

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

**C.M. No.20330-CII of 2010 in/and  
I.T.A. No.283 of 2010 (O&M)  
Date of decision: 27.8.2010**

**Commissioner of Income Tax.**

-----Appellant.

Vs.

**M/s Aggarwal Sabha Maharaja Aggarsain Bhawan, Rohtak.**

-----Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present:- Mr. Aman Bansal, Advocate  
for the appellant.

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**ADARSH KUMAR GOEL, J.**

**C.M. No.20330-CII of 2010:**

Heard.

Order dated 2.8.2010, dismissing the appeal in default  
is recalled.

**I.T.A. No.283 of 2010:**

1. This appeal has been preferred by the assessee under Section 260-A of the Income Tax Act, 1961 (for short, "the Act") against the order dated 29.5.2009 in I.T.A. No.5009/DEL/2007 passed by the Income Tax Appellate Tribunal, New Delhi, proposing to raise following substantial questions of law:-

- “i) Whether the Hon’ble Tribunal was justified in directing the Commissioner of Income tax to grant registration to the assessee society when the conditions as to registration of trust etc. as laid down under Section 12A of the Income Tax Act (before it was amended w.e.f. 1.6.2007) were not complied with?
- ii) Whether the Hon’ble ITAT was justified in directing the Commissioner of Income Tax to allow registration when the requirements under Section 12AA(1)(a) were not complied with by the applicant before the CIT?
- iii) Whether the Hon’ble ITAT was right in restoring the matter of the condonation of delay to the file of the CIT when the applicant had made no such request before the CIT before his passing order under Section 12 AA of the Income Tax Act?
- iv) Whether the Hon’ble ITAT erred in law while holding that the society is existing solely for education and not for the purposes of profit inspite of the fact that it was having many objects at article 4(a), (b), (c), (d), (e), (f), (g) other than the minor object of opening and running educational institutions (vide article 4(d) and that it has been earning systematic profit year to year under an express provision in Memorandum of Association for earning profit vide article 5(c) thereof?
- v) Whether the Hon’ble Tribunal was justified in directing to allow the registration when the society is nominally public but practically private concern for the rich?

2. The assessee filed application under Section 12A(1) (a) of the Act seeking its registration under Section 12AA of the Act, as a charitable society. The Commissioner of Income Tax rejected the application on the ground that the same was filed 18 years after its establishment and requisite audited accounts were not filed; the society was established for benefit of only a particular community; the society was earning profits and its objects included carrying on activity which may yield profit; level of fee charged by it was high. On appeal, the Tribunal reversed the view taken by the Commissioner and held that in assessment order dated 27.11.2008 for the assessment year 2006-07, income of the assessee was held to be exempted under Section 10(23C) (iiiad) of the Act. In support of the said decision, the Assessing Officer held that the society was doing charitable activities. It was running a Senior Secondary School affiliated to CBSE. It was maintaining accounts. In view of findings recorded by the Assessing officer which was duly accepted by the department, the finding recorded by the Commissioner was contradictory. Mere fact that the assessee had certain surplus income from of its charitable activities, was not enough to hold that the society was not charitable. As regards the society being only for a particular community, it was held that nonetheless the society was for object of general public utility under Section 2(15) of the Act under which the objects beneficial to a section of public were also covered. Reliance was placed on judgment of the Hon'ble

Supreme Court in *Ahmedabad Rana Caste Association v. CIT* (1971) 82 ITR 704. It was further observed that there was nothing to show that the objects of the society were not genuine and at the stage of registration, it could not be presumed that the income will not be spent for charitable purposes. It was further held that explanation of the assessee for condonation of delay was required to be considered on merits, after giving opportunity of hearing to the assessee. For this purpose, the matter was restored back to the Commissioner.

3. We have heard learned counsel for the revenue.

4. It is clear from the findings recorded by the Tribunal that for the earlier assessment year 2006-07, the society was held to be exempted under Section 10(23C)(iiiad) after considering the merits of the activities of the society. The Tribunal, after correctly appreciating the legal position, held that activities of the society were of general public utility under Section 2(15) of the Act. This, finding is not shown in any manner to be erroneous. Once that is so, questions of law proposed cannot be held to be substantial questions of law.

5. The appeal is dismissed.

**(ADARSH KUMAR GOEL)  
JUDGE**

**August 27, 2010  
MITTAL )  
ashwani**

**( AJAY KUMAR  
JUDGE**