

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, G, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

**श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.412/Mum/2013
Assessment Year: 2013-14**

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| Green Acres Educational Trust, B-16 singh Estate, 3 rd Floor, Dadasaheb Phalke Rd, Dadar(E) Mumbai-400014 | बनाम/ Vs. | DCIT, 5(2)(2) 567, Aayakar Bhavan, M.K. RD Mumbai-400020 |
| (Assessee) | | (Revenue) |
| P.A. No.AABTG7340J | | |

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| Appellant by | Shri Madhur Agarwal (AR) |
| Respondent by | Shri Goli Srinivas Rao (CIT-DR) |

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| सुनवाई की तारीख/ Date of Hearing: | 30/05/2016 |
| आदेश की तारीख / Date of Order: | 24/06/2016 |

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against the order passed by the Director of Income Tax (Exemption) Mumbai dated 29.11.2012, u/s 12AA(1)(b)((ii) r.w. section 12A of the Act, on the following grounds:

“1.The learned Director of Income-tax (Exemptions), Mumbai (DIT) erred in passing an order under section 12AA read with section 12A rejecting appellant's application for grant of registration.

2.The DIT erred in holding that the appellant is running the pre-school essentially as a business or commercial activity rather than as a charitable one.

3.The appellant submits that the DIT failed to appreciate the objects of the appellant trust including educational object for running educational institutes while rejecting its application for grant of registration.

4.The DIT erred in taking a very narrow meaning of "normal schooling" in rejecting its application for grant of registration. The appellant submits that the DIT ought to have taken a broad meaning of the term "education" contained in section 2(15) while considering its application for grant of registration.

5.The appellant submits that merely because pre-schooling is not recognized or regulated by any authority would not imply that the relevant activity cannot be regarded as "education" within the meaning of section 2(15).

6. The appellant submits that it had filed full details and explanation before the DIT in support of its application for grant of registration including the charitable nature of its objects and the DIT erred in rejecting its application.

7. The appellant submits that the order of the DIT rejecting its application for registration be set aside and the DIT be directed to grant registration to the appellant trust.

8.Each of the above grounds of appeal are independent and without prejudice to each other.

9.The appellant craves liberty to add, alter and/or amend the grounds of appeal as and when necessary.”

2. During the course of hearing, arguments were made by Shri Madhur Agarwal, Authorised Representative (AR) on behalf of the Assessee and by Shri Goli Srinivas Rao, Departmental Representative (DR) on behalf of the Revenue.

3. The brief facts and background of this case as culled out from the orders of the lower authorities and evidences produced before us are that the assessee is a trust as its name suggest, which has been constituted by the trust deed dated 10th day of February 2012, with the following objects as mentioned at para 3 of the trust deed:

“Objects of the Trust

The settler hereby declares and irrevocably constitutes the Trust for the purpose of imparting high quality education to students of all castes, creeds and communities by way of setting-up schools (including pre-primary schools), colleges, and educational and vocational training institutes in India.”

3.1. The assessee trust filed an application u/s 12A in form No.10A dated 29.05.2012 with the Director of Income Tax (Exemption)-Mumbai for the purpose of seeking registration u/s 12A. It is noted that the aforesaid trust deed was duly registered with the Charity Commissioner of Mumbai on 17.05.2012. The Ld. DIT rejected the application for grant of registration on following two reasons:

(i). The assessee is running the pre-school which is stage prior to normal schooling, and therefore, its activities cannot be treated as falling within the gamut of ‘Education’ as per section 2(15) of the Act. The justification given by the Ld. DIT is that as compared to formal education imparted in course of normal schooling, pre-schooling is a kind of informal education which is not recognized or regulated by the State Government/Education Board/ BMC.

(ii). The assessee trust is charging fees for issue of prospects, additional fees on account of supply of School Kit, admissions

fees etc. and on the basis of the same Ld. DIT concluded that assessee trust was engaged in the business of commercial activity while running the pre-school.

3.2. Thus, on both these reasons, Ld. DIT refused the benefit of registration to the assessee trust.

3.3. Being aggrieved, the assessee filed an appeal before the Tribunal.

3.4. During the course of hearing, Ld. Counsel vehemently and exhaustively made his arguments to assail the reasoning given by the Ld. DIT for denying the benefit of registration. It has been submitted by the Ld. Counsel that Ld. DIT has ignored the object mentioned in the trust deed wherein it is specifically provided that the trust has been constituted for the purpose of imparting high quality education to all types of students from any background by way of setting up schools, colleges and vocational training institutes in India. The pre-school is just one of the activities; which has been taken up just in the beginning of the activities because, only little time had passed since date of constitution of trust when the application for registration was filed. It was further submitted on 'without prejudice' basis that in any case pre-schooling was also integral part of 'education' and cannot be and could not be seen in isolation from it. Ld. Counsel also relied upon the judgment of Chennai Bench of the Tribunal in the case of Life Shines Educational & Charitable Trust vs. ACIT in ITA

No.2818 and 2819 (MDS) of 2014 60 taxmann.com 155 for the proposition that activity of running a pre-school and collecting the fee for imparting education to children shall be covered within the meaning of the term 'education' as envisaged u/s 2(15).

3.5. Further, with regard to the second reason given by Ld. DIT, our attention was drawn upon the Income and Expenditure Account of the trust showing that an aggregate amount of expenses of Rs.53 lakhs were incurred as per Income and Expenditure Account for the year ending on 31st March 2013, whereas the receipt of the trust aggregated to rupees not more than 12 lakhs and therefore, there was a deficit (i.e. excess of expenses over receipts) amounting to Rs.41.50 lakhs. It was submitted that the assessee is required to maintain appropriate infrastructure & establishment as well as arrangement of competent faculties so as to provide good quality of education for the students. Therefore, all the facts should be seen in totality and not in isolation. It was lastly submitted by him that in any case it was beyond the jurisdiction of Ld. DIT to examine these facts at this stage. It would be domain of the AO to examine whether the receipts from education activity have been applied solely in the activity of education or not. In case the AO is not satisfied, then the legislature has provided all the powers to the AO to deny the benefit of exemption at the time of assessment also. Thus, the Ld. DIT has gone wrong as per law and facts while denying

benefit of registration to the assessee and his order may be reversed and registration should be granted.

3.6. Per contra, Ld. DR relied upon the order of Ld. DIT as well as cases relied upon by Ld DIT in his order.

3.7. We have gone through the facts of this case and evidences brought before us and we do not agree with either of the reasons given by the Ld. DIT for refusing the benefit of registration to the assessee trust, in view of our observations and discussion made in following paras’.

3.8. Whether Pre-School would fall in the term ‘education’ as envisaged u/s 2(15):

We have gone through the reasoning given by the Ld. DIT and we find that the view adopted by him is not only contrary to law and facts, but we also find it to be highly myopic and regressive. In today’s world the ‘education’ has attained its unprecedented dimensions. With the advancement of technologies and evolution of multi cultural societies, the complexities in business and real life situations have grown many folds. Under such circumstances, need for appropriate education for each and every person right from its childhood can never be over emphasized. The education has got different meaning, purpose or object for each person depending upon its position and background. We have education of various types e.g. Pre-schooling, schooling, higher education, professional education, vocational training, professions training etc etc.

After completing the school education, students go for higher education which may be obtained through college, university or they may choose to go for a professional course even after completing the professional qualification. There are many post qualification courses. That is to convey that 'education' may begin at any stage and it may go on throughout the life of a person. Under these circumstances, one cannot isolate 'education' given at one of the stages to say that it should not be treated as part of 'education'. The pre-schooling has become today a mandatory prelude to school education. It is like step number one in the ladder. If step number one is taken properly, then other higher steps would be achievable more efficiently and effectively. That is the purpose as has been understood by the parents who send their kids to pre-schools and it has become a mandatory requirement today for all the schools imparting quality educations. It is because sending a child to pre-school is like preparing a sapling of the tree to be planted in the fields. Recently, Mumbai Bench of the Tribunal in the case of ADIT (Exemption) vs Jeevan Vidya Mission (ITA Nn 770/M/2014 Dt 30-09-2015 analysed scope of the term 'Education' as envisaged by the legislature while mentioning it u/s 2(15). Observation given in the order may be useful here and therefore reproduced hereunder:

*“8.1 In our considered opinion, based upon analysis of the facts of this case, the assessee trust is engaged in the field of 'education'. In our considered view, based upon our understanding of law, **there is no merit in the order of Assessing Officer to give a restricted meaning to the***

scope of meaning of term educational activities. It is not necessary that there should be holding of regular classes or wholesome educational activities to be only eligible to be called educational activities eligible for benefits under section 11 and 12. As per our understanding, the term “education” is of wide scope and amplitude, especially in the context of section 2(15). In this fast evolving society, the term ‘education’ has assumed greater role and significance, then ever. Education has got pivotal role in evolution of a society. Therefore, keeping this crucial aspect in mind, the legislature in its wisdom had decided to place this activity within the definition clause of the term “charitable purpose”, as per section 2(15) of the Income-tax Act, wherein it has been specifically mentioned that the term ‘charitable purpose’ includes “education” Thus, the very activity of education itself has been included within the meaning of the term ‘charitable purpose’. It may further be seen that activity of imparting “education” has been specifically included in the definition, thus showing that the intention of the legislature, very clearly, is to promote education, which is further fortified by the fact that when the first proviso was inserted to section 2(15), the activity of ‘education’ was not covered therein and only other object of general public utility alone was covered therein. The first proviso was brought in to curtail the scope of ‘charitable purpose’ with respect to the activities of general public utility, by excluding the same from this

definition, if it involved carrying on of any activity in the nature of trade, commerce or business. Further, even after huge litigation with respect to blanket exemption to educational institutions, when the amendment was made by the Finance Act, 2009, the activity of the education was kept outside the purview of newly inserted proviso. Thus, impliedly, it can be said that, it is clear that the legislature has given great significance to the utility of 'education' in our country."

3.9. Further, it is noted in the case of Life Shines Educational & Charitable Trust (supra) Chennai Bench of the Tribunal held that "pre-schooling' shall fall within meaning and scope of the 'education' as used u/s 2(15). Thus, in view of the aforesaid discussion and facts of this case, we do not find any justification in the view adopted by the Ld. DIT that pre-schooling is not part of education activity. In our considered view pre-schooling is very much integral part of the term 'education' as has been envisaged u/s 2(15) of the Act and we hold so.

3.10. Whether charging of fee and retaining surplus amounts to commercial activity, disentitling an assessee from the benefit of exemption u/s 11 and 12:

It has been mentioned by the Ld. DIT that since the school is charging fee for issue of prospectus, school uniforms, kits and admission fees etc., and thus, the pre-school is being run like a commercial activity and therefore, the assessee should be

refused the benefit of registration. We find that here also, Ld. DIT has gone wrong on law as well as on facts. It has not been stipulated under the statute that for the purpose of getting the benefit of exemption u/s 11 and 12 by the educational institutions, the assessee must carry out all its activities free of cost i.e. without charging anything from anyone. Rather as per section 2(15), the term 'charitable purpose' includes *inter-alia* 'education'. Thus the intention of the legislature is unambiguously clear that carrying out the activity of 'education' itself is charitable. Thus, when the carrying out of the activity of 'education' itself is a charitable purpose, then at the stage of granting registration u/s 12A, Ld. DIT is required to examine only the genuineness of the activities of the trust. Thus, the DIT may examine at this stage that activities of the trust are as per the objects contained in the trust deed or its memorandum. He is neither permitted nor obliged under the law, to go beyond that at the stage of registration.

3.11. The second aspect to be examined is whether the amount received or income earned by the assessee from carrying out of the education activities are applied solely for the purpose of education or not. But, since the registration is granted at the very inception of an institution, therefore the law has not put this duty upon the shoulders of the Ld. CIT/DIT. This obligation has been put by the legislature upon the shoulders of the AO who shall examine these facts at the stage of assessment of the trust and in case he is not satisfied with this aspect and find that the income of the trust has been

applied for activities which are not permitted under the law, and the same has not been applied for the activities for which registration has been granted, then the benefit of exemption can be denied by the AO in accordance with law. It is further noted by us that this controversy had been arising earlier because of the judgment of Hon'ble Uttarakhand High Court in the case of Queen's Educational Society of India wherein it was held by the Hon'ble High Court that if an 'educational institute earns any surplus i.e. if receipts of the institute are more than its expenditure then the institute shall lose the benefit of exemption under the income tax Act. Various High Courts had taken a contrary view. Finally this controversy has been put to rest by Hon'ble Supreme Court in the case of Queen's Educational Society of India v. CIT 372 ITR 699(SC) wherein Hon'ble Apex Court has not agreed with the judgment of Hon'ble Uttarakhand High Courts and agreed with the judgments of other High Courts and held that merely because an Educational institute happens to earn surplus then by that fact itself it would not be held that educational institute is not charitable and will not lose the benefit of exemption under the law by that fact alone.

3.12. Thus, keeping in view totality of the facts and circumstances, we find that Ld. DIT had gone wrong on law as well as facts, on both of the above aspects. In our view, the assessee trust is carrying out the activity of education and is therefore entitled for benefit of registration u/s 12A and we direct the DIT to grant the benefit of registration u/s 12A.

Accordingly, the assessee is hereby granted the benefit of u/s 12A with effect from the date when the application was filed by the assessee. The AO is at liberty under the law to examine the aspect of application of income solely for the purpose of education and also to examine that the assessee is carrying out the activity of education only and AO is also permitted to examine compliance of other provisions of the law in this regard and accordingly he may decide about the granting of benefit of exemption at the time of assessment in different years. In view of the same, appeal of the assessee is allowed.

4. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 24th June, 2016.

Sd/-
(Amit Shukla)

Sd/-
(Ashwani Taneja)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 24/06/2016

Patel, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**