



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

ITA No.270 of 2011 (O&M)

Reserved on : 29.11.2025
Pronounced on : 27.02.2026

Whether full judgment is pronounced
or
operative part thereof : Full

The Commissioner of Income Tax, Patiala ...Appellant

Versus

Baba Gandha Singh Education Trust, Barnala ...Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Ms. Pridhi J. Sandhu, Advocate
for appellant.

Ms. Radhika Suri, Senior Advocate with
Ms. Pranika Singla, Advocate
for respondent.

PARMOD GOYAL, J.

Present appeal has been filed against the order dated 29.09.2010 (Annexure A-3) passed by Income Tax Appellate Tribunal, whereby appeal against order dated 16.03.2010 (Annexure A-2) passed by Commissioner of Income Tax cancelling registration under Section 12AA of Income Tax Act, 1961 in favour of respondent-Trust, was allowed.

2. Factual matrix required to appreciate and decide controversy arising in present case is being noticed herein. Respondent-Baba Gandha Singh Educational Trust on application dated 11.04.2007 was granted registration under section 12AA of the Income Tax Act, 1961 (hereinafter referred to as

‘**1961 Act**’) vide order dated 29.08.2007 (Annexure A-1) w.e.f. 01.04.2007 for pursuing educational activities. On 05.11.2009, the Commissioner of Income Tax, Patiala issued a notice under Section 12AA(3) of 1961 Act proposing to cancel the registration of the respondent-Trust on the ground that it was generating surplus for assessment year 2002-03 to assessment year 2007-08 and therefore went beyond the purpose for which registration was accorded to it.

3. Respondent in its reply to the show cause notice pleaded that it was imparting education and the surplus generated was ploughed back by way of investment in capital assets. In furtherance of its stated object generation of surplus by running educational institution and its utilization for education purpose would not disentitle it from exemption/cancellation of registration u/s 12AA(3) of 1961 Act.

4. The Commissioner of Income Tax vide order dated 16.03.2010 (Annexure A-2) after review of copies of accounts filed by ITO, Barnala for assessment years 2002-2003 to 2007-2008 held that respondent-Trust was generating huge surplus year after year, which shows that the Trust was not carrying on activity as per Section 2(15) of 1961 Act wherein charitable activity has been defined. While cancelling the registration under Section 12AA(3) of 1961 Act, reliance was placed upon judgment of Supreme Court in **Municipal Corporation of Delhi Vs. Children Book Trust**, (1992) 3 SCC 390 and the judgment of the Hon’ble Uttarakhand High Court in

Commissioner of Income Tax Vs. Queens' Educational Society and Anr.,
2009 (319) ITR 160.

5. On appeal filed by respondent-Trust before the Income Tax Appellate Tribunal, Chandigarh (hereinafter referred to as '**Tribunal**'), learned Tribunal noticed that pertinently the Commissioner does not dispute that the assessee/Trust was carrying on educational activities which is admittedly the dominant objective of the assessee/Trust. Notably the assessee/Trust is engaged in running schools and the Commissioner of Income Tax has not pointed out any other activity being carried out by the assessee/Trust. The learned Tribunal thereafter allowed the appeal and set aside the cancellation of registration under Section 12AA of 1961 Act in favour of respondent-Trust.

6. While setting aside order of Commissioner of Income Tax, learned Tribunal vide interim order dated 29.09.2010 placed reliance upon judgment of this Court in **Pinegrove International Charitable Trust Vs. Union of India and Ors.**, 2010 (327) ITR 73. Aggrieved therefrom present appeal was filed by the Department.

7. Learned counsel for appellant has defended order of cancellation passed by Commissioner of Income Tax on the ground that respondent-Trust was found involved in activities other than charitable activities as defined in Section 2 (15) of 1961 Act and was generating huge surplus since assessment year 2002-2003 to 2007-2008. Learned counsel further argued that since case of **Commissioner of Income Tax Vs. Queens' Educational Society and**

Anr. (supra) (vide which judgment of this Court in **Pinegrove International Charitable Trust Vs. Union of India and Ors.** (supra) was approved) has been overruled by Hon'ble Supreme Court in **M/s. New Noble Educational Society Vs. The Chief Commissioner of Income Tax I and Anr.**, 2023 (6) SCC 649, therefore, order of learned Tribunal be set aside and appeal be allowed by restoring order of cancellation of registration passed by Commissioner of Income Tax.

8. Learned counsel for respondent-Trust, however, defended impugned order dated 16.03.2010 passed by Learned Tribunal and argued that mere generation of surplus income year after year by educational activities would not lead to the conclusion that assessee/Trust is not carrying on activity in accordance with its objects. It is argued that basis of the order of cancellation under Section 12AA(3) of 1961 Act does not exist as pre-condition to invoke 12AA(3) of 1961 Act is not present. Cancellation is justified under Section 12AA(3) of 1961 Act if genuineness of the activities of the registered Trust or society are beyond its object. However, in present case, this situation does not exist as Commissioner of Income Tax has not doubted the genuineness of activities or they being against objects of respondent-Trust.

9. Findings of fact recorded by learned Tribunal indicate that since genuineness of the educational activities was never doubted by the Commissioner of Income Tax while passing the order of cancellation, therefore, learned Tribunal held order of cancellation passed by

Commissioner of Income Tax not justified, merely because the activities were generating surpluses. Dismissal is appeal is sought.

10. The appeal was admitted on 14.02.2012 for consideration of following questions of law:-

“(A) Whether an education institution would cease to exist society for educational purposes and not for purposes of profit merely because it has generated surplus income over a period of 4/5 years after meeting its expenditure?

(B) Whether the amount spent on acquiring/constructing capital assets wholly and exclusively becomes part of the total income or it becomes entitled to exemption under s. 10(23C)(vi) of the Act?

(C) Whether an institution registered as a society under the Societies Registration Act, 1860, lose its character as an educational institution eligible to apply for exemption under section 10(23C)(vi) of the Act?”

11. Section 12AA of 1961 Act is reproduced for ready reference:-

“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) or clause (ab) of sub-section (1)] of section 12A, shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,—

(i) the genuineness of activities of the trust or institution; and

(ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects,

and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause, he—

(i) shall pass an order in writing registering the trust or institution;

(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:

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(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) or clause (ab) 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.

(4) Without prejudice to the provisions of sub-section (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 it is noticed that—

(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

(5) Nothing contained in this section shall apply on or after the 1st day of April, 2021.”

12. From plain reading of Section 12AA(3) of 1961 Act, it is apparent that registration can be cancelled when the Commissioner of Income Tax is satisfied that activities of Trust or Institution are not genuine and are not being carried out in accordance with objects of Trust or Institution as the case may be. The bare reading of Section 12AA(3) of 1961 Act, therefore, makes it mandatory for Commissioner of Income Tax to conclude that the trust/institution is not carrying out its activities in line with objects of the trust.

13. In present case, the Commissioner of Income Tax, while cancelling the registration under Section 12AA of 1961 Act vide order dated 16.03.2010 (Annexure A-2), had recorded that (1) respondent-Trust is generating surplus since 2002-2003 to 2007-2008 and (2) that the Trust has not waived fee of large number of students as only fee of 56 students was waived off out of 2901 students, which is 2% of total students showing absence of any subsidy for the poor and needy.

14. On the other hand, case of respondent-Trust by way of reply to show cause notice was that surplus so generated by it was being ploughed back into educational infrastructure of the trust and therefore, it was being used for educational purposes as per objects of respondent-Trust. The Commissioner of Income Tax has no power to dictate the trust in what manner it should use its funds. The activity of trust has to be in line with the objects of society. There can be thousands of way in which object of society can be achieved. One way is to grant waiver of fee to students, another way to provide free books and uniform to the students and yet another way can be by way of strengthening school infrastructure by investing in laboratories, library or other infrastructure for providing quality education. All the purposes would be in line with object of the trust/society if are being conducted as such. Therefore, merely because trust/society, has used its surplus money for strengthening educational infrastructure and has not used the surplus money to waive off fee of

students, it cannot be held that trust/society was not working in pursuance of its activities.

15. In fact, in present case, Commissioner of Income Tax has failed to find any deviation on the part of respondent-society from the objects for which it was registered. There is no finding that trust/society has generated surplus by indulging in any activity which is not as per its object. The manner in which surplus money has been used cannot be dictated by Commissioner of Income Tax but can only be adjudged in accordance with objects of the society. However, there is no such finding by Commissioner of Income Tax as to attract provisions of Section 12AA(3) of 1961 Act. Therefore, in present case, the sole ground on which certificate under Section 12AA of 1961 Act was cancelled by Commissioner of Income Tax is generation of surplus money.

16. The question whether mere generation of surplus money would amount to violation of objects attracting cancellation of registration is no more *res integra*. Hon'ble Supreme Court in **M/s. New Noble Educational Society Vs. The Chief Commissioner of Income Tax 1 and Anr** (supra) while concluding in paragraph 76 under Clause (b) had held:-

“b. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C) of the IT Act. At the same time, where surplus accrues in a given year or set of years

per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.”

17. Therefore, mere generation of surplus money, if the same is in course of providing education or education activities or for object for which registration under Section 12AA of 1961 Act has been accorded, in that case, surplus money by itself cannot be a ground to cancel registration. In present case, there is total absence of finding by Commissioner of Income Tax that respondent-Trust had generated surplus money by indulging in activities other than objects for which it was registered or that surplus amount was used for activities other than its objects.

18. In fact, impugned order of learned Tribunal goes to show that learned Tribunal had rightly concluded that no basis for which registration can be cancelled under Section 12AA(3) of 1961 Act has been given by Commissioner of Income Tax and mere generation of surplus money cannot lead to the conclusion that Trust had not earned the same by running activities as per its object. Learned Tribunal has rightly held that this needs to be proved with material on record. In **Pinegrove International Charitable Trust Vs. Union of India and Ors.** (supra) case also, it was held that generation of surplus by itself is not a ground for cancellation of registration, therefore, the learned Tribunal had applied the same. In **M/s. New Noble Educational Society Vs. The Chief Commissioner of Income Tax I and Anr.** (supra), it is held that surplus amount by itself would not result in a conclusion that

society/trust/institution had deviated from its objects. Hon'ble Supreme Court in **Commissioner of Income Tax Vs. Queens' Educational Society and Anr.** (supra) [wherein judgment of this Court in **Pinegrove International Charitable Trust Vs. Union of India and Ors.** (supra) was approved], considered provisions of Section 10(23C) and not Section 12AA of 1961 Act. In **M/s. New Noble Educational Society Vs. The Chief Commissioner of Income Tax I and Anr** (supra) also provisions of Section 10(23C) were in question.

19. It was held by Hon'ble Supreme Court in **M/s. New Noble Educational Society Vs. The Chief Commissioner of Income Tax I and Anr** (supra) as under:-

“76. The conclusions of this court are summarized as follows:

- a. It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.*
- b. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C) of the IT Act. At the same time, where surplus*

accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.

- c. The seventh proviso to Section 10(23C), as well as Section 11(4A) refer to profits which may be ‘incidentally’ generated or earned by the charitable institution. In the present case, the same is applicable only to those institutions which impart education or are engaged in activities connected to education.*
- d. The reference to ‘business’ and ‘profits’ in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of business which is ‘incidental’ to educational activity – as explained in the earlier part of the judgment i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc.*
- e. The reasoning and conclusions in American Hotel (supra) and Queen’s Education Society (supra) so far as they pertain to the interpretation of expression ‘solely’ are hereby disapproved. The judgments are accordingly overruled to that extent.*
- f. While considering applications for approval under Section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the*

genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The observations made in American Hotel (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment. Whilst that reasoning undoubtedly applies to newly set up charities, trusts etc. the proviso under Section 10(23C) is not confined to newly set up trusts – it also applies to existing ones. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.

- g. It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc. This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from 01.04.2021.*

77. *In a knowledge based, information driven society, true wealth is education- and access to it. Every social order accommodates, and even cherishes, charitable endeavour, since it is impelled by the desire to give back, what one has taken or benefitted from society. Our Constitution reflects a value which equates education with charity. That it is to be treated as neither business, trade, nor commerce, has been declared by one of the most authoritative pronouncements of this court in T.M.A Pai Foundation (supra). The interpretation of education being the ‘sole’ object of every trust or organization which seeks to propagate it, through the decision, accords with the constitutional understanding and, what is more, maintains its pristine and unsullied nature”*

20. Learned counsel for appellant had argued that both the provisions, one under Section 10(23C) of 1961 Act and provisions under Section 12AA of 1961 Act are different in their scope and applicability. We are in agreement with contention raised by learned counsel for appellant that scope of Section 10(23C) of 1961 Act and Section 12AA of 1961 Act in its applicability, purpose, manner in which donations are exempted, condition of exemption and registration process altogether are different. Therefore, interpretation of Section 10(23C) of 1961 Act as made in **M/s. New Noble Educational Society Vs. The Chief Commissioner of Income Tax 1 and Anr** (supra) shall not be applicable *per se* in facts of present case which is under Section 12AA of 1961 Act. The provisions of Section 10(23C) of 1961 Act are narrow in nature as it covers university or

educational institutions existing solely for the purposes of profit as well as hospital or other institutions for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of the person from such hospital or hospitals or institution or institutions do not exceed five crore rupees.

21. Whereas provisions of Section 12AA of 1961 Act are wider and includes all charitable purposes as defined under Section 2(15) of 1961 Act and is available to trust or institution or society. Therefore, interpretation of Section 10(23C) of 1961 Act cannot be read in place of provisions of Section 12AA of 1961 Act. The judgment of Hon'ble Supreme Court in **M/s. New Noble Educational Society Vs. The Chief Commissioner of Income Tax 1 and Anr.** (supra) is applicable to the facts of the present case to a limited extent that mere surplus income would not result in conclusion that institution had not generated the same for the purpose for which it is registered thus leading to cancellation of its registration.

22. Learned Tribunal has rightly concluded that no violation of Section 12AA(3) of 1961 Act has been made by the respondent and mere generation of surplus continuously would not result in assumption that respondent had earned the same by violating its objects.

23. Questions of law are thus answered in favour of respondent and against the appellant in view of above discussion. No other argument was addressed.

24. In view of above discussion, we do not find any merit in present appeal and the same is accordingly dismissed.

25. Pending application(s), if any, stand disposed of.

(LISA GILL)
JUDGE

(PARMOD GOYAL)
JUDGE

27.02.2026
Sunil Chander

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No
Uploaded on	:	27.02.2026