

**IN THE INCOME – TAX APPELLATE TRIBUNAL,  
AGRA BENCH, AGRA**

**BEFORE : SHRI BHAVNESH SAINI, JUDICIAL MEMBER &  
SHRI A. L. GEHLOT, ACCOUNTANT MEMBER**

**ITA No. 443 & 444/Agra/2011**

Hardayal Charitable and Educational Trust,  
318, Shambhu Nagar, Shikohabad.  
(PAN : AAATH 7652 M).  
(Appellant)

vs. The Commissioner of  
Income-tax-II, Agra  
  
(Respondent)

For Assessee	:	Shri R.K. Agarwal, Advocate
For Revenue	:	Shri Sohail Akhtar, Jr. D.R.
Date of Hearing	:	02.03.2012
Date of Pronouncement	:	07.03.2012

**ORDER**

Per Bhavnesh Saini, J.M. :

Both the appeals of the assessee are directed against the common order of Id. Commissioner of Income-tax-II, Agra dated 17/23<sup>rd</sup> August, 2011, refusing to grant registration u/s. 12AA of the Income-tax Act and approval u/s. 80G of the Income-tax Act.

2. According to the office, both the appeals are time barred by 37 days. The assessee explained in the application for condonation of delay that earlier the assessee preferred one appeal against the common order under both the sections, though the assessee was required to file two independent appeals. Therefore, with the permission of ITAT, Agra Bench, ITA No. 341 of 2011 was withdrawn with

permission to file separate appeals. Copy of the order of the Tribunal dated 22.11.2011 is filed on record. It is, therefore, explained that the delay was caused due to above technicalities, though the earlier appeal was preferred within time. The assessee prayed that the delay in filing appeals may be condoned. The Id. DR has no objection for condonation of delay in filing the appeals. Considering the explanation of the assessee and the fact that earlier, the assessee preferred one appeal against the common order, which was withdrawn with liberty to file two separate appeals, would constitute a sufficient cause for condoning the delay in filing the appeals. Considering the facts of the case and that the Id. DR has no objection for condonation of delay, the delay in filing the appeals is condoned.

3. Briefly, the facts of the case are that the assessee trust filed an application for grant of registration u/s. 12AA and approval u/s. 80G of the IT Act on 14.03.2011. The assessee intends to set-up schools and colleges etc. with the stated objective of helping the poor and destitute, who stand in need of aid for the purpose of education. It has also been stated that the assessee would provide medical benefits to the poor, needy and aged.

3.1 During the course of hearing before the Id. Commissioner, it was mentioned that the assessee trust is in the process of construction of colleges for medical, engineering and management studies. A lot of money has been spent on

advertisement of the institution, as much as, Rs.1,58,82,526/- being spent only during the period 1<sup>st</sup> April, 2011 to 2<sup>nd</sup> August, 2011. The Id. Commissioner, considering the explanation of the assessee and the material on record found that the assessee trust has published a very high quality prospectus of the college. The prospectus also shows one page devoted to other industry being carried by the group , i.e., Hardayal Milk Product (Pvt.) Limited, complete with the logo of the Milk product company. It was, therefore, found that the assessee trust intended to promote the business of his family concern and that the commercial activity is in no way subservient to its stated charitable motive. The Id. CIT, considering the books of account and other documents, was not satisfied that the objects of the trust are charitable in nature. Accordingly, the registration u/s. 12AA was refused and approval u/s. 80G of the IT Act was also not granted.

4. The Id. counsel for the assessee referred to PB-4, which is copy of trust deed, to show that the assessee trust was created solely for the purpose of imparting education on different subjects. He has submitted that since the assessee exists only for the purpose of education and charitable activities, therefore, the Id. CIT should not have rejected the applications of the assessee. He has filed copy of the audit report ending 31<sup>st</sup> March, 2011 and admitted that the assessee is still at the stage of carrying out construction for schools and colleges. The construction is not complete and as such, no actual charitable or educational activities have been

carried out by the assessee. He has, however, submitted that since the objects of the assessee trust are educational and charitable only, therefore, the ld. CIT should have granted registration u/s. 12AA of the IT Act and approval u/s. 80G of the IT Act. He has submitted that without raising construction, the assessee may not be able to get corpus/donations and, therefore, non-carrying of the activities would not debar the assessee from getting registration and approval under the above provisions of the Act. The ld. counsel for the assessee referred to some of the decisions on the subject, which we would discuss later in this order.

5. On the other hand, the ld. DR relied upon the impugned order and submitted that no evidence has been filed to disprove the finding of the ld. Commissioner and relied upon the decision of Kerala High Court in the case of Self Employers Service Society vs. CIT, 247 ITR 18 (Ker) and the decision of Delhi High Court in the case of All India J.D. Educational Society vs. Director General of Income-tax (Exemptions), 338 ITR 218 (Del.)

6. We have considered the rival submissions and the material on record.

7. The ld. counsel for the assessee referred to the objects of the assessee trust, according to which the assessee is established for the purpose of maintaining schools, colleges and institutions for imparting education in different

fields/subjects. It was, however, conceded by the ld. counsel for the assessee that the assessee has not actually carried out any charitable or educational activities for achieving the objects of the assessee trust. The ld. counsel for the assessee also conceded that the assessee is still at the stage of raising construction for schools and colleges and no educational or charitable activities have yet been started.

Section 12AA of the IT Act provides –

**12AA.** (1) *The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) 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 the genuineness of activities of the trust or institution 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, 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 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 Commissioner and the 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) section 12A.*

*(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the 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.”*

8. Section 12AA of the IT Act confers power on the Commissioner while considering the application for registration of trust or institution made under the same provision to 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 also to make such inquiries as he may deem necessary in this behalf and after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he shall pass an order in writing registering the trust or institution and if he is not satisfied, he would refuse registration. For grant of approval u/s. 80G(5), the assessee is required to fulfill the conditions that such institution or funds derived from any income would not be liable for inclusion in its total income u/s. 11 & 12 of the IT Act. The reading of provisions of section 12AA makes it clear that the CIT has to satisfy himself about the genuineness of the activities of the trust or institution and also in consonance

with the objects of the trust or institution. Thus, on enquiry, the Ld. CIT shall have to examine as to whether the assessee who has moved application for registration is actually in the activities which are genuine. Genuineness of activities of assessee has to be seen. Both the conditions shall have to be satisfied before granting/refusing registration u/s. 12AA of the IT Act. Hon'ble Kerala High Court in the case of Self Employers Service Society vs. CIT, 247 ITR 18 (Ker.) held as under :

*“Section 12AA of the Income-tax Act, 1961 was inserted with effect from April 1, 1997. The provision provides for a procedure to be followed for grant of registration to a trust or institution. Earlier, there was no provision in the Act for processing an application for exemption in respect of income of a charitable or religious trust or institution on satisfying certain conditions. As per the new provision, the Chief Commissioner or Commissioner shall call for documents and information and hold enquiries regarding the genuineness of the trust or institution. If he is satisfied about the charitable or religious nature of the objects and genuineness of the activities of the trust or institution, he will pass an order granting registration. If he is not satisfied he will refuse registration, but it is mandatory that opportunity of being heard shall be given to the applicant before the order of refusal to grant registration is passed by the Commissioner.*

*The appellant, a charitable society, registered under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955, made an application for registration under section 12A of the Income-tax Act, 1961. The application was rejected. The order was challenged in a writ petition and a single judge disposed of the petition leaving the society at liberty to file a fresh application and directing the commissioner to hear it in accordance with law. On appeal :*

*Held, that a reference to the bye-laws of the society would show that though several charitable activities were included in the objects of the society, the society was not able to do any of the charitable activities during the first year of its functioning. The proposal to start a technical educational institution itself was taken only on June 14,*

*1999, after the rejection of the application by the Commissioner. Since the society had not done any charitable work and the activities which it had carried on were only for the purpose of generating income for its members, the rejection of the application was justified. The relief granted by the single judge was appropriate.*

*However, an opportunity was given to the society to file a fresh application when it started charitable work and the Commissioner was directed to consider such application.”*

9. Hon'ble Delhi High Court in the case of All India J.D. Educational Society vs. Director General of Income-tax, 338 218 (Del.) while considering the application u/s. 10(23C) found that the accounts not maintained properly and no evidence was filed regarding activities. Therefore, rejection of application was held to be justified.

10. The Id. counsel for the assessee admitted before us that only construction activities have been going on and no actual educational or charitable activities have been carried out by the assessee. Therefore, there was no question of satisfying both the conditions of section 12AA of the Act in the case of assessee. It would, therefore, make it clear that some capital asset is created in favour of the assessee trust at the time of filing of application for registration/approval and even same is position at the stage of consideration of appeal by the Tribunal. The Id. Commissioner also found that huge amount was spent on advertisement of the institution upto passing of the impugned order, though the assessee trust is still at the stage of raising construction. Nothing was explained as to what was the



purpose of spending huge amount on advertisement of the Institution, which is in the process of establishment and has yet to come in physical existence. Further, the Id. Commissioner found that the prospectus of the assessee trust shows one page devoted to the other industry being carried out by the group concern, i.e., Hardayal Milk Product (Pvt.) Limited having its complete logo of milk product of the company. Nothing was explained before the Commissioner as to what was the purpose of showing the industry logo on the prospectus of the institution, which is yet to exist. The Id. CIT, therefore, rightly inferred that the trust intended to promote the business of family concern and as such, it could have a commercial motive and what to say of charitable motive to establish educational Institution. The finding of fact recorded by the Id. Commissioner has not been rebutted through any explanation or material on record. Since the assessee trust had not commenced any charitable or educational activities and it had promoted the business of family concern by showing their logo on the prospectus of the assessee trust, would clearly prove that even at the initial stage, the assessee trust had carried out such activities which were meant for the purpose of generating or enhancing income of the family group concern. In such an event, burden would be very heavy upon the assessee to prove that it intended to carry out educational and charitable activities. In the absence of any details which could rebut the finding of the Id. Commissioner, we are of the view that sole objects of the assessee could not have been considered at this stage for the purpose of granting registration/approval

to the assessee. The assessee shall have to satisfy both the conditions before grant of registration/approval that its objects were educational and charitable and that it had carried out genuine activities. No genuine activities had been carried out, admittedly, for the purpose of achieving the objects of the assessee trust, i.e., educational or charitable. Therefore, the Id. Commissioner was rightly not satisfied about the genuineness of the activities of the assessee trust. Though apparently on consideration of objects of the assessee trust, we find that same may be educational or charitable in nature, but the finding of fact given by the Id. Commissioner about promoting the commercial activities of the group concern have not been refuted by the assessee through any material on record.

11. The Id. counsel for the assessee has relied upon the following decisions :

(i). Order of ITAT, Rajkot (SMC) Bench, Rajkot in the case of Surajben Harakhchand Mehta vs. CIT dated 11.02.2011 in ITA No. 1333/Rjt/2010, in which it was held that when there are no activities at all, then there is no question of holding that the activities were not genuine.

(ii). Decision of Hon'ble Allahabad High Court in the case of CIT vs. Red Rose School, 212 CTR (Alld.) 394 (HC), in which it was stated that the assessee society was registered on 29.03.1982 and in para 41 of the

judgment, it was noted that the objects of the assessee society undisputedly are for charitable purpose and not against public policy. The genuineness of its activities is proved by the aforesaid facts, which conclusively show that the society has established a school for the children in the year 1982 and thereafter it has opened its two more branches raising the standard of the school upto CBSE, Delhi Board. Therefore, the activities of the assessee could not have been doubted within the meaning of section 12AA of the IT Act. The Hon'ble High Court in para 20 held as under :

*“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.”*

Hon'ble High Court further in para 28 of the judgment held as under :

*“It is significant to mention that registration under s. 12AA, does not necessarily entitle the assessee to get the income excluded from the income of the previous year for the purpose of determination of tax liability but it only entitles the assessee to claim such exemption, which otherwise could not be claimed in the absence of registration. The enquiry by the CIT shall remain restricted to the examination, as to whether the assessee, who has moved the application for registration under s. 12A, is actually in the activities which are genuine. Genuineness of the activities of the trust or the institution has to be seen, keeping in mind the objects thereof, which*

*necessarily means that the CIT shall satisfy himself about the fact that the activities are genuine and in consonance with the objects of the trust or the institution. In other words, if establishing and running a school is the object of the society, as given in its bye-laws, it has to be satisfied that the society has established the school, where education is being imparted as per rules and the factum of establishment and running school is a genuine activity. The enquiry regarding genuineness of the activities cannot be stretched beyond this.”*

(iii). Order of ITAT, Lucknow Bench in the case of Baij Nath Charitable & Educational Trust vs. CIT, 125 TTJ (Lucknow) 255, in which the assessee had written to the CIT clearly indicating that it had conducted an eye relief camp to distribute the blankets to the patients. Even though the assessee trust was only four months old, the registration was granted.

(iv). Order of ITAT Delhi Bench in the case of Shree Krishna Education & Welfare Trust vs. CIT, 27 SOT (Delhi) 331, in which it was held that for grant of registration u/s. 12AA, the CIT is required to satisfy himself about the genuineness of activities and the charitable nature of the objects of the assessee trust. The scope of his power is limited in this regard to make such enquiries as he may deem fit to satisfy himself in respect of these two aspects. The Commissioner is not required to examine the aspect of application of income.

- (v). Order of ITAT Delhi Bench in the case of Agrawal Mitra Mandal Trust vs. DIT (Exemption, 109 TTJ (Delhi) 128, in which it was held that powers u/s. 12AA are limited to make enquiries with regard to the genuineness of the activities and objects of the trust.
- (vi). Decision of Karnataka High Court in the case of DIT vs. Garden City Educational Trust, 28 DTR (Kar) 139, in which, admittedly the assessee trust was found imparting education.
12. None of the above decisions would support the case of the assessee. The ld. counsel for the assessee also relied upon the decision of Karnataka High Court in the case of DIT (Exemption) vs. Meenakshi Amma Endowment trust, 50 DTR 243 in which it was held that the genuineness of the activities of the trust cannot be criteria since it has yet to commence its activities. Some of the other decisions of Tribunal on the same view have been referred to in the paper book. The findings given in the decision of Jurisdictional Allahabad High Court in case of Red Rose School (supra) shall have to be given preference as against these decisions.
13. However, the ld. counsel for the assessee was not able to contradict the findings of the ld. Commissioner given in the impugned order that the assessee spent considerable amount on advertisement of the institution which never existed

and further, prospectus of the assessee trust has devoted substantially on carrying out the business activities of group concern showing logo of milk product. These factors were sufficient to hold that the Id. CIT rightly rejected both the applications of the assessee, particularly when no educational or charitable activities have been actually carried out and the assessee in initial stage, assessee trust itself has tried to promote the business of group concern. Therefore, the decision of Kerala High Court in the case of Self Employers Service Society vs. CIT (supra) would squarely apply to the assessee's case. The orders of different Benches of the Tribunal and of Rajkot (SMC) Bench, thus, cannot be given preference against the decision of Hon'ble Kerala High Court. Considering the totality of the facts and circumstances, we are of the view that the assessee failed to establish that it has carried out genuine activities towards the objects of the assessee trust. Whatever other activities were carried out were found for promoting commercial activities of the group concern. Therefore, the assessee has failed to satisfy the requirements u/s. 12AA of the Act and as such, the Id. Commissioner was justified in refusing to grant registration and approval under the above provisions of the IT Act. We are, therefore, of the view that there is no irregularity or illegality in the impugned order. The decisions cited by the Id. counsel for the assessee would not support its case. We, therefore, maintain the order of the Id. Commissioner and dismiss both the appeals of the assessee. However, considering the facts of the case that the assessee trust is still at the stage of raising construction for schools and colleges

and yet to start educational and charitable activities, the assessee is given opportunity to file fresh application before the Id. Commissioner for grant of registration and approval when it would actually start educational and charitable activities and in that event, the Id. Commissioner shall consider fresh applications of the assessee in accordance with law. We, however, are not inclined to interfere with the impugned order at this stage. With the above observations, both the appeals of the assessee are dismissed.

14. In the result, both the appeals of assessee are dismissed.

Sd/-  
**(A.L. GEHLOT)**  
Accountant Member

Sd/-  
**(BHAVNESH SAINI)**  
Judicial Member

Dated: 7<sup>th</sup> March, 2012

\*aks/-

Copy of the order forwarded to :

1. Appellant
2. Respondent
3. CIT(A), concerned
4. CIT, concerned
5. DR, ITAT, Agra
6. Guard file

By order

Assistant Registrar

True copy