

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

ITA No. 402 of 2014 (O & M)

Date of decision: 10.03.2015

The Commissioner of Income Tax-II, Jalandhar

....Petitioner(s)

Versus

M/s. Apeejay Education Society, Jalandhar

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Vivek Sethi, Advocate,
for the appellant.

G.S. SANDHAWALIA (J.)

The present judgment shall dispose of two Income Tax Appeals i.e. ITA Nos. 402 and 403 of 2014, as common questions of facts and law are involved in both the appeals. For the purpose of convenience, the facts have been taken from *ITA No. 402 of 2014, Commissioner of Income Tax-II, Jalandhar vs. M/s. Appejay Education Society*.

The appeal by the revenue has been filed under Section 260A of the Income Tax Act, 1961 (in short 'the Act') against the order of the Income Tax Appellate Tribunal, Amritsar Bench passed in ITA No. 228 (ASR)/2013 dated 08.05.2014. The revenue is aggrieved against the order of the Tribunal whereby, the order dated 25.03.2013 passed by the Commissioner of Income Tax-II, Jalandhar withdrawing the registration granted under Section 12AA(3) of the Act to the assessee w.e.f. assessment year 2004-05 was set aside. Accordingly, the following substantial

questions of law are sought to be raised by filing of the present appeals:-

“(i) “Whether on the facts and circumstances of case, the Hon'ble Tribunal was right in law in allowing registration rejected by CIT u/s 12AA(3) of the Income-tax Act, 1961 in view of the activities of the society found non-genuine during the years involved as the funds of the assessee society were being siphoned off by debiting bogus purchase of software?”

(ii) “Whether on the facts and circumstances of case, the Hon'ble Tribunal was right in law in ignoring the fact that the assessee society has taken accommodation entries from M/s. Washington Software Ltd., in the form of bogus bills of computer software and thus the activities of the assessee are not genuine and in accordance with the objects of the society?”

(iii) “Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in law in holding that since the assessee institute is imparting education, it is eligible for registration u/s 12AA of I.T. Act ignoring the fact that while granting registration, the CIT should satisfy himself not only about the objects and main activity of imparting education but also about the genuineness of all the activities of the institution?”

The necessary facts for the decision of the present appeal would go on to show that the assessee-society was granted registration under Section 12AA of the Act vide order dated 13.05.1999 w.e.f. 01.04.1998. Search and seizure operation under Section 132(1) of the Act was conducted by the Directorate of Income Tax (Investigation-II), Mumbai at the premises of one Parag V. Mehta on 22.03.2011. It was accordingly found that table space to various bogus companies had been given who were not transacting any business but were engaged in providing accommodation entries to the

needy persons. One M/s. Washington Softwares Ltd. (M/s. WSL) was being run by Sanjay D. Sonawani, which was a bogus company and the statement of the said person was recorded on 12.05.2011 who also further admitted that he had provided accommodation entries to the assessee through his company. Accordingly, survey operations were also conducted on the business entities of the educational group of the respondent-assessee and the genuineness of purchase of software by the assessee from M/s. WSL was taken into consideration. The bogus bills were found entered in the books of accounts and accordingly, the Commissioner came to the conclusion that the activities of the society were not genuine as per the provisions of Section 13(1)(c) read with Section 13(3) of the Act. The statement of Sh. Sanjay D. Sonawani was thus relied upon and the Commissioner of Income Tax came to the conclusion that an opportunity had been provided to cross examine him and, therefore, the activities of the society were not genuine and its funds were misutilized for many years after the registration was granted and accordingly the registration was withdrawn and cancelled. The basis, thus, being that the funds of the assessee-society were not being utilized for the objects of the society for the past many years.

The matter was taken to the Tribunal by the assessee wherein, it was held that admittedly 21 institutions were engaged in the activities of imparting education to the students under various fields. No finding had been recorded that the institute was not imparting education or not carrying out any activity which was the main object and expenses to the tune of 95.66% of the receipts were also being incurred which was more than 85% as required under Section 11(1) of the Act. The genuineness of the activities of the trust were held to be in consonance with the objects of the

Trust and, therefore, the withdrawal of registration was held to be bad and accordingly set aside.

Counsel for the appellant-department has vehemently argued that it was consistent conduct of the assessee from the year 2003-04 till 2010-11 and, therefore, the Commissioner of Income Tax was well justified in passing the order dated 25.03.2013 which has wrongly been set aside. He accordingly submitted that the substantial question of law would arise that the activities of the society were not genuine and once accommodation entries had been taken from M/s. WSL, therefore, the order of the Tribunal was not justified.

After hearing counsel for the appellant-department, we are not convinced that any substantial question of law would arise and the order of the Tribunal is well justified in the facts and circumstances of the case. Under Section 12AA of the Act, the Commissioner, at the relevant time in the year 1999 had called for all documents and information from the respondent-assessee to satisfy himself about the genuineness of the activities of the institution and after making enquires had passed the order registering the said institution and giving it the benefit under Section 12A of the Act, which made the institution eligible for exemption from the provisions of Sections 11 and 12 of the Act. Under Section 12AA(3) of the Act, the Commissioner was to be satisfied about the activities of the said institution and if they were not genuine and the same were not being carried out in accordance with the objects of the institution he could pass the order cancelling the registration. Admittedly, the respondent-society is running as many as 21 institutes which are spread over the country from Punjab, Haryana and U.P. and also extend to Mumbai. The details of the students

and the list of institutes affiliated with CBSE, AICTE, MDU and PTU would be apparent from the table given below:-

<i>Sr. No.</i>	<i>Name of the School/Higher Institution</i>	<i>Affiliated to/Approved by</i>	<i>No. of students as on today</i>
1	Appeejay School, Sheikh Sarai, New Delhi	CBSE	2680
2	Appeejay School, Saket, New Delhi	CBSE	1306
3	Appeejay School, Pitampura, Delhi	CBSE	2689
4	Appeejay School, Faridabad	CBSE	2656
5	Appeejay Svrn Global School, Faridabad	-	189
6	Appeejay School, NOIDA	CBSE	3950
7	Appeejay International School, Greater Noida	CBSE	493
8	Appeejay School, Nerul, Navi Mumbai	CBSE	2630
9	Appeejay School, Kharghar, Navi Mumbai	CBSE	2028
10	Appeejay School, Charkhi-Dadri	CBSE	639
11	Appeejay School, Mahavir Marg, Jalandhar	CBSE	3309
12	Appeejay School, Tanda Road, Jalandhar	-	220
13	Appeejay School, Hoshiarpur Road, Rama Mandi, Jalandhar	CBSE	391
14	Appeejay School of Management, Dwarka, New Delhi	AICTE approved	340
15	Appeejay Institute of Mass Communication, Dwarka, New Delhi	-	47
16	AIT-School of Computer Science, Greater Noida	AICTE approved	32
17	AIT-School of Management, Greater NOIDA	AICTE approved	276
18	AIT-School of Architecture & Planning, Greater NOIDA	UO Technical University, AICTE approved	332
19	Apeejay College of Engineering, Sohna	MDU, Rohtak	208
20	Apeejay Saraswati College of Girls, Charkhi-Dadri	MDU, Rohtak	1145
21	Apeejay Institute of Management Technical Campus, Jalandhar	PTU, Jalandhar, AICTE approved	744

Thus, it cannot be disputed that the respondent-assessee is engaged in carrying out its objects and the genuineness of the same has

never been doubted. The allegation is regarding the alleged supply of the installation of the software and whether the same was done by M/s. WSL or not. Merely because Sh. Sanjay D. Sonawani had given a statement, the Commissioner as such is not justified in cancelling the registration granted on 13.05.1999 w.e.f. the assessment year 2004-05. The assessee had placed various materials before the Tribunal to show that software modules purchased were installed between 2004 to 2011 and the assessee had incurred as much as 91.71% of the receipts for the assessment year 2004-05. The reliance placed upon the judgment of the Division Bench of the High Court in ***Sanjeevamma Hanumantha Gowda Charitable Trust vs. Director of Income Tax (Exemption), (2006) 285 ITR 37 (Kar)*** is of no avail since the said case pertains to a case where the authorities had denied the registration and it observed that the authorities had not kept in mind the mandatory provisions regarding the application of the income of the Trust and how it had been expended and whether it had been utilized to its charitable and religious purposes. In such circumstances, the orders had been set aside and it had been directed that fresh consideration be made.

In ***Commissioner of Income Tax vs. Red Rose School, (2007) 163 TAXMAN 19 (All)***, it was held that the inquiry regarding the genuineness of the activities have to be seen with regard to the objects of the Trust and whether they were in consonance with the public policy. Only on the ground of mere apprehension, the registration could not be withdrawn. Accordingly, the order of the Tribunal allowing the appeal was upheld. The relevant observations read thus;-

*“19. The objects of the trust can be had from the
bye-laws or the deed of trust, as the case may be and*

unless, of course, the objects of the trust apparently make out that they were not in consonance with the public policy or that they were not the objects of any charitable purpose, registration cannot be refused accordingly on this ground.

20. In regard to the genuineness of the activities of the trust or the institution, whose objects do not run contrary to public policy and are, in fact, related to charitable purposes, the CIT is again empowered to make enquiries as he thinks fit. In case the activities are not genuine and they are not being carried out in accordance with the objects of the trust/society or the institution, of course, the registration can again be refused. But on mere presumptions and on surmises that income derived by the trust or the institution is being misused or that there is some apprehension that the same would not be used in the proper manner and for the purposes relating to any charitable purpose, rejection cannot be made.

21. Section 12AA, which lays down the procedure for registration, does not speak anywhere that the CIT, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit. The language used in the section only requires that activities of the trust or the institution must be genuine, which accordingly would mean, they are in consonance with the objects of the trust/ institution, and are not mere camouflage but are real, pure and sincere, nor against the proposed objects. The profit earning or misuse of the income derived by charitable institution from its charitable activities, may be a ground for refusing exemption only with respect to that part of the income

but cannot be taken to be a synonym to the genuineness of the activities of the trust or the institution.”

Accordingly, keeping in view the peculiar facts and circumstances as noticed above, we are of the opinion that the Commissioner of Income Tax was not justified in passing the impugned order for withdrawing the exemption as admittedly, the respondent-assessee is carrying out educational activities by running a large number of educational institutions all over the country and, therefore, the questions of law sought to be raised do not arise.

Accordingly, both the income tax appeals are dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

10.03.2015
shivani

