In the Income-Tax Appellate Tribunal,
Agra Bench, Agra

Before: Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant Member

ITA No.406/Agra/2018
(A.Y.: N.A)

Fateh Chand Trust & College Committee, 18/1, Mall Road, Agra PAN AAAAF4773E **(Appellant)**	vs.	CIT(Exemption) Lucknow **(Respondent)**

Appellant by	Shri Prem Gul, CA
Respondent by	Shri Rajshri Dwivedi, CIT D.R.

Date of Hearing	11/09/2018
Date of Pronouncement	27/09/2018

ORDER

Per Dr. Mitha Lal Meena, A.M.;

This appeal by assessee is filed against the order dated 10.05.2018 passed by the Ld. CIT(Exemption) Lucknow, rejecting its application for registration under section 12AA of the Income Tax Act, 1961.

2. The Ld. CIT(E), while rejecting the said application observed that the appellant assessee failed to showcause any act of charity and no income from fee had been shown credited in the income and

expenditure account and further on the same stroke alleged that huge fee was collected from students; that details of salary were not provided; that it is generating income from F.D Interest, Rent and Bank Interest; and therefore huge profit is being made. He further held that from the perusal of accounts, it was found that applicant society is primarily engaged in the business of education on commercial basis with a profit motive without providing any element of charity to the public at large. Books of accounts and vouchers were not produced. On the basis of aforementioned objections, the Ld. CIT(E), rejected assessee's applicationby observing as under:

> *5. I have considered the material available on record. The applicant society has not been able to produce books of accounts, Bank statement and vouchers in respect of expenses claimed by the applicant for verification of objects and activities of the trust. On perusal of material available on record, it is seen that the applicant society is not carrying out any activities of charitable nature. In light of facts that the applicant society could not produce the books of accounts and vouchers, the genuineness of activities could not be verified. As per provisions of section 12AA(1)(b) of the Act, two factors namely the objects of charitable purpose and genuineness of activities has to be proved before granting of the registration. However, the applicant failed to prove the same. Hence, the applicant society has not made a case for granting the registration u/s 12AA(1)(b).*
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> *6. In the case of CIT vs. National Institute of Aeronautical Engineering Education Society 2009, 181 Taxman 205 (Uttarakhand) it was held that clause (a) of sub-section (1) of section 12AA empowers the CIT to call for such information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution and may make such inquiries as he may deem necessary in this*

behalf. Said provision in section 12AA makes it clear that CIT is not supposed to allow registration with blind eyes. On perusal of material available on record it is found that the applicant is doing a pretence of charity. 'Charity' is soul of the expression 'charitable purpose'. Mere declaration of objects is not sufficient for according registration u/s 12A(1) of the Income-tax Act, 1961. Genuineness of the activities of the society is an essential ingredient for formation of satisfaction mandated by law. The applicant society has failed to prove the genuineness of the activities which it claims to be carrying out. In light of the above facts, the applicant has not made a case for granting registration u/s 12A(1) of the Income tax Act, 1961.

7. Reliance is also placed on the Hon'ble Delhi High Court's judgment in the case of Kirti Chandra Tarawati Charitable Society vs. DIT (Exemption) 232 ITR 11 in which it was held that there is no obligation on the CIT to grant registration merely by looking at the instrument creating the Society and shutting eyes on the actual activities carried out by it. On the perusal of Society's Memorandum it is seen that there are several objects. However, failure on the part of the applicant to corroborate them with satisfactory evidences places fatal allegation on genuineness of the activities of the applicant. It clearly proves that the applicant has done a false declaration with respect to the objects set out in the memorandum and it is not actually working towards its attainment. Therefore the activities of the Trust are not in tandem with its memorandum.

8. The Hon'ble ITAT Lucknow bench in order ITA No. 809/LKW/2014 dated 26.02.2015 has held that "We have considered the submissions of Learned D. R. of the Revenue, perused the material available on record and gone through the impugned orders of learned CIT –II, Kanpur. It is noted by learned CIT-I the order passed by him for rejecting the claim for registration u/s 12AA that the material required for formation of the satisfaction mandated by the Act is unavailable and therefore, it is held that by learned CIT that the assessee has failed to fulfill the conditions for grant of registration u/s 12A of the Act. Similarly, in his order for rejecting the claim of the assessee for registration u/s 80G, he has given a finding that the assessee has failed to fulfill the conditions for approval u/s 80G of the Act. Hence, we do not find any justification to interference in the order of learned CIT".

9. The law requires a conjunctive test whereby objects of the applicant society have to be charitable and genuineness of charitable activities should be established for registration of application u/s 12A. Mere recital of objects or activities with cogent or corroborative evidence is not sufficient by themselves to enable a registering authority to arrive at the satisfaction mandated by law. In the instant case, only part rely has been filed and the documents on record do not suffice to establish the genuineness of activities. As such the findings of fact regarding its charitable activities or rather lack thereof arrived at on the basis of the evidence filed and arguments addressed stand uncontroverted. This is fatal to the claim of applicant.

10. It is clear that applicant has failed to provide sufficient material to corroborate the charitable nature of the objects and genuineness of the activities. Despite being provided timely opportunity the applicant has not been able to substantiate its claim.

11. In view of the facts and above decisions, I am unable to accept the appellant's claim in absence of sufficient material required for formation of satisfaction. Therefore, I do not find the case fit for grant of registration u/s 12A(1) of the Income tax Act, 1961.

12. Accordingly, the registration sought by the applicant u/s 12A(1) of the Income tax Act, 1961 is hereby rejected."

3. The Ld. A.R of the assessee submitted that various findings recorded in the impugned order are wrong, opposed to the facts and material on record and that observations made therein are based on conjectures, surmises, without due consideration of the facts of the case and having regard to relevant considerations for grant of registration under section 12AA of the Act and therefore, according to him the impugned order is unsustainable both on facts and in law. Drawing our

attention to the submission made before Ld. CIT(E) it was submitted by the Ld. A.R that the undisputed facts of the case are that the appellant is Society, engaged in running and maintenance of Fateh Chand Inter College, Tota Ka Tal, Lohamandi Road, Agra. The School was started in the year 1919 and got recognition of High School in the year 1948 and, subsequently got recognition for Intermediate classes in the year 1954 by the State Government of U.P. The College is fully aided by the Government of U.P and continues to be engaged in imparting students free of cost. The payment of Salary to teaching staff is governed by the provisions of payment of Salary Distribution Regulation 1971 and the same is borne by the State Government. Applicant Society is entrusted with running of Fateh Chand Inter College and bears the daily running and operation expenses of the college.

4. The counsel referred to the Balance Sheet for the year ended 31.03.17 for which Income Tax Return also stood filed as evident from the acknowledgement of ITR. The perusal of the accounts reveals that the Society has incurred expenses against School General expenses, school electricity expenses, printing and stationery expense, legal expenses, Misc. expenses, stationery and postage, school function expense, staff salary and conveyance, sports day expense, though the expenses are minimal but the expenses are towards running of Society

under which the College is being operated. It was submitted by the Ld. A.R that the Ld. CIT was not justified in taking objection against the minimal amount of Bank Interest of Rs.457/-, FD Interest of Rs. 4,075/- and Rent received of Rs. 93,079/- earned by the Society, which income, undisputedly has been the source of meeting expenses directed towards the attainment of the main object of the Society. With regard to the objection raised by the Ld.CIT(E) that no fee is found credited in Income & Expenditure Account of the Society, it was submitted that very nominal fees is charged from the students which is deposited in Bank Account operated under the directions of Director of Inspectors School, Agra (Government of UP). The accountsare subject to audit by the office of the Auditor General, Allahabad and no amount can be used by Society.

5. It was further submitted that the Ld. CIT(E) was wrong in proceeding ex-parte and observing that no compliance was made for the date fixed on 18.05.2018.He referred to Letter dated 15.05.2018 addressed to the Ld. CIT(E) which got served in his office on the scheduled date of 18.05.2018, as is proved by the tracking report in respect of consignment number RU789929527IN. Thus, it was shown that the impugned order is bases on incorrect assumption of facts and evidences brought on records.

6. With regard to the next objection of the Ld. CIT(E), that huge sum of money is collected from students as fee but the same has not been shown in the Income & Expenditure Account of the Society. The Ld. A.R stated that again the Ld. CIT(E) went wrong in rejecting the application on this ground. Ld. A.R invited attention to Letter dated 15.05.2018by which it was submitted before the Ld. CIT(E) that the college is aided by the Government of U.P and no fee is charged by the Society. Very nominal fee is charged by the College which is deposited in Bank Account of College operated under the directions of Director of Inspector of Schools which is a Department of the State of U.P. The Bank Account and affairs are subjected to Audit by the Auditor General, Allahabad and the funds are not available at the discretion of the Society. He also submitted that allegation of charging huge fee is based on total misreading of the evidences as brought on records by the Society before Ld. CIT(E) wherein vide PBP-61 it was shown that the School Fee for students studying in Class9th and 10th is Rs. 443/- annually and from students studying in Classes 11th and 12th it was Rs. 501/- in the year 2017-18.

7. Replying to objection raised by the Ld. CIT(E) that no books of accounts were produced before Ld. CIT(E), the counsel invited attention to Reply dated 18.04.18 wherein vide Para-21, it was specifically

mentioned that books of accounts, bills and vouchers are available for verification by the Ld. CIT(E). It was further submitted that even if the alleged objection is taken on its face value such objection is not material to refuse registration.

8. Per contra, the Ld. CIT, D.R supported the order of the Ld. CIT(E), and submitted that no amount of Fee is found credited in the Income & Expenditure Account produced before the Ld. CIT(E) and therefore, according to him the application was rightly rejected.

9. We, have heard rival contentions, perused the material brought on records with specific consideration to the objects of the Society and case laws cited by the parties. Careful perusal of the objects reveals that the objects of the Society primarily are of imparting education to all the classes of the Society. The order impugned is absolutely silent in respect of this material aspect of the matter. The law is fairly well settled that while granting Registration the Ld CIT is entitled to conduct enquiry and get himself satisfied with the objects stated in the memorandum of objects, at this stage any enquiry with regard to the source of income or application thereof is beyond the scope of enquiry contemplated under the Act as per by the law evolved. Guidance in this regard can be derived from the jurisdictional High Court Judgements in the case of

Fifth Generation Education Society Vs CIT in (1990) 185 ITR 634 (All) wherein the Hon'ble Allahabad High Court has held that:

> "3. It is evident that at this stage, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of section 12A read with rule 17A and whether Form 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not At this stage, it is not proper to examine the application of income.

10. Again, the Hon'ble Allahabad High Court in the case of **CIT Vs Red Rose School (2007) 163 Taxman 19 (Allahabad)** held that:

> *"Section 12AA, which lays down the procedure for registration, does not speak anywhere that the Commissioner, 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 that they are in consonance with the objects of the trust/institution, and are not mere camouflage but are real, pure and sincere and not 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.* [Para 34]

11. Similar view was reiterated by the Jurisdictional High Court in the case of CIT Vs Babu Ram Education Society (2018) 96 taxmann.com 606 (Allahabad) wherein at the instance of the Department order passed

by the Agra Bench of the ITAT was put up for judicial scrutiny before the Hon'ble Allahabad High Court. The Hon'ble Court held as under:

> ***Section 12A of the Income-tax Act, 1961 - Charitable or religious trust - Registration of (General) - Whether registration of trust does not involve enquiry into actual activities or application of funds, etc. and at that stage, only enquiry required to be conducted is with respect to object of trust alone and if assessee is found to have been actually engaged in any non-charitable activity, benefit of exemption may be denied in manner provided by Act - Held, yes - [Para 7] [In favour of assessee] (Head Note)***

12. The Hon'ble High Court, in the above referred case held thatregistration of the trust does not involve enquiry into the actual activities or application of funds, etc. The Tribunal has committed no error in following the earlier order. At that stage, the only enquiry required to be conducted was with respect to the object of the trust alone. The objections raised by the Commissioner pertain to matters that may be examined at the stage of assessment. At that stage, if the assessee were to be found to have actually engaged in any non-charitable activity, the benefit of exemption may be denied at that stage in the manner provided by the Act.

13. It is an undisputed fact that the Society is running and maintaining a school upto Intermediate classes and is affiliated by the Government of U.P. Hon'ble Karnataka High Court in the case of CIT vs. A.S.

Kupparaju Brothers Charitable Foundation Trust reported in (2012) 69 DTR 315, has held that once it is admitted that in pursuance of the trust deed and in terms of the objects set out therein, schools and colleges are being run and educational institution are being run, nothing more requires to be established to show that the trust in question is a genuine trust. The Hon'ble Court held as under:

> *"The certificate of registration is only an enabling provision to claim exemption. Bymerely granting a certificate income is not exempted. That is only a first stage toclaim exemption. The Commissioner of Appeals should not have confused these twoaspects and seems to think as the trustees and his family members are treating theproperty as their own and mis-utilising the property it is not a genuine trust. Whenonce it is admitted that in pursuance of the trust deed and in terms of the objects setout therein, schools and colleges are being run and educational institutions are beingrun as rightly held by the Tribunal, nothing more requires to be established to showthat the trust in question is a genuine trust and therefore, the assessee is entitled tothe registration under section 12AA of the Act. As set out above, even if theregistration is granted, the exemption from the provisions of the Income Tax Act inparticular sections 11 and 12 are not automatic. It is only when the assessee satisfiesthe requirement of section 13, he would be eligible for exemption. That is a matter tobe gone into by the Assessing Authority in respect of the returns filed every year and ifaccording to them there is misappropriation of funds and it is hit by section 13 of theAct, certainly, they can deny the benefit of exemption. But that is not a ground todeny the registration in the instant case under Section 12AA, when admittedly thetrust has been established to run schools and colleges for imparting education, whichis a charitable purpose. In that view of the matter, we do not see any merit in thisappeal. The substantial question of law framed in this appeal is answered in favourof the assessee and against the revenue. Accordingly, the appeal is dismissed."*

14. Hon'ble Madhya Pradesh High Court in the case of CIT vs. D.P.R. Charitable Trust reported in (2011) 61 DTR 410, held in the said decision that while considering the application u/s 12A, the ld. CIT is not required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit while granting registration. Since the assessee trust was established for educational purposes it was held that the trust is entitled to registration.

> *"8. Sec. 12A of the Act prescribes conditions for registration of the trust whereass. 12AA of the Act prescribes the procedure for registration. A careful reading of therelevant provisions would reveal that application for registration under s. 12A has tobe made in Form No.10A prescribed by r. 17A before the expiry of one year from thedate of creation of the trust or establishment of the institution whichever is later. Theapplication has to be made by a person in receipt of income of the trust. Thus whiledealing with the application for registration the CIT has to examine whether theapplication is made in accordance with s. 12A r/w r. 17A and whether Form No.10Ahas been properly filled up. He may also examine whether objects of the trust arecharitable or not. Sec. 12AA nowhere provides that CIT while considering theapplication for registration is also required to examine whether the income derived bythe trust is being spent for charitable purposes or the trust is earning profit. Thelanguage employed by the legislature in s. 12AA only requires that activities of thetrust or institution must be genuine which should be in consonance with the object ofthe trust. At this stage, the CIT is not required to examine the application of income.All that he may examine is whether the application is made in accordance with therequirements of s. 12A r/w r. 17A and whether Form No.10A has been properly filledup. He has also to see whether the objects of the trust are charitable or not. Ourview funds support from the Division Bench decision of the Allahabad High Courtrendered in the case of Red Rose School (supra) and the decisions in the case of NewLife in Christ Evangelistic Association (supra), Fifth*

Generation Education Society(supra) and ShantagauriRamniklal Trust (supra).

9. In the backdrop of aforesaid legal position facts of the case may be seen.Admittedly the application submitted by the respondent was in consonance with theprocedural requirement prescribed in this regard. From the trust deed which wasfiled before the CIT the objects of the trust could be ascertained. From perusal of cl.(3) of the trust deed we find that the objects of the trust are charitable in nature andare in tune with s. 2(15) of the Act and, therefore, the Tribunal rightly opined that theorder of the CIT rejecting the application under s. 12A was unjustified."

15. The Hon'ble Kerala High Court in the case of Sree Anjaneya Medical Trust vs. CIT reported in (2016) 382 ITR 399, has held that while granting registration u/s 12A only genuineness of trust is to be examined and no examination of application of funds or ethical background of settlors called for at that stage.

"It is clear from a plain reading of sections 12A and 12AA that what is intended thereby is only a registration simpliciter of the entity of a trust. This has been made a condition precedent for the claiming of benefits under the other provisions of the Act regarding exemption of income, contribution, etc. No examination of the modus of the application of the funds of the Trust or an examination of the ethical background of its settlers is called for while considering an application for registration. The stage for consideration of the relevance of the object of the Trust and the application of its funds arises at the time of the assessment. Where benefits are claimed by assessees in terms of sections 11 and 12, the question as to the nature of such contribution and income can be looked into. At the time of registration of the Trust, going by the binding judgments of the Apex Court, what is to be looked into is whether the Trust is a genuine one and whether it is a sham institution floated only to avail the benefits of exemption under the Act. There is no such finding in the impugned order. [Para 10]"

16. In the case of CIT Vs Spring Dale Educational Society reported as (2011)16 taxmann.com 285 the Hon'ble Punjab & Haryana High Court held as under:

> **"Section 12AA of the Income-tax Act, 1961 - Charitable or religious trust - Registration procedure - Assessment year 2010-11 - Whether while examining application seeking registration under section 12AA, manner of application of funds of trust do not fall within purview of Commissioner; Commissioner should only satisfy himself about genuineness of aims and objects of trust/institution and genuineness of its activities as enumerated in clause (b) of sub-section (1) of section 12AA - Held, yes"**

17. The observation of the Ld.CIT(E) that books of accounts and vouchers had not been produced does not empowers the CIT(E) to reject the application as rightly contended by the Ld. A.R by relying on the order in the case of 'Vidyadayani Shiksha Samiti Vs CIT (Exemptions)'Lucknow wherein while addressing the identical objection raised by the Ld. CIT(E), Lucknow the ITAT held as under:

> *16. Now, coming to the powers of the Commissioner as to whether whilegranting registration u/s 12A he is required to examine the books of account etc. or he is only to satisfy himself regarding the objects of the trust and genuineness of the activities of the trust, we find various courts have held that while granting registration u/s 12A the ld. CIT is required to see only the objects of the assessee trust/society and not to examine the application of income. He is not required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit while granting registration. He is only required to examine the objects of the trust. We find identical issue had come up before the Tribunal in the case of*

Bhartiya Kisan Sangh Sewa Niketan (supra). In the said case also the assessee trust did not produce the books of account, bills and vouchers etc. for verification of the ld. CIT for which the ld. CIT held that the assessee society is not carrying out any charitable activities. Due to non-compliance of assessee society, the genuineness of the activities could not be verified. The ld. CIT, therefore, relying on various decisions including the decisions which have been relied on by the ld. CIT in the present case, rejected the claim of registration u/s 12A(1) of the I.T. Act. When the matter travelled to the Tribunal, the Tribunal allowed the claim of registration by holding that at this stage on granting registration u/s 12A the ld. CIT is required to see the objects of the society and not required to examine the application of income which will have to be undertaken by the Assessing Officer on a year to year basis after the assessee files the return of income claiming exemption u/s 11 of the I.T. Act.

18. The said view has also been adopted by this Bench in the case of Rasee Educational Institute Vs CIT(Exemption) Lucknow in ITA No. 462/Agra/2017 wherein vide order dated 30.07.208 similar view was adopted where identical objections were raised by the Ld.CIT(E).

19. We find that Learned CIT, while passing impugned order seems to be under gross misconception that it is his satisfaction and definition of ‘charitable activities’ de hors requirement of law would only enable an institution to be granted registration under section 12AA of the Act as once registration is granted, the entire income of the institution would become exempt. The said view, in the light of precedents referred above is wholly opposed to law. Under section 12AA of the Act, the

Commissioner is entitled to see that whether the objects are charitable in nature, which term has been well defined in the Act and also to see whether the activities are genuine or not. The genuineness of activities would mean to see that activities are not camouflage, bogus, artificial and whether these are in accordance with the objects of the institution. The scope of enquiry does not extend beyond that point. On the other hand, the registration granted by Commissioner does not extend any exemption to an institution under section 11 except to the fact that such registration is mandatory for claiming exemption under section 11. Meaning thereby, in other words, exemption under section 11 can be availed by institution which are genuinely engaged in 'charitable activities. However, benefit of section 11 is subject to application of income for charitable activities and the Assessing Officer is well entitled to see whether such application has been made and other conditions of section 11 have been complied. The Assessing Officer has to see whether exemption under section 11 is barred by application of section 13 of the Act. An institute though registered under section 12AA, would still be taxed on the income which has not been applied in accordance with section 11 or in respect of which section 13 comes into play. Even in respect of income hit by section 13, other provisions of the Act regarding levy of tax on 'maximum marginal rate' would come into play.

Thus, the registration under section 12AA is only fait accompli to the objects of the institution. The activities of an institution though genuine at the time of grant of registration may not remain so during its life span and the registration granted to it cannot be life time guarantee that it would remain so, that is why the law prescribes procedure for withdrawal of registration once granted. Various findings as demonstrated by the Ld Counsel too were recorded in total ignorance of facts available on records.

20. In the facts and circumstances of the case, the order under appeal is unsustainable and thusreversed. The Ld. CIT(E) is directed to grant registration to the appellant forthwith, preferably within a month time of furnishing copy of this order.

21. In the result, appeal is allowed.

(Order pronounced in the open Court on 27/09/2018)

Sd/-	**Sd/-**
(A.D. Jain)	**(Dr. Mitha Lal Meena)**
Judicial member	**Accountant Member**

Dated: 27/09/2018
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Copy of order forwarded to:

(1) The appellant *(2) The respondent*
(3) Commissioner *(4) CIT(A)*
(5) Departmental Representative *(6) Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra

		Date		
1.	Draft dictated / (DNS)	26.09.2018		PS
2.	Draft placed before author	27.09.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			