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

ITA-253-2011 (O&M)

Date of Decision:09.09.2024

THE COMMISSIONER OF INCOME TAX, PATIALA Appellant (s)

V/s.

YADVINDRA PUBLIC SCHOOL ASSOCIATION, PATIALA

.....Respondent(s)

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**
 HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Amanpreet (A.P.) Singh, Senior Standing Counsel,
 for the appellant-Income Tax Department.

Mr. Abhinav Narang, Advocate for the respondent.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Present appeal has been preferred under Section 260A of the Income Tax Act, 1961 against the ITAT order dated 28.02.2011, passed in ITA No. 1094/Chd/20, whereby the appeal was preferred by the respondent-Yadvindra Public School Association, Patiala.

2. The respondent/assessee had challenged the refusal of registration of the association under section 12AA of the Act, passed by CIT, Patiala vide order dated 25.09.2009. The Commissioner of Income Tax observed that the society had not been carrying on with any charitable activity as the society was not imparting education as a charitable purpose within the meaning of Section 2 (15) of the Act. The society had already been granted approval under Section 10 (23)(vi) of the Act but mere approval does not automatically entitle the assessee to registration under section 12AA of the Act. Furthermore, it was for the assessee to show before the authorities that the society was carrying out charitable activities. The CIT relied upon



the judgment passed by the Supreme Court in **Municipal Corporation Delhi v. Children Book Trust** ; (1992) 3 SCC 390 wherein, it was held that there is no charity unless there is an element of subsidy or alimonies for the poor and needy. Whereas, in the present case it is apparent from the accounts and net surplus generated by the society, that there is no element of subsidy or alimony involved.

3. The Tribunal in appeal set aside the order of the CIT(A) relying on the judgment passed in **Baba Gandha Singh Education Trust v. CIT Patiala**, ITA No.357/Chandi/2010 & ITA No. 803/Chandi/2009. The relevant extract of the said judgment is reproduced as under:-

"The observations of Hon'ble Supreme Court quoted from para 82 of the aforesaid judgment to the effect that - "what we want to stress is where a society or body is making systematic profits, even though that profit is utilized only for charitable purposes, yet it cannot be said that it could claim exemption" deserves to be read in conjunction with the express provisions of the third proviso to S. 10(23)(vi) of the Act which stipulate the retention of 15 per cent of the profits of the total income after quantification thereof, of the educational institution earned in each year provided 85 per cent of the total income is spent for the objects of the society. Infact, the judgment rendered by Hon'ble the Supreme Court in Children Book Trust case (supra) on the facts and in the circumstances of the case of the petitioner-society herein, is not at all applicable by virtue of the applicability of the



mechanism contained in the third proviso to S. 10(23(vi) of the Act. It may be clarified that Hon'ble the Supreme Court had decided the case of Children Book Trust (supra) under the Delhi Municipal corporation Act, 1957 and had not dealt with the provisions of S. 10(23 (vi) of the Act which are a complete code in itself, interalia providing a mechanism for the utilization of surpluses and prior to the utilization determination of the existence of the educational institution solely for educational purposes and not for making profit."

4. This Court in **Commissioner of Income Tax, Patiala v. Baba Banda Singh Bahadur Education Trust, Fatehgarh Sahib;** ITA No. 94 of 2011 alongwith **Commissioner of Income-Tax, Patiala v. Young Scholar's Educational Society, Barnala,** ITA No. 21 of 2011, while dismissing the Appeal of the revenue and upholding order of ITAT further observed that the Commissioner was required to examine the aforesaid factors while granting approval of registration under Section 10 (23C) of the Act and the same factors would also be required to be considered for the cancellation of registration already granted to the educational institutions, while examining the case under Section 12AA of the Act, of course, taking into consideration the conditions provided therein also.

5. The Supreme Court in **Ananda Social and Educational Trust v. Commissioner of Income Tax and Anr.,** 2020 (17) SCC 254 laid down the scope of Section 12AA and observed that for the purpose of allowing registration under Section 12AA of the Income Tax Act ,1961, the authority shall examine whether the object of the society is of charitable nature or not,



and whether the activities being performed by the society are genuine. The relevant para is quoted below:-

“12. Since section 12AA pertains to the registration of the trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the trust are genuinely charitable in nature and whether the activities which the trust proposed to carry on are genuine in the sense that they are in line with the objects of the trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the trust are not genuine being not in accordance with the objects of the trust. Similarly, the situation would be different where the trust has before applying for registration been found to have undertaken activities contrary to the objects of the trust.”

6. Thus, at this stage of registration, the Commissioner of Income Tax is required to examine the objectives of the trust and genuineness of its activities.

7. In the case of New Noble Educational Society vs Chief Commissioner of Income-Tax and another; (2022) 448 ITR 594 and



Pinegrove International Chairtable Trust vs Union of India and

others(2010) 327 ITR (P&H), this Court has held that the powers available to the authorities to cancel the registration granted under Section 12AA(3) of the Act was only prospective and could not be applied retrospectively. The relevant extract the order is reproduced as under:-

“15. XXXX XXXX

16. While answering questions of law nos. 1, 3 and 4 (supra), we find that essentially the ITAT has held the order passed by the CIT cancelling the registration on 02.03.2010 to be without jurisdiction and without authority in law. It has stated so as the amendment was made in Section 12AA(3) of the Act by the Finance Act of 2010 empowering the Commissioner to cancel the registration granted under Section 12A of the Act where it reaches to a conclusion that the activities of the such trust are not genuine and not being carried out in accordance with the objects of the trust or institution. The power was, therefore, not available as on the day when the CIT cancelled the registration i.e. on 02.03.2010.

17. XXXX XXXX

18. Thus, we find that the facts were almost similar to the facts of the present case as in the aforesaid case Industrial Infrastructure Development Corporation (Gwalior) M.P. Limited's case (supra), the Commission had cancelled the registration under Section 12A of the Act dated 13.04.1991 by its order dated 29.04.2002 and on 29.04.2002 the Commissioner was not empowered to cancel such registration. In view thereof, the questions of law no. 1, 3 and 4 are answered in favour of the



assessee on the basis of judgment in Commissioner of Income-Tax, Gwalior (supra). ”

8. In the present case, we find that the institute has been able to satisfy that it has already been registered under Section 10 (23) (vi) to be an educational institute and Section 12AA pertains to registration of the trust. Since the respondent institute is a duly registered educational trust and whatever earnings it receives are also utilized for the purpose of advancement of education, the institution could not have been denied the benefit of Section 12AA as mentioned in Ananda Social Educational Trust's case (supra).

9. We, therefore, do not find any error committed by the Income Tax Appellate Tribunal holding the respondent entitled for registration under Section 12AA. The appeal is accordingly dismissed. Compliance of the order passed by the ITAT be now done expeditiously.

10. All pending applications also stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

September 9, 2024
Ess Kay/archana

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No