

## Private University engaged in imparting education is eligible for Sec. 12AA registration: ITAT

**Summary – The Ahmedabad ITAT in a recent case of Indus University., (the Assessee) held that Private University, engaged in imparting education, is eligible for registration under section 12AA**

### Facts

- The assessee, a private university, sponsored by a charitable trust, established under the Gujarat Private University Act, 2009 was engaged in imparting education. The assessee applied for grant of registration under section 12AA.
- The Director (Exemptions) called for details from the assessee, examined various provisions of the Gujarat Private University Act, 2009 and concluded that the assessee was fully controlled by Sponsoring Body trust and was not independent. There was intermingling of the funds, as some of it was received by the assessee and the rest by the sponsoring body trust. Based on all these reasons, the Director (Exemptions) declined registration to the assessee under section 12AA.
- On appeal to the Tribunal:

### Held

- When any trust or institution would apply for grant of registration under section 12AA then the Commissioner shall call for such documents or information from trust or institution as they may be necessary to satisfy himself about the genuineness of activities of trust or institution and may also make such inquiry as he may deem necessary in this behalf. If the Director (Exemptions) is satisfied about the objects of the trust or institution and genuineness of activities, he shall pass an order in writing registering the trust or institution. If he has not satisfied then he would reject registration application. The first reasons assigned by the Director (Exemptions) is that the university is not independent but is fully controlled by sponsoring body trust which has been denied exemption under section 12A and if it is not an independent body, its existence as a legal juristic person gets compromised. The Director (Exemptions) failed to appreciate provisions of Gujarat Private University Act, 2009 (GPUA). He made reference to clause 2 of Chapter 3 of such Act but read the scheme of the Act in a selective manner. There is no dispute that in furtherance of objects contemplated under "GPUA", the assessee-university has been established. According to sub-section (4) of "GPUA", objects of the university established would be to create, organize, preserve and disseminate knowledge in the fields of science, technology, humanities, social science, education, management, commerce, law etc. It means before approving its first statute and establishing assessee as a private university, screening body have visualized objects of the assessee-university and only thereafter approval was granted. As far as reference made by the Director (Exemptions) with regard to clause 2 of Chapter 3 is concerned, the Director (Exemptions) has observed that

Board of Governance as well as Board of Management is entirely controlled by sponsoring body viz. sponsored body trust. However, in section 13 of Gujarat Private University Act, 2009 it has been provided that officers of university viz. President, Provost, Registrar, Chief Finance and Accounts Officers and such other officer as may be declared by the statute to be the officers of the assessee-university. President shall be appointed by the sponsoring body in consultation with State Government for a period of three years by following such procedures and on such terms and conditions as may be prescribed by the statute. The president shall preside at the meeting of the governing body. Thus, in the Act a mechanism has been provided that there will be search committee and it will be searching eminent personalities and professionals to be appointed by the Board of management. At every stage there would be a consultation with the State Government. Apart from the above, it is pertinent to observe that how this aspect is relevant to test genuineness of objects of the university. Objects of the university are to impart education. Whether such education is being imparted in a controlled manner, financially or administratively, then those objects would not change. If some actions at the end of the assessee are being taken against the provisions of Act and then section 13 etc. are already there to keep a check of misuse of powers.

- Next reasons assigned by the Director (Exemptions) is that university has shown unsecured loan of Rs. 3.15 crores from sponsored body trust. Again, it is not a relevant factor to determine genuineness of objects. All financial affairs if misused can be considered at the time of assessment proceedings with the help of section 13. Similarly, in reason No.4, the Director (Exemptions) made reference to various bank statements in order to demonstrate as to how funds have been paid to sponsored body trust or by the sponsored body trust to university. As observed earlier section 13 contemplates that if certain issues falling within the ambit of this section are available in case of a charitable institution, then benefit of section 11 will not be available. For example, if some undue benefit is being advanced to person, who is closely associated with the management or institution, then, the Assessing Officer could always determine fair market value of the services by such person and restrict benefit to him in accordance with market price. Balance if any will be taxable. In the present case, even if the assessee has taken funds from sponsored body trust it will not affect its objects, if it has extended some undue benefits to sponsored body trust then safeguards are already there under section 13. Registration cannot be rejected at the threshold only under an anticipation that something could be controlled either by the sponsored body trust or some undue benefit would be given to sponsored body trust. These are concerns which can always be looked into at the time of assessment proceedings.
- Third reason given by the Director (Exemptions) is that sections 41 and 42 of the Gujarat Private University Act, 2009 authorise sponsoring body to dissolve university and on such dissolution assets could be taken by sponsoring body. Since sponsored body trust was not having registration under section 12 then assets could be manipulated. This apprehension is totally misplaced and against scheme of assessment of charitable institution provided in sections 11 to 13, though safeguards have already been provided in sections 41 and 42 of Gujarat Private University Act.

- Apart from above, if a charitable institution enjoying benefit under section 12A is being dissolved then either those assets would be given to other institutions being charitable trust and enjoying benefit under section 12A, in case the assets are being parted with either individual entity or institution, who are not having charitable objects or registration under section 12A, then under the scheme of the Act it will first suffer tax, only thereafter, it will vest in such individual or entity. This is not a valid reason for rejecting registration under section 12A.
- Director (Exemptions) is directed to grant registration to the assessee-university under section 12AA.