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

ITA No. 257 of 2016
Decided on : 04.07.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

. . . Appellant

Versus

M/s. Swami Dayanand Educational Trust, Plot No. 166, Sector 51, Near Artimis Hospital Red Light, Gurgaon (PAN: AAKTS8088E)

. . . Respondent

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**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Denesh Goyal, Sr. Standing Counsel
for the appellant-revenue.

Mr. Deepak Aggarwal, Advocate
for the respondent.

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AVNEESH JHINGAN, J.

1. The Revenue (hereinafter referred to as the 'appellant') has filed the present appeal against the order dated 30.11.2015 of Income Tax Appellate Tribunal, New Delhi (in short, 'the Tribunal') allowing the appeal of the assessee and directing the CIT to grant registration under section 12AA of the Income Tax Act, 1961 (for short 'the Act').

2. According to the appellant following substantial questions of law arise in this appeal :-

(i) Whether the ITAT was right in law while insisting that the Commissioner at the time of granting exemptions, should only look at the objects of the trust, thereby in effect

precluding the other statutory requirement built in Section 12 AA i.e. satisfaction about genuineness of activities.

(ii) *Whether the ITAT was right in law in allowing the appeal of the assessee inspite of the fact that the composition of the trust and several other objects/ by-laws of the trust deed imparted the character of a private trust to the applciant that does not ensure to the benefit of general public.*

(iii) *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in allowing appeal of the assessee by ignoring the fact that the applicant had confessed to the mistakes in the trust deed and also the fact that the onus for proving, in case of beneficial clauses, that it qualifies for exigibility from taxation lies on the applicant trust.*

(iv) *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in placing reliance on the judgment of Hon'ble Karnataka High Court in the case of Sanjeevamma Hanumath Gowda Charitable Trust Vs. DIT (E) 285 ITR 327 (Karnataka) when the Commissioner had not even delved into the issue of application of income derived from trust property for charitable purposes.*

(v) *Whether in the facts and circumstances of the case and in law the Hon'ble ITAT is right in granting registration to the Society and setting aside the order of Commissioner, hence the impugned judgment is perverse.*

3. The assessee is a trust created on 02.08.2011 and duly registered by the name of Swami Dayanand Educational Trust, Gurgaon. The trust is running a school in the name of Elite International School at Village Gawalison, District Jhajjar. An application was filed on 19.03.2014 in Form 10-A for registration under Section 12A(1)(aa) of the Act. The Commissioner of Income Tax (CIT) asked for certain information and

copies of documents. The required information was furnished. The CIT vide order dated 26.09.2014 rejected the application mainly on the ground that applicant trust failed to substantiate its claim and that trust had 21 objects whereas the trust has done activities in respect of only one object that is opening of school.

4. Aggrieved of the order, the assessee filed an appeal. The Tribunal vide order dated 30.11.2015 allowed the appeal holding that there are no allegations that objects of the applicant trust are not charitable or that the fees or the donations are being used for activities beyond the objects of the trust. Hence the present appeal by the appellant-revenue.

5. We have heard learned counsel for the parties.

6. Learned counsel for the revenue contended that the assessee is pursuing only one object out of 21 objects for which the trust was created. He further argued that assessee was not maintaining the record of the meetings of the trust as only loose papers were produced in place of the Proceedings Register.

7. The contentions raised are not well founded. Section 12A lays down the conditions for applicability of Sections 11 and 12. Section 12AA provides the procedure for registration. The statute casts no obligation on the trust that for availing the benefit of Section 12A of the Act, it should pursue all the objects for which the trust came into existence. It is not the case of the department that the school is not being run by the trust and the activity being undertaken by the trust is not charitable in nature.

8. The application of the assessee was rejected on the ground that apart from running the school, the remaining 20 objects are not being pursued. This cannot be a basis in law for rejecting the application.

9. The submission that no proper proceedings of the meetings are being maintained as only loose papers were given to the CIT to show the minutes of the meeting, deserves rejection. Before the Tribunal, it was specifically pleaded by the assessee that all resolutions passed by the Board of Trustees and minutes books were being maintained in the form of computer print outs which are duly sanctioned by the Board of Trustees. The copies of print outs were produced before the CIT. In such circumstances the objection raised by the CIT cannot be sustained.

10. There is another important aspect of the matter. The Tribunal has given a categorical finding that the assessee trust is running a school with a charitable object and there is no allegation that the donations received or fees quoted are being used for purpose other than the aims and objectives of the trust. There is no challenge to the said findings.

11. The relevant portion of the Tribunal order is quoted below:-

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> *12. In the present case, on careful persual of impugned order , we note that the CIT has considered irrelevant factors in rejecting the application of the appellant trust. The objects of the applicant trust as mentioned in Trust deed are charitable in nature and the application for registration cannot be rejected merely because applicant trust undertook only one activity out of 21 objects and activities proposed in the trust deed. So far as the allegation of the CIT that the income derived by the trust either by way of donation or by way of fees from the students is concerned, there is no allegation that the receipts from fees were applied or used by the assessee trust for the purpose other than the aims and objects of the trust. From the impugned order, we further note that it is not the allegation off the CIT that the fees charged from the institutions or donations received have been used for the*

purposes other than running the institution managed by the assessee trust. Admittedly and undisputedly, this fact has been noted by the CIT that the appellant trust is running a school as per its charitable objects and it is not the allegation of the CIT that the activities carried on by the assessee trust are not in consonance with its objects as per trust deed.

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16. On the basis of foregoing discussion, we are of the view that the CIT rejected an application for registration u/s 12AA of the Income Tax Act, 1961 without any justified reason and basis despite the fact that the objects of the applicant trust are charitable and no allegation has been brought out on record by the CIT that the assessee is conducting activities beyond its objects as per trust deed or fees and donations are being used for the activities which are not charitable and beyond the ambit of the objects of the assessee applicant trust, hence, we direct the CIT that the applicant trust should be granted registration u/s 12AA of the Act and accordingly we direct the ld. CIT to grant registration to the applicant trust as per relevant provisions of the Act.

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12. The objects of the assessee trust have been found charitable. Even the photographs annexed with the appeal clearly shows running of a school. The denial of registration by the CIT on mere suspicion and conjectures cannot be upheld. No fault can be found in the order of the ITAT directing the grant of registration to the assessee trust. However, we may hasten to add that in case, subsequently, the revenue is satisfied that the activities of the assessee trust are not for charitable purposes, department can always initiate action for cancellation of registration under

Sub Section (3) of Section 12AA of the Act.

13. We do not find any reason to differ with the view taken by the Tribunal. No error has been pointed out in the findings recorded by the Tribunal. No substantial question of law arises.

14. The appeal is dismissed.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

04.07.2018
pankaj baweja

Whether speaking/reasoned ? *Yes / No*

Whether reportable ? *Yes / No*