

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 40 of 2006

Commissioner of Income Tax
Dehradun.

.....Appellant.

Versus

National Institute of Aeronautical
Engineering Educational Society
Nanda Ki Chowki, Prem Nagar
Dehradun.

.....Respondent.

Shri Pitamber Maulekhi, Advocate for the appellant.
None for the respondent.

Coram:**Hon'ble Prafulla C. Pant, J.**
Hon'ble B.S. Verma, J.

Oral:-Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 260-A of Income Tax Act, 1961 (herein after referred as the Act), is directed against the order dated 12.08.2005, passed by Income Tax Appellate Tribunal, Delhi Bench "D" New Delhi, whereby ITA No. 4278/Del/2004, preferred by the assessee/respondent-National Institute of Aeronautical Engineering Educational Society, was allowed against the order dated 14.09.2004, passed by Commissioner of Income Tax,

Dehradun, under Section 12AA (1) (b) (ii) of Income Tax Act, 1961.

2. Heard learned counsel for the appellant. None appeared on behalf of the respondent/assessee even after being sufficiently served with the notices. Affidavit of service is on record.

3. Question of law involved in this appeal is as under:-

Whether the Income Tax Appellate Tribunal has erred in law in holding that assessee carried on activity for charitable purpose in terms of Section 2(15) and directing Commissioner of Income Tax to grant registration under Section 12-AA to the assessee society?

4. Brief facts of the case are that assessee/respondent society was registered on 24.05.1994, with the Assistant Registrar, Firms, Societies and Chits, Dehradun. Said society moved an application under Section 12 AA of the Act before Commissioner of Income Tax, Dehradun (for short CIT), for grant of registration under Section 12 AA (1)(b)(i) in prescribed Form 10 A on 07.06.2004. The CIT

examined the copies of the accounts of income and expenditure for the financial year 2000-2001, 2001-2002 and 2002-2003 and concluded that assessee society is not carrying any charitable activity within the meaning of Section 2(15) of the Act, as it was in a profit making business. Consequently, application for registration under Section 12 AA of the Act was rejected. Aggrieved by said order, the assessee preferred ITA No. 4278/Del/2004, before Income Tax Appellate Tribunal (for short ITAT), which was allowed vide impugned order dated 12.08.2005, passed by the tribunal. Hence this appeal.

5. Before further discussions, we think it just and proper to mention the relevant provision of law applicable to the case. Section 2(15) of the Act, reads as under:-

“Charitable purpose” includes relief of the poor, education, medical relief and advancement of any other object of general public utility.

In the aforesaid definition of the charitable purpose, expression “education” is not qualified. That being so, any society having its object to impart education can be said to have a charitable purpose as per the definition of the

aforesaid expression in the Act as on date. But for the purposes of this case, this definition is to be read with reference to context of 12AA of the Act.

6. Section 12 AA of the Act provides procedure for registration. Clause (a) of subsection (1) of Section 12 AA, empowers the CIT to call for such documents or information from the trust or institution, as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institute and may also make such inquiries, as he may deem necessary in this behalf. Said provision in Section 12AA makes it clear that the CIT is not supposed to allow the registration with blind eyes. Order passed by CIT, shows that it has considered the income and expenditure account of the society for the financial year 2000-2001, 2001-2002 and 2002-2003, and concluded that the society/respondent was not carrying any charitable activity as the dominant object was to earn profits under the garb of “education”. The CIT has further observed that the Society is charging substantial fee from the students and making huge profits. Referring to the case of MCD Vs. Children Book Trust (1992) 3 SCC Pg.

390, the CIT has refused the registration. The order passed by CIT on 14.09.2004, further discloses that the surplus has been transferred to the capital fund of society. It has been further clarified in the finding of CIT that no expenditure by the society is made for the charitable purpose.

7. We agree with the argument advanced on behalf of the appellant that mere imparting education for primary purpose of earning profits cannot be said to be charitable activity as interpreted by the Apex Court in MCD Vs. Children Book Trust (1992) 3 SCC Pg. 390, we are unable to agree with the ITAT that since word "education" is not qualified in Section 2(15) of the Act, as such, every application received by a society, who is engaged in the business of imparting "education" is bound to be registered under Section 12 AA. If that view is accepted in that case, CIT will be failing in its duty to comply the provision of law contained in clause (a) of sub-section (1) of Section 12 AA of the Act. Question of law stands answered accordingly. In expression "charitable purpose" charity is soul of the expression. Mere

trade and commerce in education cannot be said to be a charitable purpose.

8. For the reasons as discussed above, the appeal is allowed. The impugned order dated 12.08.2005, passed by ITAT Delhi Bench "D", New Delhi, in ITA No. 4278/Del/2004, is hereby set aside. Order dated 14.09.2004, passed by CIT, Dehradun, is restored.

(B.S. Verma, J.) (Prafulla C. Pant, J.)

Dt:12.06.2009

Sweta

