

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I.T.A. No. 605/Asr/2017**  
Assessment Year: 2017-18

Lord Shiva Educational  
Welfare Society, Faridkot,  
Dehati, NH-15, 4<sup>th</sup> KM Stone,  
Kotrapura Road, Faridkot-  
151203 (Punjab)  
[PAN: AAAAL 6969J]

**(Appellant)**

Vs. The Commissioner of Income Tax  
(Exemptions), Chandigarh

**(Respondent)**

Appellant by : Sh. Sudhir Sehgal

Respondent by: Dr. Devender Singh, CIT-DR

Date of Hearing: 20.06.2018

Date of Pronouncement: 10.09.2018

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the denial of registration u/s. 12AA of the Income Tax Act, 1961 ('the Act' hereinafter) by the Commissioner of Income Tax (Exemptions)('CIT(E)' for short) vide his Order u/s. 12AA(b)(ii) dated 30.08.2017.

2. The assessee, a society formed under the Societies Registration Act, 1860 on 30.01.2013 with charitable objects (Memorandum of Association (MOA) at pgs. 3-5 of the paper-book (PB)), is pursuing the object of imparting and promotion of education, particularly for the poor or weaker sections of the society (through

establishing an institution or adopting any other means) (sub-clause (a) of object clause (4)), running a School by the name 'Mount Litera Zee School' affiliated to Central Board of Secondary Education (CBSE, Delhi) at Faridkot, Punjab, since f.y. 2013-14. For the f.y. 2014-15 (relating to AY 2015-16), the first full year of the operation of the school, it claimed and was allowed exemption u/s. 10(23C)(iiiad) in assessment u/s. 143(3) of the Act dated 15/5/2017 (PB pgs. 85-87). It applied for registration u/s. 12AA on 28.02.2017, which stood rejected by the Id. CIT(E) vide the impugned order. The reasons that inform the said rejection, as a reading of the said order, also read out during hearing shows, are as under:

(a) the school, which is the only activity being pursued by the assessee-society, is on the basis of a franchise agreement entered into with a corporate entity 'Zee Learn Limited', which is admittedly undertaking business, i.e., being run on commercial basis, and not undertaking any charitable activity. How could the assessee, the franchisee, which franchise is secured by paying a one-time non-refundable deposit of Rs.40 lacs, functioning on the terms and conditions set out in the franchise agreement, then, claim to be undertaking charity? *In fact, 10% of the total collection for each year is to be, under the agreement, paid to the franchisor company as royalty (clause 5.2(B)(ii));*

(b) the franchise agreement makes it clear, and toward which its different clauses are referred to and reproduced, that the assessee-society is not independent in its functioning. *The fee structure for the various programs/courses is as decided by the principal (franchisor);*

(c) the school is situate on a leasehold land, so that to that extent the assets of the society do not become its property;

(d) it could not therefore be said that the school, being run as a franchisee on a well established business model, is established for imparting or promoting education to the public at large, but is only in the nature of business, meant for a select few, running on commercial lines.

Aggrieved, the assessee is in appeal, raising the following grounds:

'1. That the Worthy CIT (Exemptions), Chandigarh has erred in not granting registration u/s. 12AA(1)(b)(ii) of the Income Tax Act, 1961 to the assessee Society.

2. That the Ld. CIT having agreed that the society is imparting quality education and there is no diversion of funds out of the receipts of the society towards non-educational purpose, therefore, the CIT has erred in not granting registration u/s. 12AA(1)(b)(ii) of the Income Tax Act, 1961 to the assessee society.

3. That since the genuineness and activities of the Trust having not been doubted, the rejection of bonafide claim of the assessee for registration u/s. 12AA(1)(b)(ii) of the Income Tax Act, 1961 is against the facts and circumstances of the case.'

3. The assessee's case, as made out before us, was along the following lines:

(a) no adverse comment has been made by the Id. CIT(E) on either the objects of the assessee or the genuineness of its activities, i.e., the two parameters which the Id. CIT(E), as the registering authority, is to examine and be satisfied about. The registration therefore could not be denied on the basis it has been (*CIT(E) v. Shree Shirdi Sai Darbar Charitable Trust*, 81 taxmann.com 49 (P&H)). Rather, the very fact that exemption u/s. 10(23C)(iiiad) stood allowed to the assessee for AY 2015-16, is proof enough that the school exists solely for the purposes of education and not for the purposes of profit;

(b) the franchise agreement entered into by the assessee-society, on which basis adverse inferences have been drawn by the Id. CIT(E), *is only to ensure the quality of education*, which in today's competitive times has assumed the nature of a very specialized discipline. The inference of profit maximization or business, is, under the circumstances, misplaced. In fact, the audited accounts of the school reflect an excess of expenditure over income;

(c) even if considered as undertaking business, on sound business principles and practices, generating surplus, the same only feeds the charitable purpose of education, with clause 4 (r) (of MOA) barring withdrawal of the same by way of declaration of dividend, etc. to the members of the society.

At this stage, the Bench queried the Id. Authorized Representative (AR), the assessee's counsel, Sh. Sudhir Sehgal, Advocate, as to the basis on which the assessee claims to be imparting or promoting education among the poor or the weaker sections of the society, as mandated per sub-clause 4(a) of its object clause, and toward which the school has been purportedly founded and is running. Two,

in-as-much as the lease would expire on its term (stated to be 30 years), how would the society ensure that it retains the school building – its' principal asset, after its expiry, or that the lease rent (at Rs. 50,000 per annum presently) is not increased exorbitantly or manifold, after the term, channelizing the funds/income of the society to the lessor, the president of the society. The Id. counsel would seek time to reply to these queries, which was allowed. He would, on the next date of hearing, adduce a chart showing the assessee's fee structure (from class Jr. KG to class X) vis-à-vis other schools imparting comparable education, and on that basis claimed to be lower (Additional Evidences 2-8). Also was furnished along with an affidavit dated 15.06.2018 by Sh. Chaman Lal Gulati, the president of the society, averring that the lease rent, at the end of the current term, would be increased moderately, to (say) Rs.62,500 per annum.

The Id. Departmental Representative (CIT-DR) would submit that there was nothing on record to show or exhibit that the school was running for the poor or the weaker sections of the society, adverting to, besides clause 4(a), clauses 4(g), (h), (i), (j) and (k), all of which, *qua* different objects, *are for uplifting and providing benefit to the poor and needy sections of the community*. The school is, he would continue, being run as a franchisee unit of a commercial entity and, therefore, it could not by any means be said as not operating on commercial lines. Once it is so, how could it claim to be a charitable institution, run for the poor? Referring to the balance-sheet as on 31.03.2015 (PB pgs. 35-39), it was pointed out that even late fee is being charged. How could an institution, which charges admission fee (at the rate of 10% on annual basis), and also penalizes its' students for not paying the fees in time, claim to be serving the poor?

The Id. counsel, Sh. Sehgal, would, in rejoinder, state that operating on commercial lines cannot, by itself, be regarded as jeopardizing the assessee's case where the surplus is not, as in the present case, allowed to be withdrawn, but is to

be deployed for the objects of the trust/institution. The school management is imparting fee concession/scholarship to a number of students, names of some of which are listed at PB pg. 46. Further, if allowed an opportunity, it could be shown as to how many students in each class fall in the category of 'poor' or 'weaker sections' of the society, demonstrating that the school exists predominantly for such students, i.e., as per the terms of its' mandate.

4. We have heard the parties, and perused the material on record.

4.1 Our first observation in the matter is that the assessee, a franchisee of a corporate entity, is running an educational institution in pursuance to object clause 4(a) of it's MOA, which is only object being pursued by it, reading as under:

'4. The Objects of the Society are:

The objects of the Society are given below:

- (a) To establish any institution or adopt means for imparting, promotion of education particularly for the poor or weaker sections of the Society as a whole.'

The Revenue's prime objection is that the assessee is running its' school (educational institution) on commercial lines with a view/object to earn profit, and its' activities cannot therefore be regarded as driven by the purpose of providing 'education', a 'charitable purpose' u/s. 2(15), defining the said term under the Act. The controversy as well as the issue is by now well settled. It was in fact to target profit-making, that the words 'not involving the carrying on of any activity for profit' were inserted in section 2(15). This, as explained, was as the broadly worded definition of the term 'charitable purpose' was being taken advantage of by some commercial concerns which, while ostensibly serving a public purpose, were getting fully paid for the benefit/s being provided by them. The same, however, since omitted, only qualifies a charitable purpose where the same is 'advancement of an object of general public utility'. The subsequent amendment (by Finance Act,

2008, w.e.f. 1/4/2009), further expands the restriction to include any activity involving trade, commerce or business, *irrespective of the nature of use or application or retention of income from such activity*, applicable to this last/residuary clause constituting a ‘charitable purpose’, i.e., advancement of any object of general public utility. That is, does not qualify the object of ‘education’, pursuing which could therefore entail generation of profit, which consideration would ostensibly not impinge adversely on it being regarded as, or make it any less, ‘education’, a charitable purpose *per se*.

4.2 The question, therefore, is whether the earning of profits, i.e., in a regular and systematic manner – on which there could hardly be any doubt, even as the Id. CIT(E) was at pains to emphasize, by managing its affairs adopting standard and well accepted/recognized business management practices and principles, on commercial or market driven basis, could be said to exclude an activity geared to achieve an object otherwise constituting a charitable purpose. The Hon’ble Apex Court has, per a series of decisions, as in *Sole Trustee, Loka Shikshana Trust v. CIT* [1975] 101 ITR 234 (SC); *Indian Chamber of Commerce v. CIT* [1975] 101 ITR 796 (SC); *Dharmadeepti v. CIT* [1978] 114 ITR 454 (SC); *CIT v. Surat Art Silk Cloth Manufacturers’ Association* [1980] 121 ITR 1 (SC); *Aditanar Educational Institution v. CIT (Addl.)* [1997] 224 ITR 310 (SC); *American Hotel & Lodging Assn. Educational Institute v. CBDT* [2008] 301 ITR 86 (SC); and *Queens’ Educational Society v. CIT* [2015] 372 ITR 699 (SC), the last also approving the decision by the Hon’ble jurisdictional High Court in *Pine Grove International Charitable Trust vs. Union of India* [2010] 327 ITR 273 (P&H), settled the law, explaining that on an overall view of the matter the object should not be to make profit, i.e., ‘profit-making’ should not be the predominant object, as where the charitable purpose gets submerged by the profit motive, the latter

masquerading under the guise of the former. As long as it is not so, so that the activity carried on does not have profit-making as its' predominant object, it is not excluded. However, these decisions, again, are all rendered in the context of the charitable purpose being 'the advancement of an object of general public utility', qualified by the defining provision of law itself by a bar with reference to profit, or in the context of sec. 10(23C)(iiiad)/(vi), specifically providing for the educational institution, income from which gets exempt there-under, to be 'existing solely for education and not *for* profit', so that the Apex Court found it useful to refer to the elucidation of and the connotation of the preposition '*for*' per its earlier decisions, which is the reason for our enlisting it's decisions over time, which thus document the progression of law in the matter. *For the other objects constituting a charitable purpose, the genuineness of the purpose gets tested by the obligation created to spend the income exclusively or essentially on charity, i.e., its' charitable objects.* We, therefore, fully endorse the assessee's stand that profit-making, or running the school on business or commercial principles, would not exclude it from being regarded as existing for a charitable purpose. Why, even regarding it as a business; education admittedly being a service that has become increasingly competitive and professional over time, which rather gets borne out by the fact of the same being provided through franchisee units, paying a franchise fee and royalty, so that it may not incorrect to regard it as so, would not though bar the profits and gains from it as being regarded as income liable for exemption u/s. 11(1)(a) where the 'business' is incidental to or subserves the charitable purpose (refer s. 11(4A)). The restriction, prior to sec. 11(4A), was spelt out u/s. 13(1)(bb), since omitted, stipulating a more stringent requirement of the business being carried on in the course of carrying out the primary purpose of the trust or institution, which is also satisfied in the present case as the education is being provided only through the school. The Hon'ble Courts, as a reading of the various decisions in the matter

shows, have refrained from providing a quantitative test for the income generated from the activity carried on in pursuance of or for achieving a charitable purpose/object. Nothing, therefore, turns on the assessee stating before us of its' expenditure exceeding income; the expenditure including a handsome component of depreciation (Rs. 37 lacs for AY 2015-16), so that there is substantial cash profit and, two, the depreciation stands provided on an accelerated (WDV) basis at the rates prescribed under the Act for determining business income, which inflates the charge for the initial years, as against being applied uniformly over the life of the asset. Before us, the ld. counsel sought to justify the fees which, on an annual basis, ranges from Rs. 40,000/- to Rs. 50,000/-, with reference to the quality of the education; the school also providing training in Robotics, a new discipline. Without doubt, the cost of education, as of any other service, can not be properly compared without taking into account its' quality; rather, the quality of both the input resources as well as the output. We have, however, already clarified that no quantitative tests (viz. the rate of profit; the rate of return on investment, etc.) in this regard have been laid down, which the Hon'ble Courts have eschewed for perhaps precisely this reason, i.e., as a number of variables impinge thereon, and which aspect is therefore best left for the regulating authority (as CBSE) or the market place to decide. Our decision in this regard is thus consistent with the decisions by the Tribunal cited before us in respect of similar schools run as franchisee units (of Zee Learn Ltd.).

4.3 The moot question, however, is whether the assessee's activities are being carried on in satisfaction of its' object clause 4(a) (supra), in pursuance of and to achieve which the school stands established and is being run, the only activity being undertaken by the assessee-society. We, on the basis of the material on record, consider it as not. This is as there is nothing to show that the school is

being run for children/students belonging to the poor and weaker sections of the society, or even substantially so, as the Id. counsel, Shri Sehgal, would point out during hearing, referring to the words ‘particularly’ occurring therein. Allowing concession or subsidy to a few students, as shown before us, which it is even otherwise obliged to under the Right to Education Act, would not or cannot be regarded as in satisfaction of the said object. In fact, as apparent from a reading of the various objects, also read out during hearing, serving the poor and needy underpins or pervades the assessee’s various objects – defining its’ philosophy or character, for which the assessee-society is founded, so that it is to therefore inform and guide its activities, the genuineness of which can only be in terms of their being in consonance with the object/s. The learned counsel, on being so pointed out during hearing, as also noted earlier, sought opportunity to demonstrate this inasmuch as this aspect was not highlighted in the proceedings before the Id. CIT(E). True, but, then, can a trust/institution function outside or not in conformity with its objects, and yet claim genuineness of its’ activities? Surely, not. The tribunal, as explained by the hon’ble Apex Court in *CIT v. Walchand and Co. (P.) Ltd.* [1967] 65 ITR 381 (SC) is to deal with and determine all the questions which arise out of the subject matter of appeal, in light of the evidence and consistently with the justice of the case. We are conscious that ‘education’ is a ‘charitable purpose’ *per se*, so that the assessee’s activities, to be regarded as in satisfaction thereof, do not necessarily have to be targeted to serve or educate the poor. However, we have to necessarily read the objects as they are, being the premise with which the society has been established, exhibiting the intention of its’ founder/promoter/s, the stated purpose of its’ existence.

5. We, accordingly, i.e., in view of the foregoing, only consider it proper to restore the matter back to the file of the competent authority to allow the assessee

an opportunity to exhibit its' activities as being undertaken toward and in satisfaction of its stated object/s, which no doubt constitute a charitable purpose under the Act. Before parting, we may also add, and even as clarified by us during hearing, that in view of the assessee's objects, the reliance on the decisions by the tribunal in the context of other schools run as franchisees of Zee Learn Ltd., is rendered of little moment; we ourselves holding that profit-making *per se* cannot be regarded as detrimental as long as it feeds a charitable purpose (of education). For the same reason/s, and to the same effect, would be the assessee's reliance on the decisions by the Hon'ble jurisdictional High Court, placed in the assessee's compilation, which, even though not referred to during hearing, have been perused by us to find ourselves as in agreement therewith in principle. Further, as regards the observation of the assessee's principal asset, the school building, as not secured, being on a leasehold land, an aspect which again impinges on the genuineness of its' activities, may require being addressed in a legal framework, as per a legal undertaking, etc. We decide accordingly.

6. In the result, the assessee's appeal is allowed for statistical purposes.

*Order pronounced in the open court on September 10, 2018*

Sd/-  
(N. K. Choudhry)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Date: 10.09.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Lord Shiva Educational Welfare Society, Faridkot, Dehati, NH-15, 4<sup>th</sup> KM Stone, Kotrapura Road, Faridkot- 151203 (Punjab)
- (2) The Respondent: The Commissioner of Income Tax (Exemptions), Chandigarh
- (3) The CIT(Exemptions), Chandigarh
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy  
By Order