IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.190 of 2014
Reserved on 06.7.2014
Date of decision: 30.07.2015

Alexandra School ....Appellant

Vs.

Commissioner of Income Tax-II, Amritsar ....Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE GURMEET SINGH SANDHAWALIA

Present: Mr. Sunil K. Mukhi, Advocate for the appellant.

Mr. Denesh Goyal, Advocate for the respondents.

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G.S.SANDHAWALIA, J.

The present appeal has been filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") against the order dated 26.04.2013 (Annexure A/1) whereby the Commissioner of Income Tax-II, Amritsar(hereinafter referred to as "the CIT") declined to grant registration under Section 12AA of the Act on the application filed by the appellant. The order dated 26.2.2014 (Annexure A/2) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No.329 (Asr)/2013 for the assessment year 20012-13 upholding the order of the Commissioner is also subject matter of challenge.

The reasoning given by the authorities as per impugned orders is that the appellant had only been created for the benefit of a particular religious community and therefore, under Section 13(1) (a) and (b) of the Act, it was not entitled to the benefit of Sections 11 or 12 for exclusion of the income.

The following substantial question of law thus arises for consideration of this Court:-

> "i) Whether the educational society run by the particular community is debarred for registration under Section 12AA of the Act even if it is carrying out charitable activities which benefit the community at large including persons belonging to other religion?"

The facts as per record would go on to show that the appellant society is registered with the Registrar of Societies under the Societies Registration Act, 1860 since 15.3.1976. On the strength of Memorandum of Association dated 22.3.2002 (Annexure A/4) it filed an application for registration as a charitable institution under Section 12AA of the Act on 30.10.2012. A show cause notice was issued on 21.3.2013 to the appellant that since the main purpose of the association was to run a school catering to Christian community as per its Memorandum of Association, how it was eligible for registration. In the reply dated 25.4.2013 (Annexure A/5), it was brought to the notice of the Commissioner that the school was affiliated with the ICSE Board and did not preach or teach Christianity. There was no period of religion and students were only taught that part of Christianity which made them human and secular. It was clarified that though the school was run by members of Christian society yet it was totally secular and no special emphasis was being given to students of Christian families or Christian staff employed. The percentage of students belonging to the said religion were also very small. The data showing the percentage was also attached with the said reply.

The CIT rejected the said application as noticed vide impugned order dated 26.4.2013(Annexure A/1) on the reasoning that the purpose and objectives of the trust was for the benefit of a particular religious community keeping the provisions of Section 13(1)(b) in mind.

The appeal was rejected by the Tribunal on the ground that the education was to be imparted primarily to the children of the Christian community which is contrary to the law. The main objective of the trust being to provide quality education in a Christian environment is also contrary to the law. Since the administration of the trust was controlled by the persons of a particular community, the order of the CIT was upheld.

In our opinion, the said reasoning is totally unjustified and the Memorandum of Association and the objective of the trust have not been into consideration in a proper perspective. A perusal of the same would go on to show that the purpose of association apart from the imparting of education to the children of a particular religion was also to provide sound education to persons belonging to other communities regardless of caste, creed, colour or distinction of any kind in order to produce enlightened and responsible citizens for the country. The object also further provided that each child was to discover and develop his/her potential as an individual by encouraging enquiry and creativity and to provide a well rounded education and high academic standard and to develop responsible citizenship in the students and to encourage appreciation of national and cultural heritage. The relevant portion of the said Memorandum of Association reads as under:-

> **"PURPOSE**
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> The purpose of this Association is to run and manage the schools called Alexandra Schools, Amritsar for the purpose of imparting, education, primarily to children of Christian Minority Community, for when it was founded that is to provide a sound education on a "Christian" basis to every girl/boy who voluntarily joins the Schools, in Christian atmosphere of love and service to all, regardless of caste, creed, colour or distinction of any kind in order to produce enlightened and responsible citizens for India.
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> **OBJECTIVES**
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> In order to fulfill the above purpose of providing quality education in a Christian environment the Society of the Alexandra Schools, shall have

the following objectives:-

i) To manage and control, though a management committee, the Alexandra Schools, Amritsar as a Diocesan Institution of Diocese of Amritsar in the Church of North India and thereby as a Minority Institution falling under Article 30(i) of Constitution of India.

ii) To present to all the Truth of God and his/her work as revealed in Jesus Christ.

iii) To share this truth and understanding through instruction, personal relationship and the total programme of the schools.

iv) To help each child discover and develop his/her potential as and individual by encouraging enquiry and creativity.

v) To provide a well-rounded education and high academic standard and to develop responsible citizenship in our students.

vi) To encourage appreciation of our national and cultural heritage and to promote national integration.

vii) To promote global understanding and earth consciousness.

viii) To broaden the scope of education by integrating work experience into the academic programmes.

ix) To develop leadership through co-curricular activities.

x) To provide clean, attractive, well-maintained and adequate physical facilities which reflect the above mentioned objectives and concerns."

Under Section 12AA of the Act, the CIT has to call all documents and information from the assessee in order to satisfy himself about the genuineness of activities of the trust and after making such inquiries to pass the said orders. Admittedly in the reply to the show cause notice factum of additional information regarding the percentage of Christian children studying the school had been furnished which has now been appended with the present writ petition wherein the following details have been given:-

Year	Total students	Christian Student	Non-Christian Student
2009-10	914	42	872
2010-11	901	57	844
2011-12	885	72	813

A perusal of the above information supplied would go on to show that less than 10% of the students of a particular community were studying in the last year and for the earlier period, the percentage was even less. In such circumstances, the reasoning given that the appellant was only imparting education to a particular religion, sect or group was not based on any sound footing. The additional information was never controverted and neither discussed. Provisions of Section 12AA of the Act read as under:-

> "Procedure for registration.
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> 12AA. (1) The [*Principal Commissioner*] *or* Commissioner, on receipt of an application for registration of a trust or institution made under clause (*a)*[or clause (*aa*) of sub-section (1)] of section 12A, shall—
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> (*a*) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
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> (*b*) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—
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> (*i*) shall pass an order in writing registering the trust or institution;
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> (*ii*) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :
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> Provided that no order under sub-clause (*ii*) shall be passed unless the applicant has been given a reasonable opportunity of being heard.
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> [(1A) All applications, pending before the **[***Principal Chief Commissioner or***]** Chief Commissioner on which no order has been passed under clause (*b*) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the **[***Principal Commissioner or***]** Commissioner and the **[***Principal Commissioner or***]** Commissioner may proceed with such

applications under that sub-section from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (*b*) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (*a*) [or clause (*aa*) of sub-section (1)] of section 12A.]

[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] and subsequently the **[***Principal Commissioner* or**]** Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]"

A perusal of the above section would go on to show that the Commissioner has to satisfy himself of the objects of the trust and the genuineness of the activities and after giving an opportunity of being heard to the trust or the institution, a refusal can be made to register the trust. Thus, the section gives power to the Commissioner to look into the genuineness of the activities of the trust and to satisfy himself about its activities. Under Section 12A, the provisions of Sections 11 & 12 shall not apply in relation to the income of any trust or institution unless various conditions are fulfilled. The said sections provide that income from property held for charitable purposes shall not be included in the total income of the previous year of the person in receipt of the income.

The objects of the society have already been reproduced above which go on to show that society was to provide sound education to persons regardless of caste, creed, colour or distinction of any kind and help the children to and discover and develop potential as well as individuals by providing a well-rounded education. The charitable purpose under Section 2(15) of the Act provides for relief of the poor pertaining to education and the advancement of any other object of general public utility. The purpose to provide education to the children would fall very much within the charitable purpose and predominant purpose of the appellant has to be seen.

In similar circumstances, the Rajasthan High Court in **Commissioner of Income-Tax Vs. Jodhpur Chartered Accountants Society [2002] 258 ITR 548** while placing reliance upon the judgment of the Apex Court in **Ahmedabad Rana Caste Association Vs. CIT [1971] 82 ITR 704 (SC)** upheld the order of the authorities to grant registration and rejected the argument that the Society was to benefit only a particular set of professionals and it was held that the association would organise seminars, conferences and workshops to educate the people of commercial laws, tax laws, auditing, accounting etc. which was charitable purpose as such.

Recently the Apex Court in **Commissioner of Income Tax Vs. Dawoodi Bohara Jamat (2014) 102 DTR Judgments 360** dismissed the plea of the department wherein it had objected to the registration granted to the said trust. The plea that the trust was mainly for the religious activities of a particular sect was rejected by noticing that there was provision of arranging religious education and to help the needy people for religious activities. It was held that by establishment of Madarsa or institution for imparting religious education, it could not be said that it was only for the benefit of a particular religion as such. Clause whereby it was provided that the help was to be provided to the needy for religious activities would not be sufficient to conclude that it was only purely religious in color and intent of the trust had to be seen and the purpose of religious and charity would overlap. Relevant observations read as under:-

> "36. In certain cases, the activities of the trust may contain elements of both: religious and charitable and thus, both the purposes may be over lapping. More so when the religious activity carried on by a particular section of people would be a charitable activity for or towards other members of the community and also public at large. For example, the practice of optional charity in the form of Khairat or Sadaquah under Mohammadan Law would be covered under both charitable as well as religious purpose. Further, while providing food and fodder to animals especially cow is religious activity for Hindus, it would be charitable in respect to non-Hindus as well. Similarly, service of water to the thirsty would find mention as religious activity in sacred texts and at the same time would qualify as a charitable activity.
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> xxx xxx xxx
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> 40. Further, establishment of Madarsa or institutions to impart religious education to the masses would qualify as a charitable purpose qualifying under the head of education under the provisions of Section 2(15) of the Act. The institutions established to spread religious awareness by means of education though established to promote and further religious thought could not be restricted to religious purposes. The House of Lords in Barralet v. IR, 54 TC 446, has observed that "the study and dissemination of ethical principles and the cultivation of rational religious sentiment" would fall in the category of educational purposes. The Madarsa as a Mohommedan institution of teaching does not confine instruction to only dissipation of religious teachings but also contributes to the holistic education of an individual. Therefore, it cannot be said that the object (d) would embody a restrictive purpose of religious activities only. Similarly, assistance by the respondent-trust to the needy and poor for religious activities would not divest the trust of its altruist character.
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> 41. Therefore, the objects of the trust exhibit the dual tenor of religious and charitable purposes and activities. Section 11 of the Act shelters such trust with composite objects to claim exemption

> from tax as a religious and charitable trust subject to provisions of Section 13. The activities of the trust under such objects would therefore be entitled to exemption accordingly."

Accordingly, keeping in view the above observations and keeping in mind the predominant purpose for which the trust was set up to which there was no denial, the present appeal is allowed by answering the substantial question of law framed above in favour of the appellant and against the revenue.

The respondent authority shall accordingly issue required registration to the appellant herein.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

30.07.2015
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