 123 (Punjab and Haryana) (placed at Page No. 59-62 of Judgment Set)

Also, a plethora of judgments on the same issue have enumerated below in para 5 to 8 of these synopsis.

Thus, the rejection of application by observing that there is no concurrence between the expenditure incurred as reflected in the financial statements of the applicant trust and the aims and objects incorporated in the Trust deed deserves to be quashed.

B. The Appellant Trust has given detailed submissions regarding the aims and objectives and the objects very well clarifies the intention of the trust is to serve the general public at large.

1. Also, no specific link has been established by the Worthy CIT(Ex.) between the Appellant Trust and redemption of CSR activity of M/s Stelco Limited

except one that the management of both the organizations have a common director or family members which in itself is not sufficient to doubt the aims and objects of the Appellant trust and is vague reason to reject appellant application for registration u/s 12A of the Act.

2. Without prejudice to the above, even if the Applicant Trust has been created to redeem the CSR function of any company and it has been established by the objects that the Trust is fully engaged in charitable activities then the same is entitled of registration u/s 12AA of the Act.

Reliance in this regard is placed on the following two judgments of ITAT, Delhi:

- **Nanak Chand Jain Charitable Trust vs. CIT (Ex.) (2018) 91 taxmann.com 197 dated 09.02.2018 (placed at Page No. 1-6 of Judgment Set)**
- **Escorts Skill Development vs. CIT(Ex.) in ITA No. 527/Del/2017 dated 26.04.2019 (placed at Page No. 7-18 of Judgment Set)**

3. Moreover, your honor's kind attention is also invited to the Circular issue by Ministry of Corporate Affairs vide Circular No. 21/2014 dated 18.06.2014 wherein it has been clarified vide Point No. (viii) on Page 3 that:

"Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act"

(copy of circular placed at Page No. 19-25 of JudgmentSet)

The above clarifies the intention of the legislature that the contribution made by any company towards Trust is valid, which means that the creation of trust/society/company exclusively to redeem the CSR function of any company is valid in law.

4. There is no bar in incorporating a trust by a single family for pursuing charitable activities for the welfare of the society and also, **it is a settled law that**

registration cannot be rejected merely on the basis that the trust has been formed by a single family and thus is not for general public utility,

Reliance in this regard is placed on the judgment of jurisdictional Bench in case of **ACE Vision Educational and Charitable Trust vs. CIT(Ex.)** as reported in **168 DTR 0458** (Chd Trib) dated 08.06.2018 wherein it has been held as under:

“Trust run by a family is no ground for denial of registration u/s 12AA, unless it is established that the trust is created to run a business in the form of education and claim tax benefit”.

(placed at Page No. 26-33 of Judgment Set)

Therefore, rejection of application u/s 12A merely on the ground that the company has been created by a single family is bad in law in view of the above judgment.

C. Further, the rejection of the application of the Appellant Trust on the basis of action of another independent assessee i.e., the Company namely M/s Stelco Limited is completely baseless and vague. The CIT(Ex.) has himself stated that the formation of CSR Committee is a requirement to be fulfilled by the Settlor Company which is an independent assessee and has to be examined independently. It can be easily construed that the rejection has been done with pre-set mind of rejecting the application of the Appellant Trust which is clear from the vague and ambiguous basis relied upon by the CIT(Ex.), the Appellant has come to know about this issue being raised only by way of appellate order. Nothing in respect of this was raised during the proceedings. Moreover, the Appellant Trust is not bound by any such clause in trust deed in order to fulfil the CSR requirements of the Settlor Company.

D. Here in the concluding paragraph as well, the CIT(Ex.) has indirectly agreed to the fact that there is no defect in the aims and objects of the trust and that when after obtaining registration, the trust will pursue activities in consonance with the objects, the same will be considered as activities of charitable nature as per Section 2(15) of the Act.

THUS, THERE REMAINS NO VALID GROUND TO SUPPORT THE ACTION OF CIT(EX.) IN REJECTING THE APPLICATION OF THE APPELLANT TRUST u/s

12AA AND THE ORDER OF WORTHY [CIT(EX.) DESERVES TO BE QUASHED.

5. To further elaborate on ground of want of activities raised by CIT (Ex.) regarding the rejection of application of Appellant out rightly, it is again reiterated that the allegations imposed on the Appellant are without any cogent evidence and findings placed on record. The Worthy CIT (Ex.) has not pin pointed any defect in the objects of the Trust. It has been held by various Hon'ble Courts that the Worthy CIT is not an assessing authority and unless there is any specific defect in the application of the Assessee, the registration under section 12AA of the Act cannot be rejected. The defects as found by the CIT cannot be base for rejecting the application of the Assessee.

6. The conditions for the grants of registration as per the provisions of section 12AA are as under:-

- a. The Commissioner of Income Tax should be about the genuineness of activities of the trust.
- b. The Commissioner of Income Tax should be about the objects of the trust or institution.

From the above it is clear that the CIT(Ex.) should be satisfied about the genuineness of the activities and objects of the trust which in the case of the Appellant is imparting education to rural children without any discrimination regarding caste, creed and race and extending benefit of education to weaker sections of the society, financially backward, destitute and needy student along with placement assistance. The Worthy CIT(E) has accepted the objects of the trust and that there was no iota of doubt regarding the activity carried on by the Appellant Trust.

7. The observations given by Worthy CIT(Ex.) in Para **10** of the impugned are completely vague since it has been held in the judgment of **Nanak Chand Jain Charitable Trust(Supra)** that:

"At the time of granting the registration under Section 12AA of the Income Tax Act, 1961, the CIT (exemption) need not go beyond two parameters that the object being charitable in nature and activities being genuine. All other activities

are the matters to be taken care of by the Assessing Officer at the time of assessment for granted exemption under section 11 of the Act. Reasons (vi) given by the CIT (exemption) that it also militates against the legal principal that social enterprises cannot be a direct recipients of money from corporate as it is a profit making Company. This reasons by the CIT (exemption) is not in conformity with any of the provisions of the Income Tax Act. A profit making Company can grant certain donation to the charitable trust, how can the activities of the trust become not charitable with this act. The fact that the CSR expenditure are not allowable expenditure under section 37 of the Act is relevant only for the taxability of the company incurring such expenditure. From the perception of the assessee trust the amount received as donation whether will be eligible for exemption under section 11 depends on the application of such fund for the charitable activities by the trust only. The CIT is empowered to satisfy himself only about two factors i.e. the objects of the trust and the genuineness of the activities of the trust or institution and such powers does not extend to the eligibility of the trust/institution for exemption u/s 11 r.w.s 13 of the Income Tax Act, 1961 which falls in the domain of the AO. Once the CIT has not doubted about the genuineness of the activities of the assessee nor doubted its charitable object, his powers under section 12AA end."

8. Reliance in this regard is also being placed upon the following case laws **wherein it has been held that when no defect in the objects of the trust has been pointed out, the application for registration cannot be rejected:**

- a) **CIT vs. IILM Foundation Academy** as reported in 389 ITR 148 order dated 16.09.2016 (placed at **Page No. 34-48** of Judgment Set)
- b) **Cyberstar Educational Society vs. CIT (Exemptions)** in ITA No. 795/ASR/2017 ASR-Trib (placed at **Page No. 49-54** of Judgment Set)
- c) **CIT (Exemption) vs. Shri Shirdi Sai Darbar Charitable Trust (Dharmshala), Barnala [2017] 81 taxmann.com 49 (Punjab and Haryana)** (placed at **Page No. 55-58** of Judgment Set)
- d) **CIT vs. Surya Educational 8t Charitable Trust [2011] 15 taxmann.com 123 (Punjab and Haryana)** (placed at **Page No. 59-62** of Judgment Set)
- e) **CIT vs. Baba Kartar Singh Dukki Educational Trust [2014] 42 taxmann.com 17 (Punjab & Haryana)** (placed at **Page No. 63-64** of Judgment Set)
- f) **CIT vs. B.K.K Memorial Trust [2013] 29 taxmann.com 286 (Punjab and Haryana)** (placed at **Page No. 65-69** of Judgment Set)

9. Lastly, we would like to draw your Honor's attention on the distinguishing facts of the case of the Appellant with the judgment of Hon'ble Bench in case of *Goenka Charitable Trust vs. CIT(Ex.)*, Chandigarh as reported in 89 taxmann.com311 (Amritsar Trib) (2018) as tabulated below:

Facts of Goenka Charitable Trust

1. There is reference of CSR in the trust deed as pointed out by the Hon'ble Bench with regard to clause (v) and (vi) of the trust deed reproduced in Para-6 of the trust deed on the second-last page. For reference the same is reproduced here-as-under:-

"In the instant case, there is clause No. (v) in the trust deed which specifying that any donation received "shall be spent/applied by the trust as per the objects of the trust, donation trust corpus of the trust shall be applied in accordance with specific directions from the donor."

Further in clause (vi) specifies that any donation or contribution received from 'L' Ltd or from any other company in pursuance of their Corporate Social Responsibility shall be spent/applied by the trust as per directions of the donor. These clauses in the trust deed are clearly seems to keep the trust by the settler etc. V Ltd. in its own domain. The directions shall however fall within the purview of the objects of the trust".

Further, the company has claimed exemption u/s 80G of the Income Tax Act.

2. The Trust is inherently built creation of captive trusts by company to redeem their CSR obligation.

3. The Trust received major donation from the Company actually running the Trust on their own terms and then also contributed a major chunk of donation to single trust.

4. The Goenka Charitable Trust has relinquished its function as the primary implementation of the agencies and undertaken its own programs to impact targeted beneficiaries by transferring its funds.

Facts of case of Appellant

1. There is no specific object in respect of CSR in the trust deed of the Appellant.

There is no specific object in respect of CSR of Settler Company and to operate in consonance of directions of the Settlor Company. The Trust is not bound by any such clause.

No such exemption has been claimed by our assessee trust and CSR claimed in the return has been added back in the return of the company.

2. The Appellant is not a captive Trust created and is neither operates under control of Settlor Company.

3. The Appellant has not donated all funds available to any single trust, but has in fact actually applied the funds for charitable activities by providing financial aid to needy and helps the public at large.

4. The Appellant has not relinquished its function and is acting as a charitable institution working for the welfare of the people from all walks of the society.

Thus, in view of the above, order of Worthy CIT(Ex.) deserved to be quashed.”

5. Per Contra, the Ld. CIT DR vehemently supported the impugned order passed by the CIT exemption. He relied on the decision of the Hon'ble ITAT, Amritsar in the case of Goenka Charitable Trust Vs CIT(E) [2018] 80 taxmann.com 311 (Amritsar - Trib.) in support of the action of the CIT(E) and it was humbly requested for upholding the order of the CIT(E).

6. We have heard both the sides, perused the material on record, the impugned order and case laws cited before us. Admittedly, the Trust came into existence w.e.f. 14.10.2015. In the impugned order the CIT exemption, while rejecting the claim of registration u/s 12AA of the Act has stated in the

reasons for rejection vide para 11 on page 7 that the main aim in forming of trust was merely for complying to CSR requirements by the holding company to implement CSR activities of financing parent company that the composition of the applicant company is restrictive and to that extent not amenable to public activity and that it was a mere instrument to carry out the CSR functions of the holding company self confessedly and given its restrictive composition it surely does not enure to the benefit of general public nor it partake the meaning of the public charitable company.

7. The Ld. AR argued that the CSR expenditure are not allowable expenditure under section 37 of the Act is relevant only for the taxability of the company incurring such expenditure. From the perception of the assessee trust the amount received as donation whether will be eligible for exemption under section 11 depends on the application of such fund for the charitable activities by the trust only. The CIT(E) is empowered to satisfy himself only about two factors i.e. the objects of the trust and the genuineness of the activities of the trust or institution and such powers does not extend to the eligibility of the trust/ institution for exemption u/s 11 r.w.s 13 of the Income Tax Act, 1961 which falls in the domain of the AO. Once the CIT(E) has not doubted the genuineness of the activities of the

assessee nor doubted its charitable object then the powers under section 12AA of the Act, he has no authority to reject the registration. Meaning thereby that in the present case when no defect in the objects of the trust has been pointed out, the application for registration cannot be rejected.

8. The Goenka Charitable Trust (Supra) relied by the CIT(E) is distinguishable on fact to the instant case as in that case the Trust has relinquished its function as the primary implementation agencies and undertaken its own programs to impact targeted beneficiaries by transferring its funds and the Trust received major donation from the Company actually running the Trust on their own terms and also contributed a major chunk of donation to single trust whereas in the instant case the Appellant has not donated all funds available to any single trust, but actually applied the funds for charitable activities by providing financial aid to needy and helps the public at large and that the Appellant has not relinquished its function and is acting as a charitable institution working for the welfare of the people from all walks of the society.

9. From the above, it is evident that in the present case the main aim and object was of course to implement the CSR activities of the Financing/parental company, but surely *per se* to the benefit of general public at

large. The observations given by Worthy CIT(E) are vague in the view of the judgment of Nanak Chand Jain Charitable Trust (Supra) that at the time of granting the registration under Section 12AA of the Income Tax Act, 1961, the CIT (exemption) need not go beyond two parameters that the object being charitable in nature and activities being genuine. All other activities are the matters to be taken care of by the Assessing Officer at the time of assessment for granted exemption under section 11 r.w.s 13 of the Act.

10. Again the reason (vi) given by the CIT (E) that it also militates against the legal principal that social enterprises cannot be a direct recipients of money from corporate as it is a profit making Company. This reason by the CIT (E) is not in conformity with any of the provisions of the Income Tax Act. A profit-making Company can grant certain donation to the charitable trust, how can the activities of the trust become not charitable with this act. In our view, the fact that the CSR expenditure are not allowable expenditure under section 37 of the Act is relevant only for the taxability of the company incurring such expenditure. From the perception of the assessee trust the amount received as donation whether will be eligible for

exemption under section 11 depends on the application of such fund for the charitable activities by the trust only. Thus, the CIT(E) is empowered to satisfy himself only about two factors i.e. the objects of the trust and the genuineness of the activities of the trust or institution and such powers does not extend to the eligibility of the trust/institution for exemption u/s 11 r.w.s 13 of the Income Tax Act, 1961 which falls in the domain of the AO.

11. In our view, in the present case the Ld. CIT(E) has neither pointed out any defect in the objects of the trust nor doubted the activities carried out to achieve these objects, and therefore, the application for registration cannot be rejected. Our view gets support from the decision in the cases of CIT vs. IILM Foundation Academy (Supra) and Cyberstar Educational Society vs. CIT (Exemptions) (Supra).

12. In the above view, we accept the grievance of the appellant Trust genuine as the impugned order of the CIT Exemption is infirm and perverse to the facts on record and as such is bad in law. Accordingly, the CIT(E) is directed to grant registration to the appellant Trust u/s 12AA of the Act from the date of application.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12.09.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

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

GP/Sr.PS

Copy of the order forwarded to:

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

True Copy
By Order