

**Court No. - 35****Case :-** INCOME TAX APPEAL No. - 47 of 2014**Appellant :-** Commissioner Of Income Tax**Respondent :-** Chaudhary Son Pal Singh**Counsel for Appellant :-** Dhananjay Awasthi, S.C.,S.S.C.

I.T.,Shubham Agrawal

**Counsel for Respondent :-** Suyash Agarwal**Hon'ble Bharati Sapru,J.****Hon'ble Saumitra Dayal Singh,J.**

This appeal has been filed against the order of the Income Tax Appellate Tribunal 24.05.2013 passed in in I.T.A. No. 733 of 2010 for the Assessment Year 2009-10. By that order the Tribunal has allowed the assessee's appeal against the order dated 26.11.2009 passed under Section 12AA(b)(ii) of the Income Tax Act, 1961.

The appeal was admitted on the following substantial questions of law:-

*“1. Whether the ITAT erred in law in misinterpreting the provision and language of Section 12-AA which use the phrase **“call for such documents and information”** and the phrase **may also make such inquiries as deem necessary**?”*

*2. Whether the ITAT was justified in law in curbing the legislative powers provided to the C.I.T. U/s 12-AA to be exercised before granting registration?”*

*3. Whether in the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in law in holding that in considering an application u/s 12AA, the Commissioner is not required to look into the nature of the income of the assessee concerned or its application to determine the genuineness of the activities and consequently directing the CIT to allow the registration to the assessee?”*

In brief, the assessee claims itself to be an

educational society for charitable purpose. On 25.05.2009 it had made an application for grant of registration under Section 12AA of the Act and thus claimed its income to be exempt from tax under the Act.

The aforesaid application came to be rejected by the Commissioner of Income Tax vide its order dated 26.11.2009. While rejecting the application, the only reasoning given by the Commissioner was to the effect that the cash credit entries found recorded (of interest free loans received by the assessee) were not genuine. On the other hand, the Commissioner did not examine the objects of formation of the assessee or its activities.

The aforesaid order passed by the Commissioner was challenged by the assessee in appeal before the Tribunal being in I.T.A. No. 733 of 2010 for the Assessment Year 2009-10. The Tribunal in the first part of its order has reasoned that the CIT Appeals has erred, insofar as it rejected the application for registration on the reasoning to doubting the genuineness of the cash credits found recorded in the books of account of the society.

Having thus found the approach of the CIT to be erroneous, the Tribunal then proceeded to hold that the assessee is entitled to registration under Section 12AA without returning any independent finding as to how according to the Tribunal, the assessee had earned its entitlement to exemption.

Sri Shubham Agarwal, learned counsel for the revenue submits, exemption under Section 12AA of the Act could have been granted if, the Commissioner had been satisfied that the objects of the assessee an education society were charitable. Insofar as neither the CIT nor the Tribunal have recorded any finding to that effect, the Tribunal could not have granted relief of registration to the assessee under Section 12AA of the Act.

Alternatively, he relied on a judgment of the Division Bench of this Court in the case of ***The Commissioner of Income Tax Vs. Wilsonia College Society*** reported in ***(2017) U.P.T.C. 679*** to submit that the matter be remitted to the Commissioner to decide the matter afresh.

Responding to the above, Sri Suyash Agarwal, learned counsel for the assessee submitted in the course of the inquiry made by the CIT he has been satisfied on all counts including the objects of the societies being charitable. According to him, the CIT did not record any finding to that effect for that reason. He therefore submits, there is no error committed by the Tribunal in granting the registration for the reason that the rejection of that registration had been made by the CIT on extraneous considerations.

Having considered the arguments advanced by learned counsel for the petitioner we find that the only

relevant aspect required to be examined by the CIT for the purpose of granting registration was with regard to the objects of the society being charitable in nature and if the activities are genuine i.e. in consonance with the charitable objects. Clearly, neither the Commissioner nor the Tribunal recorded any finding on the aforesaid aspects.

The argument advanced by learned counsel for the assessee that since there is no finding in the order of the CIT therefore those conditions stood satisfied cannot be accepted as that being the only matter to be examined by the CIT, the same had to be specifically dealt with. No presumption can arise in favour of either party, in absence of any finding on that aspect or issue.

However, there is force in the submission made by learned counsel for the assessee that the finding of the CIT was based on extraneous or irrelevant consideration and the order of the Tribunal, the order of CIT, to that extent, is wholly justified.

This Court in the case of ***CIT Vs. Wilsonia College Society (supra)*** while dealing with a similar issue had followed an earlier judgment of this Court in the case of ***Commissioner of Income Tax Vs. Red Rose School*** reported in ***(2007) 212 CTR 394 (All)*** and had held as below:-

*"We have perused the aforesaid decision and find that the profit earning or misuse of income derived by*

*charitable institution from its activities may be a ground for refusing exemption under the Act which is a matter to be considered and decided at the time of assessment but at the time of grant of registration it is incumbent upon the registering the authority to see if the activities of such institution or trust are in consonance with the objects of the trust or the institution and are not a camouflage but are real, pure and sincere. In this regard paragraph 21 of the aforesaid decision which is relevant is reproduced herein below:*

*21. Section 12AA, which lays down the procedure for registration, does not speak anywhere that the CIT, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit. The language used in the section only requires that activities of the trust or the institution must be genuine, which accordingly would mean, they are in consonance with the objects of the trust/ institution, and are not mere camouflage but are real, pure and sincere, nor against the proposed objects. The profit earning or misuse of the income derived by charitable institution from its charitable activities, may be a ground for refusing exemption only with respect to that part of the income but cannot be taken to be a synonym to the genuineness of the activities of the trust or the institution.*

*This is more evident if we see the provisions of Section 11, which, while exempting the income given in its various sub-clauses from being included in the total income of the previous year of the person in receipt of the income, for example, in sub-clause (1) says 'income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property.'*

We are in agreement with the aforesaid view.

In that view, the questions of law are answered

accordingly. The matter is remitted to the Commissioner of the Income Tax to decide the petitioner's application for exemption afresh, in accordance with law keeping the scope of inquiry limited to the provisions under Section 12AA of the Act.

In view of the above, the instant appeal is **allowed**.

No order as to costs.

**Order Date :- 27.11.2017**

A. Singh