

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 363/DEL/2016

Sanatan Dharam Shiksha Sammittee C/o. S.D.Senior Secondary School, Narwana, Distt. Jind Haryana PAN : AAETS6172P (APPELLANT)	Vs.	CIT (Exemptions) Aayakar Bhawan, Sector-17-E Chandigarh (RESPONDENT)
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Appellant by	Smt. Rano Jain, Adv.
Respondent by	Sh. Sanjay Goyal, CIT-DR

Date of Hearing	29.07.2019
Date of Pronouncement	31.07.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 27.11.2015 passed by Commissioner of Income Tax (Exemptions), Chandigarh by the assessee.

2. The grounds of appeal are as under:-

- 1) *“On the facts and circumstances of the case and in law the Ld Commissioner of Income Tax (Exemptions), Chandigarh [hereinafter referred to as CIT(E)] was not justified in refusing the registration of the society just on his surmises & conjecture and without considering all the facts on the file.*
- 2) *On the facts and circumstances of the case and in law CIT(E) was not justified in refusing the registration to the appellant society without giving it a opportunity of being heard as required u/s 12AA of The Income Tax Act 1961.*
- 3) *That CIT(A) has erred in law and on facts while holding, based on his suspicions, surmises and conjectures , that the resolution of the society*

passed as addendum 'that surplus funds will be invested as per provisions of section 11(5) of the I.T.Act ' connotes that prior to the resolution there was no charitable activity.

4) The CIT(A) has erred in law and facts while holding that running of schools is not a charitable activity as first object of the society is ' direction, supervision and looking after Sanatan Dharma High School".

5) That CIT(E) has erred in law and on facts while holding that purchase and sale of immoveable property as per their needs by an educational institution is against charitable object.

6) On the facts and circumstances of the case and in law The Ld CIT (E) has erred while holding that for registration of society under Income Tax Act, it must be registered under " Haryana Registration and Regulation of Society Act, 2012" whereas no such registration is required either under section 12AA of Income Tax Act,1961 and/ or rules made there under.

7) That CIT(E) has erred in law and on facts while holding that Provisions of section 44AB applies to an institution seeking registration under section 12A of the Income Tax Act.

8) On the facts and circumstances of the case and in law, the order of Ld CIT (E) dated 27/11/2015 is vitiated in law since he failed to appreciate the legal position that the source is not important but the application of funds towards objects of the society which are "Charitable in nature" is required to be considered in order to decide the genuinely of the activities of the society when he himself admitted the fact that the society is running schools- an educational activity.

9) On the facts and circumstances of the case and in law the Society being a Public Charitable Institution and undisputedly imparting education since its inception, therefore it was not justifiable on the part of the CIT (Exemption) Chandigarh to deny registration.

10) The appellants seek leave to add, amend, delete or alter any ground(s) of appeal petition at the time of hearing of appeal, if deemed necessary, in the interest of justice & equity.

3. Sanatan Dharam Shiksha Samiti, Narwana is a society registered under the Society's Act, 1860 with effect from 19.11.1974. The applicant society is having object of directing, supervising and looking after Sanatan Dharam High School, to construct the building of the school, to purchase movable and immovable property for the Samiti and sale it time to time, to collect money for

the proper conduct of Samiti and to impart and sustain Indian Cultural values amongst students. This object and aim are submitted before the Tribunal as well as before the CIT(Exemptions). No return of income was filed since inception of the society except for Assessment Years 2013-14 and 2014-15 showing nil income and apparently with the aim of seeking refund on the basis of TDS. An application for registration u/s 12A was filed on 5th May, 2015 by the applicant society. Notice was issued on 02.11.2015 by the CIT(Exemptions). The Society filed reply dated 09.11.2015. The Commissioner of Income Tax (Exemptions) held that from the perusal of the by-laws of the society, it can be seen that there are general clauses which do not point out to any charitable activity. In fact, from the objectives the society will purchase and sell immovable property as per society's needs. The CIT(Exemptions) further observed that the society purchased the property out of surplus funds and earned rental income from the shops which have been constructed out of these funds. The CIT(Exemptions) observed that the society has no investment clause, amendment clause, irrevocability clause, utilization clause, or beneficiary clause in the by-laws of the society. The applicant society did not file audit report prescribed in the balance sheet and shown receipt of about Rs. 1 crore. The Society was supposed to file audit report in form 3CB and 3CD as per provisions of Section 44AB of the Act which was not filed by the applicant society. Thus, the CIT(Exemptions) rejected the application u/s 12A of the Income Tax Act, 1961.

4. Being aggrieved by the order, the applicant society filed present appeal.

5. The Ld. AR submitted that the Applicant Society three schools and one college which are run at two different places/premises. The sammittee is looking after its affairs from the premises of S.D. Senior Secondary School, Canal Road, Narwana. The Sammittee has no branch. The area of operations of the Sammittee is only Narwana (District Jind) Haryana. The Ld. AR submitted that the individual balance sheets of the schools and college as on 31.03.2015

were submitted before the CIT (Exemptions). The Ld. AR submitted that the Applicant Society is in the field of education which is a charitable purpose only. The Ld. AR further submitted that all the relevant documents as asked by the CIT (Exemptions) were produced. Therefore, the Ld. AR submitted that the CIT (Exemptions) should have granted benefit of Section 12AA of the Income Tax Act, 1961. The Ld. AR further submitted that provision of Section 44AB and audit in Form 3CB and 3CD are not applicable to the Society. Merging of the Financial statement of three schools of which one is financed by the Government is not against the law and main object and intent of the society is charitable in nature as defined in the provisions of the Income Tax Act, 1961.

6. The Ld. DR submitted that the applicant society did not complete with the requirement of grant of Section 12A application. The Ld. DR relied upon following decisions:

- i) CIT vs. Sree Anjaneya Medical, 2016, Supreme Court of India, 74 taxmann.com 243.
- ii) National Labour Federation Co-Operative of India Ltd. vs. DIT (Exemption) 2010, ITAT Delhi Bench "F", 130 TTJ 163(Delhi)
- iii) Society for the Small & Medium Exporters vs. DIT(Exemption), 2010, ITAT Delhi Bench "G", {2011} 11 taxmann.com169(Delhi)
- iv) CIT vs. Babu Ram Education Society, 28, Supreme Court of India, 96 taxmann.com 607
- v) Winsome Foundation vs. CIT-1, Chandigarh, 2018, ITAT Chandigarh Bench "B", 89 taxmann.com 131
- vi) Dr. Bhim Rao Ambedkar Educational Society vs. CIT(Exemptions), 201, High Court of Allahabad, 88 taxmann.com 524
- vii) Dawn Educational Charitable Trust vs. CIT, Supreme Court of India, 2016, 73 taxmann.com 61.

7. We have heard both the parties and perused all the relevant material on the record. It is pertinent to note that from the perusal of the by-laws of the

society, all the clauses are general clauses which do not point out any charitable activity. In fact, from the objectives the society will purchase and sell immovable property as per society's needs. The CIT(Exemptions) rightly observed that the society purchased the property out of surplus funds and earned rental income from the shops which have been constructed out of these funds. Thus, from these observations it can be seen that the society is having commercial activities. The CIT(Exemptions) observed that the society has no investment clause, amendment clause, irrevocability clause, utilization clause, or beneficiary clause in the by-laws of the society. The Ld. AR could not point out that the society is dealing exclusively in imparting education which is charitable purpose from the bye-laws. In fact main object of the society is to direct, supervise and look after Sanatan Dharam High School, as well as to construct the building of the school, along with purchase movable and immovable property for the Samiti and sale it from time to time. One of the object is to collect money for the proper conduct of Samiti and to impart and sustain Indian Cultural values amongst students. All these are not coming under the purview of imparting education among the society. The applicant society did not file audit report prescribed in the balance sheet as per the requirement for filling application u/s 12AA registration. Thus, the Applicant society also failed to submit the proper documents before the CIT(Exemptions). Thus, the CIT(Exemptions) rightly rejected the application of the applicant society u/s 12A of the Income Tax Act, 1961.

8. In result, appeal of the applicant society/appellant is dismissed.

Order pronounced in the Open Court on 31st JULY, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 31/07/2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	15.07.2019
Date on which the typed draft is placed before the dictating Member	16.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	31.07.2019
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	