

Income-tax Appeal No. 881 of 2010

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

1. **Income-tax Appeal No. 881 of 2010**
Date of decision: 13.10.2011

The Commissioner of Income Tax, Bathinda **...Appellant**

Versus

M/s Baba Deep Singh Educational Society, SCF 23, Bharat Nagar,
Bathinda **...Respondent**

2. **Income-tax Appeal No. 882 of 2010**

The Commissioner of Income Tax, Bathinda **...Appellant**

Versus

Aklia Educational & Research Society **...Respondent**

3. **Income-tax Appeal No. 883 of 2010**

The Commissioner of Income Tax, Bathinda **...Appellant**

Versus

M/s Saint Kabir Educational Trust, Punjab **...Respondent**

4. **Income-tax Appeal No. 884 of 2010**

The Commissioner of Income Tax, Bathinda **...Appellant**

Versus

M/s Amravati Educational Society, Bathinda **...Respondent**

**CORAM: HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr. G.S.Hooda, Advocate for the appellant.

G.S.SANDHAWALIA, J.

This order will dispose of four Income Tax Appeals No. 881,
882, 883 and 884 of 2010 as questions of law involved in these appeals

are common. However, the facts are being taken from ITA No.881 of 2010.

The respondent-society applied for registration under Section 12AA of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) on 31.3.2009. The said application was declined by the Commissioner of Income Tax, Bathinda (for short “the CIT”) vide order dated 25.9.2009. The CIT came to the conclusion after examining the income and expenditure account and the balance sheet for the period ending on 31.3.2006, 31.3.2007 and 31.3.2008 that the society had received donations and the capacity of donors and genuineness of the transactions have not been explained. The CIT while noticing that the society was running a Polytechnic College further took into consideration that the society was earning profits for the last two years and had claimed exemption under Section 10(23C) of the Act. The reasons to switch over to Section 11 of the Act remained unexplained for claiming exemption under Section 12AA of the Act and while taking into consideration Section 2 (15) of the Act the CIT came to the conclusion that since the society was charging building fund, development fund, sports fund and transportation costs etc., the same could not be termed as charitable activity by any definition.

The society preferred an appeal before the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as “the Tribunal”) which has allowed the appeal of the society and has set aside the order passed by the CIT and directed that registration applied for by the appellant under Section 12AA of the Act be granted. The present appeal is directed against the said order and the following questions of law have been formulated by the revenue:-

- “1. Whether, in the facts and circumstances of the case, the Id. ITAT was right in law to restrict the powers of the CIT for

making the enquiries u/s 12AA(a) of the Act despite the fact that the said section provides that the CIT can make such enquiries as he may deem necessary in this behalf.

2. Whether, in the facts and circumstances of the case the Id. ITAT was right in law in granting registration to the assessee Trust when no work of relief to the poor in the field of education was done as per definition of “Charitable Purposes” provided u/s 2(15) of the Act.”

The Tribunal while allowing the appeal has noticed that the Memorandum of Association and the objects of the society was to do charitable work, projects and activities relating to education which have not been considered while declining the application under Section 12AA of the Act. It was further held that the CIT should have only seen the genuineness of the activities of the society and circular No.11/2008 dated 19.12.2008 was also referred that the provisions of Section 2(15) of the Act are not applicable to a society. Accordingly, it was held that nature and scope at the stage of grant of registration under Section 12AA of the Act is to only regarding the objects of the society. The Tribunal also distinguished the provisions of Sections 10(23C) and 12AA of the Act and scope of the said sections and held that it was open to the revenue authorities while processing the return of the income of those assesseees to examine their claim under Sections 11 and 13 of the Act and give such treatment to those societies as warranted by the facts of the case. The power of the revenue authorities to cancel registration under Section 12AA (3) of the Act was also taken into consideration on the ground that same can be resorted to if the Commissioner is satisfied that the activity of such society or institution are not genuine or are not being carried out in accordance with the objects of the society/institution.

The power of the CIT regarding the scope of Section 12AA of the Act has been considered by this Court in the order dated 5.10.2011 passed in ***ITA No.701 of 2010 (Commissioner of Income Tax-II, Chandigarh Vs. M/s Surya Educational & Charitable Trust)*** and it has been held that Section 12AA of the Act, requires satisfaction in respect of the genuineness of the activities of the Trust, which includes the activities which the Trust was undertaking at present and also which it may contemplate to undertake. The insertion of Sub Section 3 to Section 12AA of the Act regarding the powers of the Commissioner to cancel the registration if the activities of the trust are not carried out in accordance with such objects was also noticed.

The Allahabad High Court in ***Commissioner of Income Tax Vs. Red Rose School 2007 (163) TAXMAN 19*** has held that the jurisdiction of the Commissioner at the stage of processing application under Section 12AA of the Act is limited regarding whether the activities are genuine and in consonance with the objects of the trust or institution and where education is being imparted as per the rules and the factum of the establishment and running of schools is not disputed the same was a genuine activity and the enquiry regarding genuineness of the activities cannot be stretched beyond this.

In view of above facts and circumstances, it would be clear that respondent-society which was admittedly running a Polytechnic College and the activities were interwoven for furthering the projects and activities pertaining to education, the Tribunal rightly directed that registration should be granted to the respondent-society with the rider that the same could always be cancelled if it came to the notice of the CIT that the society was not carrying on the activities as per its objects. The Commissioner while processing the application under Section 12AA of the

Act was not to act as an Assessing Authority and thus, the Tribunal has rightly allowed the appeal filed by the society in the facts and circumstances of the present case.

Accordingly, no substantial question of law as contended in the present appeal arises for determination by this Court and the order dated 31.3.2010 passed by the Tribunal is upheld. Consequently, the appeal is dismissed.

October 13, 2011
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(G.S.SANDHAWALIA)
Judge

(HEMANT GUPTA)
Judge



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