

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, 'A' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 827/CHD/2016**  
Assessment year : 2016-17 onwards  
(U/S 12AA)

ACE Vision Educational &  
Charitable Trust,  
B-12/375, Club Road,  
Sangrur-148001 (Punjab)

Vs. The CIT(Exemption),  
Chandigarh

(Appellant)

(Respondent)

Appellant by : S/Sh. Aman Parti &  
Deepak Jain

Respondent by : Sh. Manjit Singh, Sr. DR

Date of Hearing : 06.06.2018

Date of Pronouncement : 08.06.2018

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 29.04.2016 of the Commissioner of Income Tax (Exemptions), Chandigarh [hereinafter referred to as 'CIT(E)'], whereby, he has rejected the application of the assessee seeking registration u/s 12AA of the Income-tax Act, 1961 (in short 'the Act').

2. The brief facts of the case are that the assessee Trust filed an application on 8.10.2015 seeking registration u/s 12AA of the Act . It was submitted that the object of the assessee trust was to provide education, medical and other facilities at large to the public without

any distinction of caste or creed on a non-profit basis. That the assessee has started a school namely Cambridge International School and the assessee, therefore, is providing and carrying out educational activities which falls within the definition of Charitable purposes as provided u/s 2(15) of the Income Tax Act. The Ld. CIT(E), however, observed that so far as no activity had been carried out by the applicant-trust in respect of its other stated objects. That running of the school was only object that was intended to be pursued by the applicant-trust. The Ld. CIT(E) examined the trust deed and found that the composition of the trust was restricted to the husband and wife who were permanent trustees. They had an unhindered power in respect of appointing and removal of other trustees. The Ld. CIT (E) further observed that even though the citations quoted to exemplify that these restrictive arrangement do not take away the charitable character, lack of any other representative in the trust either from the society / area the school was purported to serve or from amongst the elected representative from the area or the target clientele of the school etc., are pointers towards strict control over the running of school. The Ld. CIT(E) further observed that the applicant had not cited even a solitary example in respect of subsidized education being imparted to the needy or freeship provided to the deserving poor or even adhering to norms under the Right to Education Act.

He further observed that applicant-trust had sought registration u/s 12AA of the Ac, however, more relevant provision in case of educational institution was that of section 10(23C) (iiiad) and 10(23C)(vi). He observed that the requirement under the provisions

of section 10(23C)(iiiad) and 10(23C)(vi) was that the trust should exist solely for educational purpose and not for profits. However, the option exercised by the assessee for registration u/s 12AA showed that the applicant trust was not meant solely for charitable purposes rather profit element was involved. He further observed that trustees also run several other institutions under the aegis of other trusts. That it would have been logical if the institutions were run under the aegis of a singular society. He finally concluded that the arrangement of the composition of the society had been kept in such a manner that two trustees were empowered to control the entire working of the society and it was difficult to preclude the possibility of large scale activities that did not ensure to the benefit of general public. The possibility of large scale profit making in the current set up was also not precluded. He further observed that in the absence of concrete examples being cited by the applicant that demonstrate its altruistic intent, the genuineness of the activities of the society did not get corroborated. He, therefore, rejected the application of the assessee moved u/s 12AA of the Act.

3. Being aggrieved from the above rejection of the application by the CIT(E), the applicant trust has come in appeal before us.

4. We have heard the rival contentions and have also gone through the records. The Ld. Counsel for the assessee has submitted that assessee is a public charitable trust and is carrying educational activities which falls within the definition of charitable activity as provided u/s 2(15) of the Act. He has further submitted that the trust

deed explicit that strict conditions have been imposed for restricting any of the trustees from taking any personal benefit from trust property. That mere fact that both the trustees are from the same family will not change the character of the trust as long as the objects and other terms are clearly defining the trust as a public charitable trust. That after incorporation, the trust has moved towards achievement of its charitable objectives and has started to establish a school in pursuance to its object of education. That the trustees have leased out their personal land in the school for long period of 99 years at a token yearly rent of Rs. 15,000/- per annum only. That a separate managing committee has been constituted with five members including two founder trustees. That well qualified teaching staff have been appointed and that the applicant has already been obtained various statutory approvals, got bank term loan sanctioned and has started the construction. That the primary education has been started in school by April 2016 and a reasonable fee structure has been adopted. The Ld. counsel has further relied upon Circular No. 11 of 2008 dated 19.12.2008 of the CBDT and various other case laws to contend that element of charity / altruism / eleemosynary as perceived in the general meaning of the term is not required in first three limbs of the definition of charitable purposes within the meaning of section 2(15) of the Act. He in this respect has relied on the following case laws:-

- i) PIMS Medical & Educational Charitable Society Vs. CIT-III, Chandigarh [2013] 31 Taxman 371 –ITAT Chandigarh
- ii) Baba Amarnath Educational Society Vs. CIT –III [2012] 18 Taxman 222 – ITAT Chandigarh

- iii) CIT, Faridabad Vs. IILM Foundation Academy [2016] 75 Taxman 215- (P&H High Court)
- iv) Addl .CIT Vs. Surat Art Silk Cloth Manufacturers Association [1979] 2 Taxman 501 (SC)
- v) Meritta Welfare Trust v CIT, Dehradun [2015] 56 Taxman 363 363 ITAT Delhi
- vi) Shri Gian Ganga Vocational & Educational Society Vs. CIT, Rohtak [2013] 35 Taxman 17 – ITAT Delhi

5. The Ld. counsel has further submitted that the Legislature has given an option to the applicant trust either to get it registered u/s 12A of the Act or to claim exemption u/s 10(23C) of the Act and that when two recourses are available to a person under the law, it is for him to choose one or the other or both courses. The Ld. counsel has further submitted that while Section 12A is applicable to all limbs of the charitable activities, whereas section 10(23C) is restricted to education activity only. That though the assessee has started only one activity out of various objects, however, it may start the other activities in near future for which the assessee has rightly applied under the appropriate provisions of section 12AA of the Act.

6. The Ld. DR, on the other hand, has relied on the findings of the CIT(E).

7. We have considered the rival submissions. Admittedly, the object of the assessee trust inter alia includes educational activity and the assessee has proceeded to set up a school in pursuance of its main object of educational activity which is duly included in the definition of charitable purposes as defined u/s 2(15) of the Act.

The Ld. CIT (E) has not pointed out any clause in the trust deed or otherwise which may point out about the distribution of profits or net assets to the members in the case of dissolution of the trust. The Ld. Counsel has invited our attention to clause (9) of the trust deed, which reads as under:-

**“9. Conditions:-**

- a) *The income and property of the trust shall be applied solely towards the promotion of the objectives of the trust as set forth in this Trust Deed and no proportion thereof shall be transferred directly or indirectly to any member / trustee of the Trust.*
  
- b) *No member of the board of Trustee of the Trust shall be entitled to any salaries. No office bearers of the Trust shall draw any salary for their services rendered to the Trust.*
  
- c) *The Trust is required to apply its surplus, if any, for promoting its objectives.*
  
- d) *In case of dissolution or otherwise winding up of this trust all the Assets, interests etc. remaining on the date of dissolution / winding up can only be distributed / donated or handed over to trust / other institution whose objects are similar to those of the present Trust and which enjoys similar recognition u/s 12A or 80G of the Income Ax Act, 1961 as amended from time to time.*

8. A perusal of the above clause reveals that income and property of the trust shall be applied solely towards the promotion of the objectives of the trust and no proportion thereof shall be transferred directly or indirectly to any member / trustee of the trust. The

trustees shall not be entitled to any salaries for their services rendered. The surpluses, if any, will be applied for promoting the objectives of the trust and that in case of dissolution or otherwise winding up of this trust, all the assets of the trust can only be distributed / donated to a trust which enjoys similar recognition u/s 12A or 80G of the Income Tax Act, 1961. The Ld. CIT (E) has not pointed out any violation of the above conditions by the trust so far.

Further, we agree with the contention of the Ld. AR of the assessee that when two recourses are available to a person under the law, it is open for him to choose one. Further, the Ld. AR of the assessee has explained that the claim of exemption u/s 10(23C) is limited only to the educational activity, however, to achieve its various objects, apart from educational activity, it was appropriate that trust be registered u/s 12AA of the Act. So far the objection of the Ld. CIT(E) that the trust is dominated by only two founder members, who were husband and wife which creates doubt about charitable nature of the trust, the Ld. Counsel for the assessee submitted that there is no bar under the Act if the trust is run by only one family for getting registration u/s 12A of the Act. That at the time of granting registration what is to be seen is that if the objects of the trust are charitable in nature and the activities of the same are genuine. The Ld. counsel in this respect that also relied upon decision of the coordinate Chandigarh Bench of the Tribunal in 'M.R. Educational Trust, Vs. CIT' order dated 23.5.2016 in ITA No. 861/Chd/2014 and further decision of the ITAT Delhi Bench of the Tribunal in the case of 'Shanti Devi Educational Trust, Rewari v

CIT' order dated 29.2.2012 passaged in ITA No. 4439/Delhi/2010 and another decision of the Delhi Bench in the case of 'NLB Charitable Trust Vs. CIT' [2010] 38 SOT 291. So far as the objection that the applicant had not furnished any reliable evidence of carrying out its charitable activity of education, the Ld. counsel has submitted that the trustee is its inception stage and has started providing primary education and further that the building of the school has been constructed after taking loan from the bank and for which purpose, the founders of trust have mortgaged their private property. He in this respect has relied upon the Certificate of the Canara Bank placed at page No. 16 of the paper book. Further, reliance has been placed on various cutting of news items placed in paper book showing that the applicant trust has started its activities by way of running a school namely 'Cambridge International School' at Sangrur and these news items have covered the various educational and extra-curricular activities, events organized at the school.

9. We have gone through the aforesaid case laws relied upon by the Ld. Counsel for the assessee and have found that the Coordinate Bench of the Tribunal has ruled that there was not bar under the Act for registration u/s 12AA of the Act even if the trust is run by only one family unless it is not established that the trust is created to run a business in the form of education and claim tax benefits. Admittedly, there exists no material no record to suggest that the activities of the assessee trust are not genuine. The CBDT vide Circular No. 14/2016 has issued certain guidelines relating to grant of approval and claim of exemption u/s 10(23C)(vi), wherein, it has



been provided that there is no provision under the Act which calls for denial of exemption merely on account of extraordinary powers of Managing Trustees to appoint or remove other trustees. The relevant part of which is reproduced as under:-

***‘5. Impact of extraordinary powers of the Managing Trustees to appoint remove or nominate other trustee.***

*5.1 Doubt has been expressed whether extraordinary powers to the Managing Trustees to appoint or remove other trustees and also to nominate their successor affect the nature of charitable activity of the trust and whether in such eventuality , exception can be denied.*

*5.2 There is no provision under the Act which calls for denial of exemption merely on account of appointment or removal of trustees. Although answer to such a situation would normally depend on the factual implication of such arrangement, the same should generally not be a ground for denying exemption unless the nature of activities of the trust or institution get changed or modified or no longer remain to exist ‘solely for educational purpose and got the purposes of profit’. Hence denial of exemption would not be justifiable only on the ground of induction of new trustees or removal of existing ones.”*

10. A perusal of the above, clarification given by CBDT reveals that there is no bar under the Act for denial of exemption merely on account of extraordinary powers of the managing trustee to appoint or remove other trustees and also to nominate their successor and that itself can be a ground for denying exemption unless the nature of

activities of the trust or institution get change or modified or no longer remain to exist. It has been explained that assessee trust has just started its activity and it is at inception stage and at this stage, it is the objects of the society that are to be seen. The quantum of the genuineness of the activity can be examined only after the trust come fully into operation. From the activities as on date, the Ld. CIT(E) has not pointed out that the same are not genuine or in any way against the objects of the society rather it is admitted fact on the file that the assessee society is running a school which falls within the purview of scope of education, which has been declared as charitable purpose as per provisions of section 2(15) of the Act. In view of this, the impugned order of the CIT (E) is hereby set aside and he is directed to grant registration to the Society.

In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the Open Court on

Sd/-

**(B.R.R.KUMAR)**

**ACCOUNTANT MEMBER**

Dated : 08.06.2018

Rkk

*Copy to:*

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*

Sd/-

**(SANJAY GARG)**

**JUDICIAL MEMBER**