

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER  
AND Ms. SUSHMA CHOWLA, JUDICIAL MEMBER**

**ITA No.1692/PN/2013  
(Order under section 12AA)**

Kul Foundation,  
Bungalow No.2, La Enviro  
CTS No.588, Near Hutching School,  
Pune – 411001

.... Appellant

PAN: AACTK0652N

Vs.

Commissioner of Income Tax-I,  
Pune

.... Respondent

Appellant by	:	Shri V.L. Jain
Respondent by	:	Smt. M.S. Verma, CIT
Date of hearing	:	24-12-2014
Date of pronouncement	:	30-01-2015

**ORDER**

**PER SUSHMA CHOWLA, JM:**

This appeal filed by the assessee is against the order of CIT-I, Pune dated 29.07.2013 passed under section 12AA(1)(b)(ii) of the Income-tax Act, 1961 read with Rule 17A of the Income Tax Rules, 1962.

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT has erred in law and on facts in not granting an appropriate opportunity of hearing and has thus violated the laws of nature justice.*
2. *The learned CIT has erred in law and on facts in denying the registration u/s. 12A of the Income Tax Act, 1961 for the twin reasons that – (i) Clause No.23 of the object clauses of the Trust Deed is specifically for the benefit of the Jain Community, which is a specific religious community and which attracts the provisions of sec.13(1)(b) and – (ii) the Trust has not commenced its activities as yet.*

3. *The appellant craves leave to alter, amend or delete any of the grounds of appeal or add to the same, if deemed necessary.*

3. The ground of appeal No.1 raised by the assessee is not pressed.

Hence, the same is dismissed as not pressed.

4. The issue raised vide ground of appeal No.2 is against the denial of registration under section 12A of the Act for the reason that clause No.23 of the object clause of the Trust Deed was specifically for the benefit of Jain community and further, the Trust had not commenced its activities as yet.

5. The brief facts relating to the issue are that, the assessee filed an application in Form No.10A for grant of registration under section 12A of the Act. The assessee Trust was set up by Trust Deed dated 03.09.2012. The assessee was called upon to furnish the information regarding the charitable activities carried on by the Trust along with evidence. In reply, the assessee mentioned about its proposed activities and did not say anything about the activities actually carried out so far. The CIT further noted that even though the objects of the applicant Trust were by and large charitable, two objects vide serial Nos.22 and 23 appearing in the object clause in the Trust Deed, were for the benefit of Jain community. The assessee was show caused as to why the application for the registration under section 12A of the Act should not be rejected in view of the two items of the object clause attracting the provisions of section 13(1)(b) of the Act. In reply, the assessee explained that the activities as per serial No.22 of the object clause, does not confer any benefit on any particular community and hence, would not attract the provisions of section 13(1)(b) of the Act. In respect of the second object clause i.e. serial No.23, the assessee explained that the object was not for the promotion of any one religion,

but was for the promotion of educational and social standards of the Jain community. Reliance was placed on the ratio laid down by Hon'ble Madras High Court in CIT Vs. Shri Gujrathi Mandal (1999) 240 ITR 293 (Mad) and the Hon'ble Supreme Court in State of Kerala Vs. M.P. Shanti Verma Jain (1981) 231 ITR 787 (SC) wherein, it was laid down that section 13(1)(b) of the Act is applicable only when the dominant object of the Trust was propagation of a particular religion and serving its followers. The assessee, without prejudice to the above contention, submitted that if it was desirable, the clauses could be modified subject to the powers conferred in the Trust Deed. With regard to the activities not having been commenced, the contention of the assessee was that an application for registration under section 12A of the Act could not be rejected merely on this ground. Reliance was placed on the ratio laid down by the Hon'ble Gujarat High Court in CIT Vs. Kutchi Dasa Oswal Moto Parivar Ambama Trust (2013) 29 taxmann.com (Guj).

6. The CIT noted that though other objects in the Trust Deed were general in nature, however, the object in particular in item No.23 could not be said to be general in nature since it was meant specifically for the benefit of Jain community. The CIT distinguished the case laws relied upon by the assessee and pointed out that the facts of the case in hand are different from the judicial propositions laid down by the various courts. The CIT vide para 3.1.2 observed as under:-

*“3.1.2 For the reasons stated supra it has to be held that the appellant being a charitable trust and yet as by virtue of item (23) of the object clauses it specifically intend to benefit a specific religious community, the provisions of section 13(1)(b) are clearly attracted. As per section 13(1)(b), the benefit of sections 11 & 12 cannot be extended to a charitable Trust or Institution which has been established for the benefit of any specific religious community or case. When the benefit of sections 11 & 12 cannot*

*thus be extended to the applicant Trust in view of the item (22) of the object clauses, no purpose would be served by granting it registration u/s.12A which is an in-principle recognition of entitlement of such benefits.”*

7. Further vide para 3.2, the CIT noted that the applicant Trust had not carried out any activities so far and the assessee had not denied the same. The CIT was of the view that when no activities were there, satisfaction regarding the genuineness of the activities could not be found and this issue was also decided against the assessee. The CIT held that the assessee was not entitled to registration under section 12A of the Act as it was adversely hit by the provisions of section 13(1)(b) of the Act. Thus, the assessee's request for grant of registration under section 12A of the Act, was not accepted.

8. The assessee is in appeal against the order of CIT.

9. The learned Authorized Representative for the assessee pointed out that the main object of the assessee Trust was in the field of education and though the assessee had not started its activities as per the objects of the Trust, but was entitled to the claim of registration under section 12A of the Act. It was further pointed out by the learned Authorized Representative for the assessee that the object at serial No.23 was not violative of the provisions of section 13(1)(b) of the Act. Reliance in this regard, was placed upon the ratio laid down by the Hon'ble Supreme Court in CIT Vs. Dawoodi Bohara Jamat 222 taxman 228 (SC). It was further pointed out by the learned Authorized Representative for the assessee that at the time of grant of registration under section 12A of the Act, the applicability of the provisions of section 13(1)(b) of the Act is not to be looked into. In this regard, the assessee placed reliance on the ratio laid down by Pune Bench of the Tribunal in Sadguru Narendra Maharaj Sansthan Vs. CIT-II, in ITA

No.994/PN/2012, vide order dated 16.09.2014. Further, reliance was placed on the ratios laid down by the Hon'ble High Court of Allahabad in *Hardayal Charitable & Educational Trust Vs. CIT-II*, (2013) 355 ITR 534 (All) and Hon'ble High Court of Gujarat in *Director of Income Tax (Exemption) Vs. Panna Lalbhai Foundation*, (2013) 216 Taxman 148 (Guj).

10. The learned Departmental Representative for the Revenue placing reliance on the order of CIT, pointed out that the provisions of section 13(1)(b) of the Act could be considered while allowing registration under section 12A of the Act. Reliance in this regard, was placed on the ratios laid down by Hon'ble High Court of Madhya Pradesh – (Indore Bench) in *Shri Dhakad Samaj Dharamshala Bhawan Trust Vs. CIT* (2008) 302 ITR 321 (MP) and in *CIT, Ujjain Vs. Dawoodi Bohata Jamat* (2009) 184 Taxman 222 (MP).

11. We have heard the rival contentions and perused the record. The issue arising in the present appeal is in relation to the claim of registration under section 12A of the Act for carrying on charitable and religious activities. The assessee Trust was formed by a Trust Deed dated 03.09.2012. The copy of the Trust Deed is placed at pages 1 to 20 of the Paper Book. The said Trust was registered under the Bombay Public Trust Act, 1950 vide Notification dated 08.10.2012 issued by the Assistant Charity Commissioner, Pune Region, Pune. The activities of the Trust as per object clause No.1 was to start Pre-primary, Primary, Secondary, Higher Secondary including Graduation, Post-Graduation institutions, Research Centre, etc. The aim and object of the assessee Trust was to establish and start educational institutions for imparting school and college education, for providing academic, technical, engineering, vocational, sports, professional and

social education. Further, educational institutions had to start in the field of business / management studies, engineering, etc. These were the objects of the Trust as per clauses 2 and 3 of the Trust Deed. The assessee had further enlisted several other objects in line with the field of education, vide clauses Nos.22 and 23, which read as under:-

*“22. To inculcate spirituality and Jain philosophy of Nirvana and Karma and such parallel philosophies professing Ahinsa and Nirvana through self-purification and scientific methods of living without belief in Tantra, Mantra, Magic and support of any impure means.*

*23. The Society shall protect the interest of Jain Community as a minority community and for that purpose the objects are as under:-*

- 1. To obtain status of Minority of Jain Community.*
- 2. To provide educational facilities for Jain Community students.*
- 3. To guide for financial assistance to the poor deserving and needy students from Jain Community.*
- 4. To give admission to Jain students in the school as per their qualifications.*
- 5. To arrange various programmes for development of Jain Community.*
- 6. To work for removal of illiteracy from among Jain Community.”*

12. Admittedly, till the date of passing the order denying registration under section 12AA of the Act, the assessee had not carried out any activities in any of the fields. The first objection raised by the CIT was that since the assessee was not carrying on any activity, it was not entitled to the claim of registration under section 12A of the Act. Another objection raised by the CIT was that as the object clauses vide serial Nos.22 and 23 were for the benefit of Jain community and hence why the registration under section 12A of the Act should not be refused to the assessee Trust as the said clauses were in violation of section 13(1)(b) of the Act. The plea of the assessee in reply was that, the objects were not for the promotion of any religion but were for the promotion of educational and social standards of Jain community and

on the basis of same, the registration under section 12A of the Act could not be denied to the assessee. The assessee also raised a plea before the CIT that the said clauses could be modified in case it was so desired by the CIT. The CIT however, was of the view that, though other objects in the Trust Deed were general in nature, but the objects vide serial Nos.22 and 23 were for the specific benefit of the Jain community, which were specific religious community and hence, was violative of the provisions of section 13(1)(b) of the Act. The CIT also noted that the benefits of sections 11 and 12 of the Act could not be extended to the charitable trust or institution, which was established for the benefit of any specific religious community. In view thereof, the CIT was of the view that *no purpose could be served by granting it registration under section 12A which is an in-principle recognition of entitlement of such benefits.*

13. Under the provisions of section 12A of the Act, it is provided that in order to avail the deduction under sections 11 and 12 of the Act, the Trust or the Institution has to make an application for registration of the Trust or Institution in the prescribed form and in the prescribed manner before the Commissioner, before the expiry of one year from the date of creation of the Trust or the establishment of the Institution, whichever is later. Such Trust or Institution is to be registered under the provisions of section 12AA of the Act. The procedure for registration is enlisted in section 12AA of the Act, under which, the Commissioner on receipt of an application for registration of a Trust or Institution, 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 the activities of the Trust or Institution and is also empowered to make such further enquiries as he may deem

necessary. The CIT after satisfying himself about the objects of the Trust or Institution and the genuineness of its activities, shall pass an order in writing registering the Trust or Institution and where he is not so satisfied, he shall pass an order in writing refusing to register Trust or Institution. It is further provided under the section that, no order under sub-clause (2) i.e. refusing to register the Trust or Institution, shall be passed unless the applicant has been given a reasonable opportunity of hearing. It is also provided under section 12AA of the Act that every order granting or refusing the registration to a Trust or Institution shall be passed before the expiry of six months from the end of month in which the application under section 12A of the Act was received.

14. The CIT while disposing of an application for registration moved by a Trust or Institution is empowered to call for documents in order to satisfy himself about the objects of the Trust and also the genuineness of its activities. Under section 2(15) of the Act, charitable purpose includes relief of the poor, education, medical relief, preservation of environment, preservation of monuments or places of artistic or historic interest and the advancement of any other object of general public utility. The provision of education is one of the objects recognized by the Act to be charitable object.

15. The assessee before us, as per the objects of the Trust Deed, had been created in order to establish and start educational institutions and also to provide incidental activities relating to education. Where the principal object of any Trust or Institution is in the field of education, the said Trust or Institution can be said to have been engaged in carrying out charitable activities. However, in the case of the assessee as per object vide serial Nos. 22 and 23 of the



Trust Deed, the assessee enlisted certain objects for the promotion of educational and social standards of Jain community. The CIT in view of the serial Nos.22 and 23 of the object clause, was of the view that the dominant object of the Trust was for the promotion of a particular religion and serving its followers and as such, was violated the provisions of section 13(1)(b) of the Act.

16. At the time of grant of registration, the powers of the CIT enshrined under section 12AA of the Act, provided that the CIT is to look into the objects of the Trust and the genuineness of its activities. Merely because, one of the objects of the Trust was for the benefit of upliftment of the Jain community as against the pre-dominant object of providing education by the Trust or the Institution, the issue arises whether the grant of registration under section 12AA of the Act could be denied to the assessee. We find no merit in the order of CIT in observing that the said benefit being provided to the Jain community would attract the provisions of section 13(1)(b) of the Act and the assessee therein would not be entitled to the claim of deduction under sections 11 and 12 of the Act and consequently, there was no merit in allowing the registration under section 12A of the Act. The allowability of the deduction under sections 11 and 12 of the Act is to be looked into by the Assessing Officer while completing the assessment in the hands of the assessee at the relevant time. Whether the said deduction under sections 11 and 12 of the Act is allowable or not to the Trust or the Institution by way of non-fulfillment of the conditions laid down in section 13(1)(b) of the Act is to be considered by the Assessing Officer while completing assessment in the hands of the assessee Trust or Institution. But the said violation by the Trust or Institution on account of provisions of section 13(1)(b) of the Act, if

any, are not to be considered by the CIT while granting registration under section 12A of the Act.

17. We find similar issue has been decided by the Pune Bench of the Tribunal in Ashoka Education Foundation Vs. CIT – I, Nashik, in ITA No.1294/PN/2009, vide order dated 31.12.2014, wherein, it was held as under:-

*“28. The denial of registration under section 12A of the Act by way of order passed under section 12AA(3) of the Act was on similar grounds as in the case of exemption denied under section 80G(5) of the Act. In view of our finding in the paras hereinabove, we direct the CIT to grant registration under section 12AA of the Act, as at the time of grant of registration, the CIT was only empowered to look into the nature of activities carried on by the assessee and whether the same were charitable in nature and not to look into the applicability of the provisions of section 13(1) of the Act. The Assessing Officer while granting the deduction under section 11 and 12 of the Act is to look into the violation of the provisions of section 13(1) of the Act, if any. The Commissioner at the time of grant of registration under section 12A of the Act was not empowered in considering the violation, if any, under section 13(1) of the Act. Further, in the paras hereinabove, we have already given a finding that the agreement entered into by the assessee with M/s. ABL was for the benefit of the society and the same cannot be the ground for denial of registration to the assessee trust under section 12A of the Act. The CIT is thus, directed to allow the registration under section 12AA of the Act.”*

18. Further, in Sadguru Narendra Maharaj Sansthan Vs. CIT-II (supra), the Tribunal had considered the aspect of Trust being established for the benefit of people belonging to a particular community and had referred to the ratio laid down by the Delhi Bench of the Tribunal in Aggarwal Mitra Mandal Trust Vs. DIT (Exemption) 119 TTJ 128 (Delhi) and observed as under:-

*11. Now, the next objection of the Ld. Commissioner is that there is a violation of Sec. 11(1)(d) as there is no evidence to show that the donations were given with the specific direction that they should form part of the corpus. In our opinion the finding of the Ld. Commissioner on the said aspect is beyond the powers vested u/s. 12AA(3) of the Act. Moreover, in the case of Aggarwal Mitra Mandal Trust (supra) it is held as under:*

“6. We have considered the rival submissions and also perused the relevant material on record. It is observed that any trust or institution seeking to avail the benefit of the provisions of ss. 11 and 12 is required to apply for registration under s. 12A. The procedure for registration is prescribed in s. 12AA and as per the provisions of sub-s. (1) of that section, the CIT [Director of IT (Exemption) in the present case] is empowered to satisfy himself about the object of the trust and about the genuineness of the activities of the trust or institution before granting the registration under s. 12A. Once the CIT has not doubted the genuineness of the activities of the assessee nor doubted its charitable object, he cannot refuse to grant registration under s. 12A. In the present case, the registration, however, was refused by the Director of IT (Exemption) on the ground that as per the object clause Nos. 3(1) and 3(2), the assessee trust was established for the benefit of people belonging to Vaish community only which was clearly in violation of s. 13(1)(b). However, as held by Hon’ble Supreme Court in the case of Ahmedabad Rana Caste Association (supra), an object beneficial to the section of the public is an object of general public utility and to serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or all persons in a particular country or State. Explaining further, it was observed by the Hon’ble apex Court that it is sufficient if the intention is to benefit a section of the public as distinguished from a specified individual. Relying on this decision of Hon’ble Supreme Court in the case of Ahmedabad Rana Caste Association (supra), Hon’ble Allahabad High Court in the case of Surji Devi. Kunji Lal Jaipuria Charitable Trust (supra) has held that trust created for giving medical aid, social welfare and upliftment of poor members of Vaish community is, therefore, for religious and charitable purposes. To the similar effect is another decision of Hon’ble Allahabad High Court in the case of CIT vs. Pt. Ram Shanker Misra Trust (1996) 222 ITR 252 (All) wherein it was held that expenditure incurred by a trust for the benefit of one community is an expenditure incurred on a public charitable object. The proposition propounded by Hon’ble Supreme Court as well as by Hon’ble Allahabad High Court in the aforesaid judgments clearly shows that the objects of the assessee trust as indicated in object cls. 3(1) and 3(2) of its trust deed were of charitable nature and since the powers of the CIT/Director of IT (Exemption) conferred under s. 12AA were confined to satisfy himself about the genuineness of the activities of the trust as well as nature of its object being charitable, we are of the view that he was not justified in refusing to grant registration to the assessee trust under s. 12A merely on the ground that the said objects were violative of the provisions of s. 13(1)(b). As held by Lucknow Bench of Tribunal in the case of St. Don Bosco Educational Society vs. CIT (2004) 84 TTJ (Lucknow) 805 : (2004) 90 ITD 477 (Lucknow), the CIT under s. 12AA is empowered to satisfy himself only about the object of the trust and about the genuineness of the activities of the trust and such power

does not extend to eligibility of the trust/institution for exemption under s. 11 r/w s. 13 which falls within the domain of the AO. To the similar effect is the decision of Delhi Bench of Tribunal in the case of *Aryan Educational Society vs. CIT* (2005) 94 TTJ (Del) 462 : (2005) 93 ITD 546 (Del) wherein it was held that so long as the provisions of ss. 11, 12 and 12A are complied with, the exemption cannot be denied merely because there is any violation of the provisions of s. 13.

7. As already noted, the procedure for registration laid down in s. 12AA requires the CIT to satisfy himself about the genuineness of activities and object of the trust or institution and as such, the scope of his powers is limited in this regard to make such enquiries, as he may deem fit, to satisfy himself in respect of these two aspects. As held by Hon'ble Supreme Court in the case of *Ahmedabad Rana Caste Association* (supra), an object beneficial to the section of the public is an object of general public utility and to serve a charitable purpose, it is sufficient if the intention is to benefit a section of the public as distinguished from a specified individual. This decision of Hon'ble apex Court followed subsequently by Hon'ble Allahabad High Court in the case of *Surji Devi Kunji Lal Jaipuria Charitable Trust* (supra) and in the case of *Pt. Ram Shanker Misra Trust* (supra) to hold that the expenditure incurred by a trust for the benefit of one community is an expenditure incurred on a public charitable object still holds the field notwithstanding the provisions contained in s. 13(1)(b) since the definition of the term "charitable purpose" given in s. 2(15) continues to remain the same. The provisions of s. 13(1) are thus not directly relevant in this regard. On the other hand, the said section begins with the words "Nothing contained in s. 11 or s. 12 shall operate so as to exclude, from the total income of the previous year, of the person....." which clearly envisages operation of s. 11 or s. 12 before the provisions of s. 13 can be applied or invoked in a given case. It also shows that the said provisions can be applied or invoked only at the time of computation of total income of the previous year of the person who is claiming exemption under s. 11 or s. 12. Both these situations contemplated in s. 13 can arise only and only if registration under s. 12A is granted to the said person. If the same is not granted and the person is refused the registration under s. 12A, he would not be entitled to claim any benefit available under s. 11 or 12 and there will be no occasion to the AO to invoke or apply s. 13 in his case. This position would not only be contrary to the scheme of the Act as laid down in ss. 11, 12, 12A, 12AA and 13 but the same may also cause prejudice/hardship to the persons in certain cases. For instance, the objects, for which the assessee trust in the present case is established, as indicated in object cls. 3(1) and 3(2), no doubt are for the benefits of a particular community, viz., Vaish. Nevertheless, as per object cl. 3(4), it was also established to run schools, colleges, hospitals, etc. for the benefit of public at large. In this situation, if the registration applied

*for under s. 12A is not granted to it for violation of provisions of s. 13(1)(b) and it is ultimately found that the assessee trust actually accomplished the objects as indicated in cl. 3(4) only for the benefit of public at large without there being any activity undertaken as per object cls. 3(1) and 3(2), it would be deprived of any benefits which otherwise were available to it under s. 11 or s. 12. This certainly is not the legislative intention as reflected in the scheme laid down in ss. 11, 12, 12A, 12AA and 13. On the contrary, the phraseology of s. 13, as already discussed, makes it explicitly clear that the said provisions become operative or relevant only at the stage of assessment when the AO is required to examine the claim of the assessee for benefits under s. 11 or s. 12 while computing the total income of the assessee of the relevant previous year. The application of s. 13 thus falls within the exclusive domain of the AO and the provisions contained therein can be invoked by him while framing the assessment and not by the CIT while considering the application for registration under s. 12AA”.*

*12. Hence, in our opinion the Ld. Commissioner exceeded her jurisdiction on the said issue also for giving one of the reasons for cancelling the registration of the assessee by exercising the powers u/s. 12AA(3) of the Act. The next objection is in respect of the amendment to the trust deed. There is no dispute about the fact that the assessee trust is registered under the Bombay Public Trust Act, 1950 and all the amendments made to the trust deed were subject matter of the enquiry and scrutiny by the Assistant Charity Commissioner, Ratnagiri which details are given here-in-above. We find that the Ld. Commissioner has given one more reasons that the powers to appoint or remove any trustee is vested in the Chief Trustee only and Ld. Commissioner has further concluded that the assessee trust is like private trust. As per the amended trust deed filed before us in our opinion the Ld. Commissioner has not properly appreciated the main objects of the trust but she is more concerned about the management of the trust. Sec. 12AA(3) limit the jurisdiction of the Ld. Commissioner to examine the activities vis-à-vis the objects of the trust.”*

19. The learned Departmental Representative for the Revenue on the other hand, had relied upon the ratio laid down by Hon’ble High Court of Madhya Pradesh – (Indore Bench) in CIT, Ujjain Vs. Dawoodi Bohata Jamat (supra), wherein it was held as under:-

*“Under section 260A(1), the appeal lies to the High Court on a substantial question of law. The scope of appeal under section 260A is same as that of a second appeal under section 100 of the Code of Civil Procedure. The Supreme Court in a catena of decisions has ruled that finding of fact recorded by the final fact finding Tribunal/Court is binding on the High Court exercising second appellate jurisdiction and unless such finding is perverse in nature, it is binding on the second appellate Court. [Para 11]*

*A finding recorded by the Tribunal on the nature of activities and objects of the trust was essentially a finding of fact. [Para 12]*

*In the instant case, the Tribunal, on the basis of the evidence led by both the parties, had recorded a finding that the assessee was a public religious trust. The revenue had neither assailed the aforesaid finding recorded by the Tribunal as perverse nor it had been able to point out any perversity in the said finding. Therefore, said finding was binding on the Court. Therefore, there was no good reason to interfere in such finding of fact. [Para 13]*

*A perusal of the order of the Tribunal also indicated that the same issue had come up in respect of grant of registration to Dawoodi Bohra Jamat before the Tribunal, Ahmedabad Bench, which by an order dated 10-3-2006 had held the said trust to be entitled to registration under section 12A. That also showed that not only the Tribunal, Indore, but the Tribunal in the other States on the same facts had found the trust of Dawoodi Bohra Jamat located within their jurisdiction to be entitled to claim registration under the Act. [Para 1.4]*

*Therefore, the Tribunal was justified in holding that all the objects of the assessee-trust were religious in nature. [Para 15]*

*As regards the applicability of the provisions of section 13(1)(b), the Tribunal had held that since the assessee was a religious trust, the provisions of section 13(1)(b) would not be applicable, because the same are applicable I to the case of the trust established for charitable purposes. There was no error in such a conclusion of the Tribunal [Para 17]*

*In the instant appeal, the Tribunal had found as a fact after analyzing the objects of the trust that the assessee was a public religious trust and its objectives were solely religious in nature. [Para 19]*

*In view of the aforesaid analysis, the appeals were to be dismissed. [Para 20]”*

20. The Hon’ble High Court of Madhya Pradesh in CIT, Ujjain Vs. Dawoodi Bohata Jamat (supra) had upheld the finding of Tribunal that since the assessee was a religious Trust, provisions of section 13(1)(b) of the Act would not be applicable. However, in the facts of the present case, there is no finding of the CIT that the assessee was a religious Trust, but the objection of CIT was that the Trust was created for the purpose of particular community.

21. On the other hand, the learned Authorized Representative for the assessee, had relied upon the ratio laid down by Hon'ble Allahabad High Court in *Hardayal Charitable & Educational Trust Vs. CIT-II* (supra) wherein it was held that at the time of registration under section 12A of the Act, it is not necessary to look into the activities vis-à-vis claim of exemption under sections 11 and 12 of the Act. Similar view has been laid down by the Hon'ble Delhi High Court in *Aggarwal Mitra Mandal Trust Vs. DIT (Exemption)* (supra), which was referred to by the Pune Bench of the Tribunal in *Sadguru Narendra Maharaj Sansthan Vs. CIT-II* (supra). The Hon'ble Supreme Court in *CIT Vs. Dawoodi Bohara Jamat* (supra) had also laid down similar proposition. Accordingly, the view favourable to the assessee is adopted for deciding the issue. In the totality of the above said facts and circumstances and the legal propositions, we find no merit in the order of CIT in this regard and accordingly, we direct the CIT to grant registration to the assessee Trust under section 12A of the Act and pass the order under section 12AA of the Act registering the said Trust.

22. The second aspect of the issue raised by the CIT was that where the assessee had not started its activities, then it was not entitled to the claim of registration under section 12A of the Act. The assessee in the present facts and circumstances of the case, had in its objects recognized the field of education as the activity to be carried on. Merely because that the said activity has not started, does not dis-entitle the assessee from the claim of registration under section 12A of the Act. We find that similar issue arose before the Hon'ble High Court of Gujarat in *Director of Income Tax (Exemption) Vs. Panna Lalbhai Foundation* (supra) and it was held as under:-

*“5. It can thus be seen that under Section 12AA of the Act, the Commissioner has to satisfy himself about the objectives of the trust and the genuineness of its activities. For such purpose, he has the power to call for such documents or information from the trust as he think are necessary. However, this does not mean that if the activities of the trust have not commenced, the Commissioner has authority to reject its application for registration on the ground that the Trust failed to convince him about the genuineness of the activities. That is what unfortunately the Commissioner did in the present case. In that view of the matter, we see no error in the Tribunal's impugned order reversing the order of the Commissioner. It is of course true that even if the activities of the trust have not commenced, if the Commissioner has sufficient material in his command, he may still come to the conclusion that he is not satisfied about the objectives of the Trust or the genuineness of its activities. We understand the decision of the Tribunal accordingly.*

*6. In the present case, however, merely on the ground that the activities of the Trust had not commenced, the Commissioner was persuaded to reject its application for registration, which in our opinion, was not appropriate and therefore, rightly interfered by the Tribunal.”*

*5. As can be noted in the instant case also, for availing benefits under Sections 11 and 12, the Trust made an application under Sections 12A for registration u/s. 12AA before the Director of Income-tax (Exemption). It also further emerges that Commissioner since is required to call for documents and information from the Trust if he deems it necessary in order to satisfy about the genuineness of the activities of the Trust, he, in this case also, made such inquiries. After duly satisfying himself about the objects of the Trust and genuineness of the activities, he is required to grant registration as held hereinabove. The powers of the Commissioner to satisfy himself about objects and the genuineness of the activities are recognized under law. However, only because the Trust has not commenced the activities, the Commissioner would have no authority to ipso facto reject the application for registration on that count alone.*

*6. In the instant case, the Director of Income-tax (Exemption) held that Trust had not commenced its activities and denied registration. However, there was nothing to indicate any material to conclude that the objects of the Trust or the activities of the Trust were not genuine or any doubt arose in respect of the genuineness of the activities. The Tribunal, in the instant case, therefore, has rightly held in favour of the assessee by interfering with such an order. Considering the objects of the Trust, the Tribunal, with cogent reasons, directed the DIT(E) to grant registration u/s. 12AA on an application preferred under Sections 12A.”*

23. In view thereof, we find no merit in the order of CIT in refusing to grant registration under section 12A of the Act, as the assessee had not started its activities. Following the above said ratio laid down by



Hon'ble High Court of Gujarat (supra), we direct the CIT to grant registration under section 12A of the Act and issue the necessary Certificate under section 12AA of the Act.

24. In the result, the appeal of the assessee is allowed.

Order pronounced on this 30<sup>th</sup> day of January, 2015.

**Sd/-**  
**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUSHMA CHOWLA)**  
**JUDICIAL MEMBER**

Pune, Dated: 30<sup>th</sup> January, 2015.  
GCVSR

*Copy of the order is forwarded to: -*

- 1) The Assessee;
- 2) The Department;
- 3) The CIT-I, Pune;
- 4) The DR "A" Bench, I.T.A.T., Pune;
- 5) Guard File.

By Order

//True Copy//

Assistant Registrar  
I.T.A.T., Pune