

Sec. 12AA registration couldn't be rejected on ground that assessee was engaged in education with profit motive

Summary – The Agra ITAT in a recent case of Fateh Chand Trust & College Committee., (the Assessee) held that Commissioner could not reject assessee's application for registration under section 12AA on ground that it was primarily engaged in business of education on commercial basis with a profit motive without providing any element of charity to public at large

Facts

- The assessee-society was formed with the object of running various educational institutions for imparting education. It filed an application for registration under section 12AA.
- The Commissioner opined that the assessee was 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. He thus rejected the assessee's application.
- On appeal:

Held

- A 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 Commissioner 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 the law evolved.
- It is an undisputed fact that the society is running and maintaining a school up to intermediate classes and is affiliated by the Government of U.P. the High Court in the case of *CIT v. A.S. Kupparaju Brothers Charitable Foundation Trust* [2012] 17 taxmann.com 242/205 Taxman 9 (Kar.), 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 Commissioner, 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 as once registration is granted, the entire income of the institution would become exempt. The said view is wholly opposed to law. Under section 12AA, 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 the 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. 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 lifespan and the registration granted to it cannot be lifetime 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 counsel too were recorded in total ignorance of facts available on records.
- In the facts and circumstances of the case, the order under appeal is unsustainable and thus reversed. The Commissioner (Exemption) is directed to grant registration to the assessee.
- In the result, the appeal is allowed.