

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH - NEW DELHI
Before Sh. G.D. Agrawal V.P. and Sh. C.M. Garg, J.M
ITA No. 877/DEL/2014

Shree Balaji Educational Trust C/o Anil Ashok & associates, CA 1 st Floor Verma Sweets, Arya Nagar, Jwalapur Haridwar	VS	CIT Dehradun
APPELLANT		RESPONDENT
PAN No. AALTS2383M		

Appellant by: Sh. Piyush Kaushik, Adv.

Respondent by: Sh. Munish Kumar, CIT DR

Date of final hearing : 08/02/2016

Date of pronouncement : 18.03.2016

ORDER

Per C.M. Garg, JM

1. This appeal by the applicant trust has been filed against the order of the CIT, Dehradun dated 17.10.2013 by which the application of the appellant seeking registration under section 12A (a) of the Income Tax Act 1961 (for short the Act) has been rejected.

The grounds raised by the assessee read as under:

1. *“That on the facts and circumstances of the case and in law, the CIT has grossly erred in denying registration to the assessee trust U/s 12A (a) of the Income Tax Act, 1961 (‘the Act’)*
2. *That on the facts and circumstances of the case and in the Law, the CIT has grossly erred in failing to appreciate that the assessee trust has been incorporated essentially for the purpose of providing education which is per se a charitable purpose and that the entire income is wholly and exclusively dedicated for the purpose of trust without even a single rupee distribution on account of profits to its members clearly entitling the assessee trust for registration in accordance with the decision of Hon’ble Supreme Court in the*

case of American Hotel & Lodging Educational Institute Vs CBDT 301 ITR 86 SC & other decisions, inter-alia, from Hon'ble Supreme Court."

2. We have heard arguments of both the sides and carefully perused the relevant materials placed before us on record. The Ld counsel of the assessee submitted that the assessee trust has been incorporated with the main objective of providing education, enter-alia, to provide education in respect of B.Ed. course under object No. 1 of the trust deed para 4 and as per vide para 5 of the trust deed it is specifically provided that the money of the trust shall be used in accordance with the provisions of the Act and the entire receipts/income shall be dedicated for the objectives of the trust as mentioned in para 4 of the trust deed. The Ld Counsel further pointed out that as per para 17 of the trust deed it is also provide that the property of the trust shall not be used for the private benefit of any trustee or his relatives or his friends therefore the activities of the applicant trust and its application of funds clearly established that the main object of the applicant trust is charitable in nature. The Ld Counsel also pointed out that from the financial results and audited accounts of the trust it is clear that the entire surplus is transferred to the capital fund and not even a single rupee is given to the trustees as profit or dividend.

3. The Ld Counsel further pointed out that the CIT(E) has framed two reasons for refusing to grant registration under section 12A of the Act viz. first that the education should be given free of cost to some needy students and second the assessee is expending and increasing its receipts therefore not entitled for registration. The Ld Counsel of the assessee vehemently pointed out that as per amended provision of section 2(15) of the Act the expression charitable purpose includes relief to the poor, education, yoga, medical relief, preservation of environment & monuments and advancement of other object of the general public utility and these independent terms used by the legislation have independent meaning and education per-se is charitable purpose. The Ld Counsel of the assessee has placed reliance on the decision of ITAT Delhi in the case of Shavak Shiksha Simiti Vs CIT 104 TTJ 127 (Delhi) and submitted that there is no dispute that education per-se as a charitable purpose just like relief to poor or medical relief.

4. The Ld Counsel further placing reliance on the decisions of Honøble Supreme Court in the case of Addl. CIT VS. Surat Art Silk Cloth Manufactures Association [1980 121 ITR I (SC), Aditanar Educational Institution Vs. Addl. CIT [1997 224 ITR 310 (SC) and American Hotel and Lodging Association Educational Institute Vs. CBDT [2008 301 ITR 86 (SC) submitted it is clear that when a surplus is ploughed for educational purposes the educational institution exists solely for educational purposes and not for purposes of profit. The Ld Counsel lastly pointed out that recently the Honøble Supreme Court in its decision in the case of Queenø Educational Society Vs CIT (2015) 372 ITR 699 (SC) reversing the decision of Uttarakhand High Court in the case of CIT Vs Queens Educational Society and other similar decision as relied by CIT in the impugned order has clearly held that where an educational institution carries on activity of education primarily for educating persons the fact that it does makes a surplus does not lead to a conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit. Reversing the decision of Uttarakhand High Court it has been held by Supreme Court in this decision that when a surplus is ploughed back for educational purposes the educational institution exists solely for educational purposes and not for the purposes of profit.

5. Replying to the above the Ld DR supported the impugned order and submitted that in the case of National Institute of Aeronautical Engineering Educational Society Vs. CIT (2009) 184 Taxman 264 (Uttarakhand) it was observed that charityø is the soul of the expression ðcharitable purposeø as defined in section 2(15) of the I.T.Act. Mere trade or commerce in the name of education cannot be said to be a charitable. No other argument was submitted by the Ld DR.

6. Placing rejoinder to the above submissions of the revenue the Ld Counsel again placed his reliance on the recent decision of Honøble Apex Court in the case of Queens Educational Society Vs CIT (Supra) and submitted that the Honøble Supreme Court reversing the decision of Honøble Uttarakhand High Court has held that when a surplus is ploughed back for educational purposes then it cannot be said that the institution exist for profit motive. The Ld Counsel pointed out that the CIT(E) has not brought out any

allegation to show that the surplus of receipt was misused or used other than the educational purposes and against the object of the society.

7. On careful consideration of above rival submissions and perusal of the impugned order and relevant record we note that the CIT(E) has not brought out any allegation to show that the receipt/income of the assessee's trust was not used for the educational purposes and the same was used for other purposes beyond the objectives of the applicant trust. It is also pertinent to note that the reasons recorded by the CIT(E) that the education should be given free of cost to some needy students and applicant is expending and increasing its receipts is not a criteria or relevant fact for gathering satisfaction as required under section 12A of the Act for grant of registration under said provision. The CIT has relied on the decision of Honøble Uttarakhand High Court in the case of CIT VS Queens Educational Society reported as 177 Taxman 321 but we respectfully note that this decision has been reversed by Honøble Supreme Court in the case of Queen Educational Society VS CIT (Supra) wherein their lordship held that when the surpluses of a educational institution has been used for educational purposes then it should be held that the educational institution exists solely for educational purposes. We may pointed out that merely because the applicant trust is increasing its assets and receipts does not ipso- facto established that the applicant trust exists for the purposes of profit and carried out educational activities with a profit motive in the nature of trade commerce or business as provided in the amendment provision of section 2(15) of the Act.

8. At this stage it is relevant to take cognizance of decision/order of ITAT Delhi D Bench in the case of JK Education Samiti Vs CIT, Rohtak dated 20.05.2015 passed in ITA No. 6251/Delhi/2013, as relied by the Ld Counsel of the assessee, wherein it was held thus:

“We have heard rival parties and have gone through the material placed on record. We find that [Section 12AA](#) deals with the procedure for registration which inter alia provides that on an application filed by assessee, the Commissioner of Income Tax will make certain queries as he may deem necessary in this respect and after getting satisfied about the objects of the society/institution and the

genuineness of activities, he shall pass an order in writing registering the institution or on non satisfaction, refusing the registration thereof as the case may be. However, before passing order for refusal of registration, the assessee will be provided reasonable opportunity of being heard. Therefore, from the above provision of law, we find that at the time of registration u/s 12AA, the Commissioner is only required to examine the objects of the society / institution as well as genuineness of activities of the assessee and if he finds that the objects of the society are charitable, and the activities as stated in the object clause of the society are being carried out, then he is bound to grant registration u/s 12AA of the Act. Hon'ble High Court of Uttarakhand as relied upon by Ld. D.R. in the case of CIT VS National Institute of Aeronautics and Education 181 Taxman 205 has held that where the assessee was earning profits by charging hefty fees, the assessee cannot be said to be engaged in charitable activities and was not eligible for registration u/s 12AA of the Act. However, the Hon'ble Supreme Court in the case of Queens' Educational Society Vs CIT 245 CTR 449 has held that mere earning of profit cannot be the reason for not allowing registration under the provisions of [Section 12AA](#). The findings of Hon'ble Supreme Court as contained in para 19 are reproduced below:

"It is clear, therefore, that the Uttarakhand High Court has erred by quoting a non-existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which expressly stated at rulings arising out of the [Income Tax Act](#) would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to [Section 10\(23C\)](#) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of [section 10\(23C\)](#) is to ignore the language of the Sec 'on and to ignore the tests laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case. It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit. In fact, in [S.R.M.C.T.M. Tiruppani Trust v. Commissioner of Income Tax](#), (1998) 2 SCC 584, this Court in the context of benefit claimed under [Section 11](#) of the Act held"

6. Though, the above findings of Hon'ble Supreme Court are with reference to [Section 10\(23C\)\(iiiad\)](#) and not in respect of [Section 11](#) and [12](#) yet the ratio of decision is that mere earning of profit in the course of carrying out charitable activities cannot be a reason for not granting registration u/s 12AA of the Act.

7. Hon'ble Punjab & Haryana High Court in the case of CIT Bhatinda Vs Baba Deep Singh Educational Society vide order dated 13.10.2011 has held that the jurisdiction of the Commissioner at the stage of processing application u/s 12AA of the Act is to examine the genuineness of the objects of the Trust, whether they are genuine and in consonance with the objects of the trust or institution and where education is being imparted as per the rules and the factum of the establishment and running of schools is not disputed, the same was a genuine activity and the enquiry regarding genuineness of the activities cannot be stretched beyond this. The relevant findings of Punjab and Haryana High Court are reproduced as under:

"2. The respondent-society applied for registration under [Section 12AA](#) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on 31.3.2009. The said application was declined by the Commissioner of Income Tax, Bathinda (for short "the CIT") vide order dated 25.9.2009. The CIT came to the conclusion after examining the income and expenditure and the balance sheet for the period ending on 31.3.2006, 31.03.2007 and 31.3.2008 that the society had received donations and the capacity of donors and genuineness of transactions have not been explained. The CIT while noticing that society was running a Polytechnic College further took into consideration that the society was earning profits for the last two year and had claimed exemption under [Section 10\(23C\)](#) of the Act. The reasons to switch over to [Section 11](#) of the Act remained unexplained for claiming exemption under [Section 12AA](#) of the Act and while taking into consideration [Section 2 \(15\)](#) of the Act the CIT came to the conclusion that since the society was charging building fund, development fund, sports fund and transportation costs etc., the same could not be termed as charitable activity by any definition.

3. The society preferred an appeal before the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") which has allowed the appeal of the society and has set aside the order passed by the CIT

and directed that registration applied for by the appellant under [Section 12AA](#) of the Act be granted. The present appeal is directed against the said order and the following questions of law have been formulated by the revenue:-

"1. Whether, in the facts and circumstances of the case, the Id. ITA T was right in law to restrict the powers of the CIT for making the enquiries u/s [12AA\(a\)](#) of the Act despite the fact that the said section provides that the CIT can make such enquiries as he may deem necessary in this behalf.

2. Whether, in the facts and circumstances of the case the Id. ITA T was right in law in granting registration to the assessee Trust when no work of relief to the poor in the field of education was done as per definition of "Charitable Purposes" provided u/s [2\(15\)](#) of the Act."

4. The Tribunal while allowing the appeal has noticed at Memorandum of Association and the objects of the society was to do charitable work, projects and activities relating to education which have not been considered while declining the application under [Section 12AA](#) of the Act. It was further held that the CIT should have only seen the genuineness of the activities of the society and circular NO.11/2008 dated 19.12.2008 was also referred that the provisions of [Section 2\(15\)](#) of the Act are not applicable to a society. Accordingly, it was held that nature and scope at the stage of grant of registration under [Section 12AA](#) of the Act is to only regarding the objects of the society. The Tribunal also distinguished the provisions of [Sections 10\(23C\)](#) and [12AA](#) of the Act and scope of the said sections and held that it was open to the revenue authorities while processing the return of the income of those assesseees to examine their claim under [Sections 11](#) and [13](#) of the Act and give such treatment to those societies as warranted by the facts of the case. The power of the revenue authorities to cancel registration under [Section 12AA \(3\)](#) of the Act was also taken into consideration on the ground that same can be resorted to if the Commissioner is satisfied that the activity of such society or institution are not genuine or are not being carried out in accordance with the objects of the society/institution.

5. The power of the CIT regarding the scope of [Section 12AA](#) of the Act has been considered by this Court in the order dated 5.10.2011 passed in CIT Vs. Surya

Educational & Charitable Trust [2011] 203 Taxman 53/15 taxmann.com 123 (Punj. & Har.) and it has been held that Section 12AA of the Act, requires satisfaction in respect of the genuineness of the activities of the Trust, which includes the activities which the Trust was undertaking at present and also which it may contemplate to undertake. The insertion of Sub Section 3 to section 12AA of the Act regarding the powers of the Commissioner to cancel the registration if the activities of the trust are not carried out in accordance with such objects was also noticed.

6. The Allahabad High Court in CIT Vs. Red Rose School [2007] 163 Taxman 19 has held that the jurisdiction of the Commissioner at the stage of processing application under Section 12AA of the Act is limited regarding whether the activities are genuine and in consonance with the objects of the trust or institution and where education is being imparted as per the rules and the factum of the establishment and running of schools is not disputed the same was a genuine activity and the enquiry regarding genuineness of the activities cannot be stretched beyond this.

7. In view of above facts and circumstances, it would be clear that respondent-society which was admittedly running a Polytechnic college and the activities were interwoven for furthering the projects and activities pertaining to education, the Tribunal rightly directed that registration should be granted to the respondent- society with the rider that the same could always be cancelled if it came to the notice of the CIT that the society was not carrying on the activities as per its objects. The Commissioner while processing the application under Section' 12AA of the Act was not to act as an Assessing Authority and thus, the Tribunal has rightly allowed the appeal filed by the society In the facts and circumstances of the present case.

Accordingly, no substantial question of law as contended in the present appeal arises for determination by this Court and the order dated 31.3.2010 passed by the Tribunal is upheld. Consequently, the appeal is dismissed."

8. Similarly, Hon'ble Delhi High Court in the case of CIT Vs O.P.Jindal Global University, I.T.A. No. 190/2011 and 285/2012 dated 2.5.2013, under similar circumstances, has held as under:

"Therefore, the object of Section 12AA of the Act, is to examine the genuineness of the objects of the Trust, but not the income of the Trust for charitable or religious purposes. The stage for application of income is yet to arrive i.e. when such Trusts or institution files its return. Therefore, we find that the judgement referred to by the Learned Counsel for the appellants are not applicable to the facts of the present case arising out of the question of registration of the Trust and not of assessment."

9. It is an undisputed fact that assessee is running educational institution as is apparent from the assessment order of earlier years placed at paper book pages 124-126 and moreover the object clause as placed in paper book pages 3-14 suggests that assessee is running school for educational purposes. The argument of Ld. D.R. that original constitution needs to be examined with respect to objects clause does not hold much force as A.O. in assessment orders of earlier years (as placed in paper book pages 124-126) has noted that society was running a school. In view of above facts and circumstances and in view of the judgements as noted above, we direct the Commissioner to allow registration u/s 12AA of the Act. The A.O. during assessment proceedings will however be entitled to examine the books of accounts of assessee with a view to examine any violation of the Act and can disallow exemption u/s 11 if anything adverse is found.

10. In view of above, appeal filed by assessee is allowed."

9. On the basis of forgoing discussion we reach to a fortified conclusion that the CIT dismissed application of the assessee for grant of registration under section 12A of the Act by recording incorrect and irrelevant facts and circumstances and the assessee successfully established that it was created for the charitable purposes including education activity and it used its funds for the purpose of educational activities and therefore the applicant trust is eligible for registration under section 12A of the Act.

10. It is relevant to mention that grant of registration under section 12A of the Act does not automatically make eligible the applicant for exemption under section 11 and other relevant provisions of the Act. During the assessment proceedings while considering such claim of assessee the AO is fully empowered to examine and verify

these facts that whether the assessee/applicant has applied its receipts towards its charitable objects and the AO is also empowered to verify as to whether the applicant assessee is conducting any activity in the name of charitable which is actually in the nature of trade commerce or business. These sovereign powers of the tax authorities are perpetual which cannot be taken away only by grant of registration under section 12A of the Act. It is also relevant to mention that the grant of registration under section 12A of the Act merely a pre-qualification for claiming exemption under section 11 and other relevant provisions of the Act, which should be granted by recording satisfaction as required under the said provision.

11. Finally, we hold that the CIT dismissed application for registration without any justified reason and by considering incorrect and irrelevant facts and the Id. CIT(A) has not brought any adverse finding on record to show that he objects of the Trust are not charitable or non genuine. At the same time, we note that the applicant successfully established that it was created with charitable objects and purposes, activities are genuine and in consonance with the charitable objects and all receipts/income surplus is being used for education purposes. Therefore, we set aside the impugned order and thus conclusion of the CIT is demolished. Consequently, the CIT is directed to grant registration under section 12A of the Act to the applicant trust.

6. In the result, appeal of the assessee is allowed in the manner as indicated above.
Order is pronounced in the open court on 18.03.2016.

Sd/-
(G. D. Agrawal)
Vice President

Sd/-
(C.M Garg)
Judicial Member

Dated : 18/03/2016

*Res. Desktop

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT