

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

**Before : Shri Laliet Kumar, Judicial Member And  
Dr. Mitha Lal Meena, Accountant Member**

**ITA No. 03/Agr/2021**

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| Doctor Madan Lal Atri Charitable Trust<br>255/3, Azad Nagar, Sipri Bazar<br>Jhansi (U.P.)<br>PAN: AABTD5679H<br><b>(Appellant)</b> | vs. | CIT Exmp.<br>Lucknow (U.P.)<br><br><b>(Respondent)</b> |
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| <b>Appellant by</b>  | Sh. Utsav Sehgal, C.A.   |
| <b>Respondent by</b> | Sh. Sunil Bajpai, CIT DR |

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| <b>Date of Hearing</b>       | 28.05.2021 |
| <b>Date of Pronouncement</b> | 07.06.2021 |

**ORDER**

**Per Laliet Kumar, J.M.:**

The present appeal was filed by the assessee feeling aggrieved by the order passed by the CIT exemption, rejecting the application for registration under section 12 AA of the income tax act 1961 on the following grounds :-

1. That the learned Commissioner of Income-tax (Exemption), [hereinafter referred to as the 'CIT(E)'], Lucknow has been arbitrary and unjust in denying the registration U/S 12AA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') to the appellant charitable Trust.

2. That the learned CIT(E), Lucknow has erred both in law and on facts in rejecting application for seeking registration U/S 12AA of the Act filed by the appellant charitable Trust, solely on the basis of her wrongly drawn unilateral inferences and unwarranted observations, which are contrary to the facts of appellant's case and even to the material/evidences placed on records.
3. That while arbitrarily rejecting the application for seeking registration U/S 12AA of the Act filed by the applicant, the learned CIT(E), Lucknow has completely brushed aside and disregarded that in the light of material/evidences placed on records it was beyond doubt evident that from last number of years, the appellant charitable Trust was genuinely conducting the charitable activities strictly in accordance with its objects and it had duly complied with all the necessary requirements of any other law, which were material for the purpose of achieving its objects and therefore appellant charitable Trust deserves for grant of registration U/S 12AA of the Act.
4. That in any view of the facts and circumstances of the case of the appellant charitable Trust it is entitled for grant of registration U/S 12AA of the Act, which be kindly granted.
5. That the order U/S 12AA(1)(b) (ii) of the Act dated 22<sup>nd</sup> December, 2020 is against the law and facts of the case of the appellant charitable Trust.
6. The appellant seeks permission to modify and/or add any other ground/grounds of appeal as the circumstances of the case may require or justify.

## **Brief Facts**

1. That the "Assessee Educational Charitable Trust" (hereinafter referred to as 'Assessee Trust') was formed on August 1, 2009 with the primary and main objective of rendering "education". As per trust deed the objects of the assessee were mentioned as under:

i) To render services in the field of education by establishing and operating schools and educational institutions irrespective of any reservation for any caste, creed, race, religion or language.

ii) To establish and run educational institutions to promote nursing, teaching, training and other associated training related to education.

iii) To promote such educational, sports and co-curricular activities as may result in mental and/or physical well being of the students and members of the society in general.

iv) To acquire, construct and maintain hostels/buildings for providing accommodation and fooding to persons teaching, studying or connected with such aforesaid schools and educational institutions.

v) To set up laboratories, purchase and acquire any equipments, books, journals and instruments required for carrying out teaching and research activities in any field such as science, technology, commerce, arts, computers, medical, social, animal husbandry, dairy etc. in such aforesaid schools and educational institutions, to promote educational activities.

To bring out, encourage and develop the inventive and research faculties of the pupils and teachers and to afford opportunity for research work in fields like science, technology, commerce, arts, computers, medical, social, animal husbandry, dairy and industrial undertakings etc.

vii) To grant stipend, scholarships, awards or any other assistance or otherwise to deserving students or scholars, to further the course of study and/or research.

i) To train and equip the pupils, so as to be self supporting in honorable and decent way of life, so as to develop into good, healthy and progressive citizens of good conduct and a habit to observe the rule of law and self restraint.

vi) To promote and carry out all other activities of charitable purpose including spread of education, medical relief, relief of poor and advancement of any other object of general public utility as the law may regard as public charitable objects or purposes.

vii) To borrow, raise loan from any person, bank or financial institution in such manner as the Trustees shall think proper or convenient for the furtherance of objects of the Trust and for this purpose the Trustees may secure repayment of these loans in any manner as may be decided from time to time.

viii) The Trust shall be entitled and be at liberty to accept gifts, donations, voluntary contributions in money or otherwise from any person, firm or institutions or Government and to collect subscription, donation or aid from State Government, Central Government to augment the Trust Fund towards the corpus or otherwise and to use such money for the objects of the Trust but the Trust shall return the gifts of immovable properties received for carrying out specific object, back to the donors or their legal heirs, if the Trust does not carry out the object for which the gift of immovable property was made even when such transfer of immovable property was made by an irrevocable gift deed.

ix) To do all necessary acts for and incidental or conducive for the attainment of above objectives of the trust and to give donations to institutions having similar objects.

2. On the basis of the above objects, it was submitted that the cursory glance of the objects of the assessee, shows that the assessee is a charitable trust registered for the purpose of charity as defined under section 2 (15) of the income tax act 1961 .

3. It is the case of the assessee that with a view to fulfilment the objects of establishment “ imparting education “ the assessee trust is running a school under the name of 'The Aryans' School' which is a CBSE affiliated school for Senior Secondary School Certificate Examination. It was also

the case of the assessee that the assessee was following the guidelines as laid down in the Right to Education Act 2009.

4. The AR for the assessee had submitted that 'Assessee Trust' has been maintaining Audited books of accounts and voluntarily filing its return of income well within the stipulated time.
5. That as upto F.Y.2018-19, the annual aggregate receipts did not exceed the prescribed amount of Rs.1 crore vide rule 2BC of Income Tax Rules therefore till A.Y.2019-20 it had claimed exemption U/S 10(23C)(iiiad) of the Act, which looking to the facts, nature and charitable objects of the 'Assessee Trust' was always allowed by the Income Tax Department and accordingly declared income of the 'Assessee Trust' has always been accepted.
6. That as the management of the 'Assessee Trust' noticed that in future there is likelihood of the annual receipts of 'Assessee Trust' may exceed the amount of Rs.1 crore prescribed vide Rule 2BC of Income Tax Rules and for other reasons also it was decided to seek registration under section 12AA(1)(b) of the Act.
7. That accordingly the 'Assessee Trust' had filed application vide Form 10A under the relevant provisions of Rule 17A of the Income Tax Rules, 1962 to seek registration under clause (aa) of sub section (1) of section 12A of the Act dated 30.03.2020 before the Ld. CIT(Exemptions), Lucknow (hereinafter referred to as 'the Ld. CIT(E)') alongwith the required details, informations and documents/material.
8. However despite filing the details as sought by the CIT exemption during the proceedings before her for granted registration, the registration was declined to the assessee by the impugned order 22 December 2020.

Feeling aggrieved by the order passed by CIT exemption the assessee is in appeal before us on the ground mentioned herein above.

### **Submissions Of The Assessee**

9. Ld. for the assessee had submitted that the Ld. CIT(E) issued an online questionnaire dated 30.07.2020 for the 'Assessee Trust' containing 26 questions, reply to which was sought by August 18<sup>th</sup>, 2020, a copy of which is being attached at pages 4 to 6 of this paper compilation
10. Ld. for the assessee had submitted that the 'Assessee Trust' furnished reply dated, August 16<sup>th</sup>, 2020 vide e-proceedings Response Ack. No. 16082013385047 and August 17<sup>th</sup>, 2020 vide e-proceedings Response Ack. No. 17082013385050, copies of which are being attached to this synopsis along with the copies of the entire paper submission filed online before the Ld CIT(E) and before the designated due date of August 18<sup>th</sup>, 2020. On a bare perusal of such online paper submission, one can easily conclude that the "assessee charitable trust" had furnished reply to all the 26 queries raised by the Ld CIT(E) along with the relevant paper evidence, material information and material records.
11. Ld. for the assessee had submitted that the Ld. CIT(E), rejected the application made by the 'Assessee Trust' in

Form 10A, by passing an order under section 12AA(1)(b)(ii) of the Act dated 22.12.2020, on the basis of reasons which on an apparent basis are contrary to the case and facts of the 'Assessee Trust'. The Ld CIT(E) refused to register the 'Assessee Trust' under clause (aa) of sub section (1) of section 12A of the Act on the basis of unilaterally ill found and non-existent reasons and without even giving a reasonable opportunity of being heard to the 'Assessee Trust' before such refusal.

12. The first contention of the Ld.AR for the assessee was that T at the time of granting of registration under clause(b) of sub section(1) of section 12AA of the Act, the Ld CIT(E) has to only look into the following:

- objects of the trust and
- genuineness of the activities of the trust and
- compliance of such requirements of any other law for the time being in force by the trust as are material for the purpose of achieving its objects.

13. Ld. AR had submitted that on a bare perusal of the objects of the 'Assessee Trust' which pivot around imparting of "education", it can be easily concluded that they fulfill the conditions as laid under section 2(15) of the Act and therefore, there can be no denial to the fact that the 'Assessee Trust' is carrying out activities which are charitable in nature. It is noteworthy that the Ld CIT(E) has not

raised any doubt with respect to charitable nature of activity carried on by the 'Assessee Trust'.

14. Ld AR had submitted that the 'Assessee Trust' had furnished financials of the Aryan's School in form of Audited Receipts and Payments Account, Income and Expenditure Account and Balance sheet for the 24--31 last three years i.e. for the FY 2016-17, 2017-18 and 2018-19. Also the 'Assessee Trust' had furnished copies of ITR V and computation of income for such financial years relevant to AY 2017-18, 2018-19 and 2019-20 wherein 'Assessee Trust' has shown claiming of exemption u/s 10(23C)(iiiad) of the Act. List of fixed assets as on 31.3.2019 and complete copy of bank statements for such period, from which is pretty evident that the 'Assessee Trust' has been imparting education, maintaining proper audited books of account and making timely compliance under the relevant provisions of the Act. The Ld CIT(E) has also not doubted the genuineness of activities carried on by the "assessee charitable trust".

15. Ld Ar further submitted that as far as "compliance of such requirements of any other law for the time being in force by the trust as are material for the purpose of achieving its objects" is concerned, it is worth mentioning that the 'Assessee Trust' is duly registered under the laws as applicable over it and are material for the purpose of achieving its objects such as it is affiliated under CBSE, it has enrolled students under RTE,

2009, etc details of which it had duly submitted before the Ld CIT(E) in its paper submission which out of lackluster approach were not taken cognizance of by the Ld CIT(E) and a rejection order was passed in a cryptic manner mentioning that the 'Assessee Trust' had not made necessary compliance under relevant laws, when in fact the 'Assessee Trust' was duly affiliated under CBSE.

16. Ld AR submitted that therefore, as it is obvious from the above that the 'Assessee Trust' also satisfies the condition where "compliance of such requirements of any other law for the time being in force by the trust as are material for the purpose of achieving its objects" is needed, so, in true sense, the 'Assessee Trust' duly fulfills all the parameters that need to exist at the time of grant of registration under clause(aa) of sub section(1) of section 12A of the Act and so it is travesty of justice as the 'Assessee Trust' has been denied such registration rightfully.

17. That it's a well settled law, that at the time of grant of registration under clause(aa) of sub section(1) of section 12A of the Act, the CIT(E) has to see whether the objects are charitable in nature, which has been well defined in the Act and also to see whether the activities are genuine or not. In the case of **Ananda Social & Educational Trust v. Commissioner of Income tax, [2020] 272 Taxman 7 (SC)** the **Hon'ble Supreme Court** held as under:

*"9. Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its*

*activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration*

*12. Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act.*

*There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust."*

18. That in the case of **Commissioner of Income-tax, (Exemption)v. Association of Third Party Administrators [2020] 114 [taxmann.com](http://taxmann.com) 534 (Delhi)**, the Hon'ble Delhi High Court observed the following,

*"4. We have carefully examined the record and given due consideration to the contentions urged by Mr. Maratha. At the initial stage of registration, we have to examine whether the proposed activities of the assessee can be considered charitable within the meaning of section 2(15) of the Act. On an application for registration of a trust or institution made under section 12AA, the Principal Commissioner or Commissioner shall 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 the compliance of such requirements of any other law for the time being in force by the trust or institution, as are materials for the purpose of achieving its objects, and he may also make such inquiries as he may deem necessary in this*

*behalf. Once he is satisfied about the objects of the trust or institution, and genuineness of its activities, he shall pass an order under the said provision..."*

19. That in the case of **Fateh Chand Trust & College Committee v. Commissioner of Income Tax (Exemption), Lucknow [2019] 101 [taxmann.com](http://taxmann.com) 364 (Agra - Trib.)**, the **Hon'ble ITAT, Agra Bench** observed the following:

*"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' dehors 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 pint...."*

20. That the **Hon'ble Allahabad High Court** in the case of **CIT v 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]"

That similarly **Jurisdictional High Court** in the case of **CIT v. Babu Ram Education Society [2018] 96 taxmann.com 606 (All.)** 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)"*

That In the case of **CIT v. Spring Dale Educational Society [2011] 16 taxmann.com 282/[2012] 204 Taxman 11 (Mag.)** 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 201011 - 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"*

That in the case of **Vigyadayani Shiksh Samiti v. CIT (Exemption) [IT Appeal No. 309 (Delhi) of 2016, dated 14-12-2017]** wherein while addressing the identical objection raised by the Id. CIT(E), the Hon'ble Lucknow ITAT held as under:

*"Now, coming to the powers of the Commissioner as to whether while granting 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 Id. 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 Id. CIT for which the Id. 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 Id. CIT, therefore, relying on various decisions including the decisions which have been relied on by the Id. 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 Id. 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."*

The said view has also been adopted by this Bench in the case of **Rasee Educational Institute v. CIT (Exemption) Lucknow** in [IT Appeal No. 462/Agra/2017 wherein vide order dated 30.07.2008] similar view was adopted where identical objections were raised by the Id.CIT(E ).That in the case of **CIT Vs M/s. Reham Foundation Kandhari Lane Lal Bagh Lucknow (High Court Allahabad, Lucknow Bench), Income Tax Appeal No. 37 of 2017, dated 26.09.2019**, the Hon'ble Full Bench of Allahabad High Court, held that,

*"31. In view of the above the answer to questions referred are answered as under:-*

*The income tax Appellate Tribunal while hearing an Appeal under Section 254(1) in a matter where registration under Section 12(AA) has been denied by Commissioner income tax can itself pass an order directing commissioner*

*to grant registration in case the income tax Appellate Tribunal disagrees with the satisfaction of the Commissioner on the basis of material already on record before the Commissioner*

*The power of the Appellate Tribunal are co-extensive with the power of the Commissioner under Section 12 (AA) of the Act, 1961 subject to what has been indicated herein above*

*In view of the aforesaid the reference is answered."*

21.....Relying upon the above said decisions the Ld.AR for the assessee had submitted that , it is clearly evident that at the stage of granting of registration, the Ld CIT(E) had to look into the above mentioned three points i.e. whether the objects of the trust are of charitable nature, genuineness of activities of the trust and the compliance of such requirements of any other law for the time being in force by the trust, as are materials for the purpose of achieving its objects. As it is apparent that the 'Assessee Trust' is engaged in rendering "education" which falls within the meaning of "charitable purpose" as per section 2(15) of the Act and such has not been doubted by the LD CIT(E), further, the Ld. CIT(E) has not doubted genuineness of activities of the 'Assessee Trust' or mentioned a word if the activities of the 'Assessee Trust' are not of genuine nature and lastly, the 'Assessee Trust' has demonstrated here that it is duly affiliated under CBSE and enrolls students under the Right to Education 2009, therefore, the 'Assessee Trust' deserves to get registered under clause (aa) of sub section (1) of section 12A of the Act and on the basis of the above so submission it was submitted that the assessee trust is entitled to registration as sought by the assessee.

## Submissions of the Revenue

22. At the outset the Ld.DR for the revenue had drawn our attention to the order passed by the Commissioner exemption, whereby she had recorded that, the assessee had failed to comply with the other the statutory requirement for imparting education in the school. Our attention was drawn to the following paragraph of the CIT exemption order:

*"4. From the perusal of the material available on record. it is observed that as per the applicant:-*

*" The main aims and objectives of the trust include the following among others:-*

*i. To render services in the field of education by establishing and operating schools and educational institutions irrespective of any reservation for any caste, creed, race, religion or language.*

*ii. To establish and run educational institutions to promote nursing, teaching, training and other associated training related to education.*

*iii. To grant stipend scholarships, awards or any other assistance or otherwise to deserving students or schools, to further the course of study and or research.*

*iv. To promote and carry out all other activities of charitable purpose including spread of education, medical relief, relief of poor and advancement of any other object of general public utility as the law may regard as public charitable objects or purposes.*

*v. In order to fulfill its objectives the trust has been running a school by the name of the Aryans School at*

*Atri Gardens Sipri Bazar, Jhansi. The Aryans School is an English Medium School, affiliated with CBSE Board, upto Class 12th."*

*vi From the material on record it appears that the applicant is running a school to earn profit as no details with evidences were submitted regards any scholarship or concession of fees given to any student in A.Y. 2018-19 & 2019-20. No proof was submitted to corroborate of fees given to any student in A.Y. 2018-19 & 2019-20. No proof was submitted to corroborate the charitable activities claimed to be carried out by the applicant.*

*vii Also the applicant has not furnished the annual financial statements for the applicant's trust. The balance sheet & income & expenditure account of ' The Aryans' cannot be treated as the financial statements of the trust.*

*5. Thus, the application/written submission made by the applicant is therefore, deficient, to the above extent.*

*6. Further, with a view to compliance with respect to the above said amended section 12AA of the Income Tax Act. the applicant was required to furnish information as per point no. 24 & 25 of the questionnaire which is as follows:*

*"Please furnish copies of approvals/permissions received from **the competent authorities, with respect to the charitable activities carried out by you in the past three years, under the relevant respective laws.** which are material for the purpose of achieving your objects".*

*7. The written submission of the applicant has been considered and it is to be noted that the applicant trust has been formed on 01.08.2019. The main objects of the trust is stated to be providing education. The applicant is running an educational institution but it has neither submitted any **affiliation certificate nor any***

**details of the students enrolled in the institution.**  
Besides the applicant is required to comply with **other laws in force** at the time.

8. Further, with aforementioned amendment in section 12AA of the Income Tax Act. the applicant is required to comply with any laws, material for achieving its objects. However in case of the applicant, there is no compliance of laws towards achieving the above mentioned objects. Needless to say the applicant has not also obtained any permissions/approvals/affiliations, for implementing its objects, such as **Right to Education Act, 2010, The Uttar Pradesh Basic Shiksha Adhiniyam, 1972. The intermediate education Act, 1921//The Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962, National Building Code 2005, Fire and Life Safety Certificate, Save Drinking Water and Sanitary Conditions Certificate etc.**

9. Thus looking to the facts and circumstances of the case it is clear that the application has been made without compliance of the other laws, which are material for achieving the objects of the applicant. It may also be mentioned here that approval/registration u/s 12AA of the Income Tax Act. is not a prerequisite for obtaining other necessary permissions/approvals/affiliations, or compliance to other laws necessary for achieving the objects of the applicant. In other words, the applicant is not prevented from obtaining/complying with other laws, as necessary, by lack of registration u/s 12AA. Hence the applicant is free to make a fresh application for registration after obtaining necessary permissions/approvals/affiliations.”

21. It was submitted that the assessee had failed to demonstrate that the assessee is having the affiliation from the Central Board Of Secondary

Education, further it had not provided the details complying with the provisions of Right to Education Act, 2009, and other statutory requirement which are necessary for functioning of the schools.

22. The DR for the revenue had submitted that the case law relied upon by the assessee are not applicable to the facts and circumstances of the case, as new requirement in law have been introduced by virtue of the amendment with effect from September 2019, whereby it was incumbent and obligatory on the part of the Commissioner exemption to ensure that the assessee must be comply with the relevant requirement of other law for the time being in force at the time of registration . He had taken us to the provisional affiliation granted by the central board of education. As per the said provisional affliction the assessee was duty-bound to comply the other requirement of law.
23. In rebuttal, the Id. AR for the assessee had submitted that the assessee is having the affiliation from Central Board of Secondary Education and is also complying with the requirement of Right to Education Act. It was submitted that the finding of Commissioner exemption that the assessee is not having approvals from various statutory authorities is factually incorrect. Further it was submitted that once the Central Board of Secondary Education, grants the necessary affiliation to the assessee, then the CBSE, had taken care of the compliance of norms of other statutory authorities. During the hearing We had asked the AR to file the documents from various authorities mentioned by the Commissioner exemption in paragraph 8..
24. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the

course of hearing by both the parties. Before we deal with the facts of the present case, it would be appropriate for us to reproduce the relevant provision of income tax act, dealing with the registration of the charitable society/trust. which were applicable on the case of 'Assessee Trust'.

"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 1.[as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause], he—

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

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.

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.

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

50[(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.

Nothing contained in this section shall apply on or after the 1st day of June, 2020."

25. If we look into the amended provision of section 12AA, , which was inserted in the Act on 1.9.2019, it is clear that the lower authority shall call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,—

- a. the genuineness of activities of the trust or institution; and
- b. 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]

26. So far as the first respect of satisfaction of the lower authority pertaining to genuineness of the activities of the trust is concerned, the law is fairly settled by the decision of the Hon'ble Supreme Court in the matter of **Anand social (supra)**, which requires the lower authorities to examine the memorandum of Association/or objects of the trust for the purpose of coming to the conclusion whether the activities of the assessee are genuine or not . Undoubtedly in the present case the activities of the assessee are genuine as is clear from the chart of the activities reproduced herein above. Further the assessee is also claiming exemption under section 10(23) of the Act from the respondent for the last three years i.e 2017-18 to 2019-20 , which were granted to the assessee for the purposes of imparting the education only( pages 36 to 40 PB) . Thus the first condition as stipulated under section 12AA , regarding the genuineness of the activity have duly been proved by the assessee before the Commissioner exemption. We have no doubt about the genuineness of the activities of the assessee i.e the assessee was/is imparting education and imparting of education is a charitable activities under section 2(15) of the Act. Thus

we hold that the activities of the assessee are charitable within the meaning of section 12AA (1) (i) read with 2(15) .

27. However, post amendment, the lower authorities are duty-bound to satisfy itself whether the assessee is complying the requirement of other laws as are material for the purposes of achieving its objects or not, for the purposes of registration. For the purposes of recording satisfaction, registering authority is under an obligation to make such inquiries as are necessary for the purposes of ensuring the due compliances of such other laws.

28. In the present case the assessee is registered with the object to render services in the field of education by establish and operating schools and educational institutions in respect of any reservation for any caste creed race religion or language. Further in paragraph 4 of the impugned order it is mentioned that “ *in order to fulfill its objectives the trust has been running a school by the name of the Aryans School at Atri Gardens Sipri Bazar, Jhansi. The Aryans School is an English Medium School, affiliated with CBSE Board, upto Class 12th.*”

29. *The Commissioner exemption has sought the information from the assessee, as mentioned by her in paragraph 6 with respect to the permissions received from the competent authorities with respect to charitable activities carried out by the assessee, which are material for the purposes of achieving its objects.*

30. From the perusal of paragraph 6 and question 24 and 25, it is clear that the Commissioner exemption had not specified which are the competent authorities, from which the assessee was required to seek the approval/permission and which according to Commissioner exemption are material for achieving its objects. In the absence of specific query it was not possible for the assessee to answer it .

**31. In our considered opinion, if the Commissioner exemption, is of the opinion that approval/permission are required from competent authorities,**

**a) Commissioner exemption to specify which are the relevant laws**

**b) the reasons why such other laws are material and**

**c) Authorities from which permissions/approval are required.**

32. In the present case, the Commissioner exemption had only raised vague question to the assessee asking it submitted approval / permission from the competent authorities. The questions raised by the commissioner are as under

|     |  |
|-----|--|
| 24. | If your trust/society is an educational institution, please furnish details of all the students enrolled in your institute during last three years |
| 25  | Please furnish copies of approvals/permissions received from the Competent Authorities, with respect to the charitable                             |

33. In response to the question, the assessee had pointed out that the assessee is having approval from the Central Board Of Secondary Education and the

assessee is also complying with the requirement of Right To Education Act. The relevant portion of the reply given by the assessee is as under :-

24. The trust is running an educational institution and the list showing names of students enrolled under Right To Education Act 2009 during the last three years is given below:

| Academic Year | No. of Students | Name of Students   |
|---------------|-----------------|--|
| 2017-2018     | 2               | 1. Hrithika Sahu s/o Rajendra Sahu<br>2. Krishna Sahu sio Rajendra |
| 2018-2019     | 0               | No student recommended by the Basic Shiksha Adhikari               |
| 2019-2020     | 0               | No student recommended by the Basic Shiksha Adhikari               |

25. Copy of affiliation letter of CI3SE. of "The Aryans' School" is attached. [Anx — 8]

34. However the Commissioner exemption was not satisfied with the answer given by the assessee and in paragraph 8 wrongly mentioned that the assessee has not obtained any permission /approvals /affiliation for implementing its objects under various acts.

35. In our view the finding recorded by the Commissioner exemption cannot be sustained, as the same is factually incorrect the assessee is having approval under the Central Board Of Secondary Education ( page 67 to 69 of PB) as well as the assessee is complying with the Right To Education Act 2010. Though the Commissioner exemption has never enquired about compliance of various other statutory requirement as mentioned in paragraph 8 of her order to the following effect

**“.....Right to Education Act, 2010, The Uttar Pradesh Basic Shiksha Adhinyam, 1972. The intermediate education Act, 1921, The Uttar Pradesh Pravidhik Shiksha Adhinyam, 1962, National Building Code 2005, Fire and Life Safety Certificate, Save Drinking Water and Sanitary Conditions Certificate etc.”**

36. In our considered opinion it was incumbent upon the Commissioner exemption to seek the response of the assessee, after giving the Show cause notice , in the light of our conclusion drawn by us in paragraph 31 (supra). Neither any enquiry was made in this regard nor any show cause notice was given on the applicability of these laws/ permission/ sanction nor any opportunity of hearing was given to the assessee. Therefore the action of the CIT(A)(EXEP) can not be countenanced and is not in accordance with law.

37. *In our considered opinion the Commissioner exemption can only ask for the compliance of other laws which are material for fulfilment of the objects of the assessee. The Commissioner exemption should keep in mind that the scope and ambit of the enquiry under the Act is only limited. The Commissioner exemption cannot look into whether the approval or*

37. *permission was rightly given or not.*

38. *Further we are of the opinion once the affiliating Central Board of Secondary Education, which is a specialized and designated authority for the purpose of ensuring the quality , standard of education and is further bestowed with the responsibility to ensure safety, hygiene, potable water, health, building norm etc and once it or any other equivalent body had*

granted the affiliation to the assessee then the Commissioner exemption cannot sit in appeal against the affiliation granted to the assessee by the board . The expert body in the field of education, in our opinion is **affiliating board** and once affiliation is granted then the authorities and approval/permission, which had already been examined by the board should not be a subject matter of fresh examination by the Commissioner exemption.

39. The purpose of grant of registration is to ensure that the assessee is primarily into charitable activities as defined under section 2(15) of the Act and for those purposes, Commissioner exemption should make enquiries only. The Commissioner exemption should not use this opportunity to extend its authority beyond Income Tax Act i.e in the sphere of the other authorities under different laws or sitting in judgment against permission/ approval given under different laws, as a super Cop . As in our opinion it is for the other authorities to examine whether the assessee is subjected to provision of law and is required to comply the relevant provision of law. The Authorities created under various ACTS should function within their respective domain and should not encroach or interfere in other areas, this is necessary for smooth functioning of various organs of state. Though Section 12AA of Act has been widely worded “any other law” however the same has been given restricted or narrowed by the other words used in the section namely “ **as are material for the purpose of achieving its objects** ”. Therefore before embarking upon any enquiry by the Commissioner exemption, it is sine qua non(essential) to inform the

*assessee as to which are the various laws under which the assessee should have the approval/permission before seeking the registration.*

40. *The Commissioner Exemption should keep in mind that various approvals/permission cannot be sought from the assessee or in other words it is not possible for the assessee to even apply and seek approval/permission at the stage of registration of the trust under section 12AA, as those approvals/permission can only be granted after the setting up or commencement of the charitable activities.*

41. During the course of hearing, we enquired from the assessee whether the assessee is permission/ approval under National Building Code 2005, Fire and Life Safety Certificate, Save Drinking Water and Sanitary Conditions Certificate etc. to this the Ld. AR had submitted that all these have been taken care of by the Central Board Of Secondary Education while granting the provisional affiliation and thereafter at the time of renewal. This submission of the assessee, on verification from the condition mentioned in the provisional/renewal of affiliation with central board of secondary education were found to be correct.

42. We had asked the Ld. AR to place on record the copy of approval /permission under **National Building Code 2005, Fire and Life Safety Certificate, Save Drinking Water and Sanitary Conditions Certificate etc.**

**1. In compliance of the direction , the assessee had filed had filed following documents on 2.6.2021 :**

a. Copy of certificate under **National Building Code.**

- b. Copy of certificate from Jhansi Nagar Nigam certifying the entire school campus being surrounded by "pucca" boundary,
- c. Copy of certificate from the office of Nagar Nigam, Jhansi regarding **Safe Drinking Water and Sanitary Conditions**.
- d. Copy of **"Fire Safety Certificate"** from the office The Chief Fire Officer, Jhansi,
- e. Copy of certificate under Right to Education Act, 2009 from the office of **"Zila Basic Shiksha Adhikari, Jhansi"**, and
- f. Evidence showing online affiliation details of the school run by the "Assessee Trust" by the name of "The Aryans School", under Central Board and Secondary Education (CBSE) up to 31.03.2025. Such extension was given by the CBSE in continuation to its last certificate dated 18.07.2017 wherein affiliation was granted by the CBSE from 01.04.2017 to 31.03.2020

43. The perusal of these documents shows that the assessee have all the requisite permissions/ approval as are necessary to run the school. All these documents were never sought from the assessee during proceedings before the CIT( Exemp). Hence there was no occasion to produce these documents before the lower authority. The assessee can not be relegated back to the lower authority for the purposes of satisfaction of the revenue, as the assessee can not be made to

suffer on account of failure of the lower authority, for giving show cause notice and making enquiries on the said aspects.

44. *In the light of the above we find that the assessee was having necessary approval /affiliation from the respective authorities as required by the Commissioner exemption. These permission/ approval now produced by the necessary may not be necessary for the purposes of considering registration, as the same had already been filled with Board at the time of affiliation. Nonetheless now these permission / approval are available, there is no point of denying the registration on the pretext of alleged deficiency.*

45. In the light of the above we are of the considered opinion that the assessee is entitled to registration under section 12AA of the Income Tax Act 1961. Accordingly, we direct the Respondent to grant registration to the assessee from the date of its application. For that purposes we rely upon the decision of the judicial High Court in the matter of **Reham Foundation LKO.\* [2019] 111 taxmann.com 379 (Allahabad) , wherein it was held**

“10. A perusal of Section 12AA of the Income Tax Act shows that the Principal Commissioner or the Commissioner, on receipt of an application for registration of a Trust or an institution, may call for such document or information as he thinks necessary to satisfy himself about the genuineness of the activities of the Trust or the Institution, as it deems necessary. After calling for such an information and satisfying himself about the object and genuineness of the activities of the Trust, he shall pass an order for registering the Trust or the Institution or in the alternate, refuse such registration. In view of the aforesaid provision, the registration of the Trust is subject to satisfaction of the Commissioner, not only over the genuineness of the activities of the Trust, but also about the objects of the Trust or the Institution. In view

of above, the registration of the Trust requires satisfaction of the Commissioner. In case the Commissioner is satisfied with the genuineness of the activities and even the objects, he can register the Trust under Section 12AA of the Act of 1961 and in case the Commissioner is not satisfied or refuses registration, then the Appeal lies to the Tribunal to challenge such order under Section 254 of the Act, 1961.

11. In such case, the Appellate Tribunal needs to adjudicate the issue raised before it because it is the last court of facts. The exemption under Sections 11 & 12 of the Act of 1961 can be sought only after registration of the Trust, thus satisfaction of the Commissioner before registration has been given importance. In view of above, the argument of the learned counsel for the Revenue is that unless such a satisfaction, as envisaged under Section 12AA of the Act of 1961 is recorded by the Commissioner, a direction for its registration should not be given by the Tribunal. As against the aforesaid, the argument of learned counsel for the assessee is that if Tribunal is satisfied about the genuineness of the activities and the object then it can direct for registration.”

**Accordingly the appeal of the assessee is allowed.**

**Sd/-  
(Dr. Mitha Lal Meena)  
Accountant member**

**Sd/-  
(Laliet Kumar)  
Judicial Member**

Dated: 07th June, 2021

Copy of order forwarded to:

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

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal Agra Bench, Agra*

