

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER  
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 140/Asr/2020  
Assessment Year:N/A**

M/s Anwar Sultana Educational Trust, 29 Housing Colony Sanat Nagar, Srinagar. [PAN: AAFTA2878M] <b>(Appellant)</b>	<b>Vs.</b>	CIT(E), Chandigarh.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. M. A. Meer, AR.</b>
<b>Respondent by</b>	<b>Sh. J. S. Kahlo, CIT DR</b>

<b>Date of Hearing</b>	<b>13.07.2021</b>
<b>Date of Pronouncement</b>	<b>16.08.2021</b>

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal of the assessee society is directed against the order dated 20.07.2020 passed by the CIT(E), Chandigarh whereby he rejected the application filed for registration u/s 12AA(1)(b)(ii) of the Act.

*“1. The Ld. CIT (Exemptions) has grossly erred in rejecting the appellant assessee's application for grant of registration under section 12AA(1)(b)(II) of the Income Tax Act, 1961.*

2. *The Ld. CIT (Exemptions) has totally ignored the ground realities as were existing in Kashmir valley since August, 2019 due to abrogation of Article 370 and 35A of the Indian Constitution followed by complete lockdown due to COVID-19, which prevented the appellant assessee to pursue his proceedings before the Ld. Commissioner of Income Tax (Exemptions) Chandigarh.*

3. *The appellant assessee reserved to right to add, alter, modify, amend the grounds of appeal.”*

2. The appellant society has been in operation since 28.05.2016 and filed an application in this office of CIT(E) on 01.02.2017 for seeking registration u/s 12AA of the Income Tax Act, 1961.

3. This is 2<sup>nd</sup> round of appeal before us. In the 1<sup>st</sup> round of appeal Income Tax Appellate Tribunal, Amritsar Bench, Amritsar has allowed the appeal of the applicant Society for statistical purposes in ITA No. 682&683(Asr)/2017 dated 08.02.2018.

4. The stated ostensible aims and objects of the trust is to impart education to the public at large without discrimination of caste, creed etc. Again, the Ld. CIT(E) rejected the instant application for registration u/s 12AA(1)(b)(ii) of the Act by observing that on the fixed date neither did any one attend nor was any request for adjournment received, in order to follow the principles of natural justice another opportunity was accorded to the applicant on 01.07.2020 and the matter was fixed for 06.07.2020, Again, on the fixed date neither did any one attend nor was any request for adjournment received. In order to follow the principles of natural

justice another opportunity was accorded to the applicant on 07.07.2020 and the matter was fixed for 10.07.2020. Again on the fixed date neither did any one attend nor was any request for adjournment received. Given the non compliance on the occasion afforded to the applicant, it becomes evident that the applicant is not interested in pursuing the matter. In the absence of submissions regarding the activities, it is difficult to verify both the objects & genuineness activities of the applicant. It can safely be concluded that the queries raised answered by the applicant. Further, keeping in view unresponsive attitude of the applicant, it is safe to conclude that the applicant has failed to discharge onus and registration u/s 12AA is rejected accordingly.

5. The Ld. Counsel for the assessee Shri Sh. M. A. Meer, submitted that the CIT(E), Chandigarh has rejected the application filed for registration u/s 12AA(1)(b)(ii) of the Act, exparte qua the assessee society during the covid period in the 2<sup>nd</sup> round of appeal without considering the material documents on record and the direction of the Hon'ble ITAT, Amritsar Bench, Amritsar in the instant case. He contended that the Ld. CIT (E) has totally ignored the ground realities as were existing in Kashmir valley since August, 2019 due to abrogation of Article 370 and 35A of the Indian Constitution followed by complete lockdown due to COVID-19, which prevented the appellant assessee to pursue his proceedings before the Ld. Commissioner of Income Tax (Exemptions) Chandigarh. In support of applicant's matter, he has filed a written note which extracted hereunder:

The appellant namely Anwar sultana Charitable Trust is a trust solely created for imparting education as per the relevant clause of the Deed for creation of the Trust. The appellant had applied for Registration U/S 12AA of the Income Tax Act 1961 before Ld. Commissioner of Income Tax, Exemptions Chandigarh which has been denied. Then the appellant

appealed to the Honorable Bench of ITAT at Amritsar and the order was set a side and referred back to the Worthy Commissioner of Income Tax Exemption Chandigarh vide order dated 8, February 2018 and fresh request for issuance of registration U\S 12AA was submitted on 17/03/2018 whereby the appellant submitted all the papers and documents required for the purpose of grant of Registration. The Request was again rejected vide order which is under appeal before the honorable Bench.

The Order was passed by the Ld. CIT Exemption on 20, July 2020 when almost whole the country was functioning and arbitrarily passed the order thereby denying the registration stating the reason of non attendance when almost physical appearance was not allowed in the Income Tax Department due to COVID-19.

The appellant had submitted deed of trust and note on activities of the trust besides Balance Sheet or Income and Expenditure account. The Ld. Commissioner wanted to go into investigate into genuineness of activities of the of the trust when it is stated that the stage at which the Ld. Commissioner of Income Tax desired deep investigation into the matter is quite pre mature.

I may invite kind attention of Honorable Bench towards page No 42 of the Paper book where the appellant has submitted all the information required and page No 10 &11 wherein all the requisite questions are properly replied.

However section 12A of the Income Tax Act 1961 clearly that the appellant can make application U\S 12AA of the Income Tax Act 1961 within one year from the date of Creation of the trust or establishment of the institution. So the application is not premature. Secondly mere getting registration U\S 12AA of the Income Tax Act 1961 does not provide for blanket exemption but provisions of section 11 or 12 of the income tax are to be complied with.

I may rely upon judgment of M\S Foundation Trust Vs CIT Exemption, Chandigarh where the Honorable bench has granted registration to the trust after it was rejected by the Commissioner of Income Tax Exemption.

**Section 12 A of the Income Tax Act 1961 reads as under:-**

(1) The provisions of [section 11](#) and [section 12](#) shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [whichever is later and such trust or institution is registered under [section 12AA](#)

[Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

(i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied.

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007.

[(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007

in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA

(b) where the total income of the trust or institution as computed under this Act without giving effect to [the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year], the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.]

(c) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

***The procedure for registration of the trust or institution as provided U\S 12AA of the Income Tax Act 1961, reads as follows:—***

(1) On receipt of an application for registration of a trust or institution; the Commissioner shall —

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself; and

(b) after satisfying himself about the objects or the trust of institution, he shall pass an order in writing registering the trust or institution; and if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant: However, no order shall be passed unless the applicant has been given a reasonable opportunity of being heard,

*It is so as to provided that where a trust or an institution has been granted registration and subsequently it is noticed that the activities of*

*the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then the Commissioner or Principal Commissioner may by order in writing cancel the registration of such trust or institution. However, the registration shall not be cancelled under the said subsection, if the aforesaid trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.*

I may rely upon following citation the relevant portion of said citations are stated therein for clarity in the matter.

In the case of Fifth Generation Education Society v. CIT [1990] 185 ITR 634 (All.): Question of application of income need not be considered - While considering the assessee's application for grant of registration under section 12A, all that the Commissioner may examine is whether the application is made in accordance with the requirements of that section read with rule 17A, and whether Form 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At that stage, it is not proper to examine the application of income.

In the Case of New Life in Christ Evangelistic Association v. CIT [2000] 246 ITR 532 (Mad.): Institution of a religious nature is not excluded - The language of section 12A does not show that in order to be able to get registration, there is necessity of first establishing as to how the concerned institution or, as the case may be, the society would be able to claim the exemptions under section 11 or 12 of the Act. At the stage of grant of certificate under section 12A of the Act, the only enquiry which could possibly be made would be whether the society has actually made an application in time and whether the accounts of the society are maintained in the manner as suggested by the said section. Beyond that, the scope of enquiry would not go. In insisting upon the society changing or amending its bye-laws and in refusing to consider the application on

the ground that those bye-laws have not been changed so as to exclude the religious aspect from those bye-laws, the Commissioner would be overstepping his limits.

In general at the stage of application for registration under Section 12AA the Ld. Commissioner of Income Tax Exemption need not to go in deep and only to see from the annexed documents the following:-

1. Activities of the Trust are genuine.
2. That the Trust activities are carried in accordance with the objects of the trust/Institution.

***“Procedure of registration is a first step and a preliminary stage where the Commissioner shall restrict the enquires as to whether the trust is actually and whole heartedly performing all the duties and activities for which it was created...On careful reading of this section it was gathered that at this initial stage there is no scope of any apprehension of mis-utilization of funds or to judge the taxability of income. The scheme of the Act otherwise do not subscribe and allow a trust to take the benefit of the provisions of sec 11 and 12 unless establish the prescribed utilization of the income, even if. at all the trust hold the registration in its hands. Therefore at the stage of granting registration the Commissioner is not expected to bother himself about the other provisions of the Act and supposed to confine himself to the procedure of registration as laid down therein For this view, we draw support from the order of the respected coordinate bench ITAT”***

In case of UP Forest Corporation Vs CIT 2007 165 Taxman 533, the Honorable supreme Court has held that unless and until institution is registered U/S 12AA, of the Income Tax Act 1961 it cannot claim exemption U/S 11 or 12 Of the Income Tax Act 1961. Therefore registration U/S 12AA is not blanket exemption that the Ld. Commissioner of Income Tax Should consider at this stage but it is a pre requisite and a formality to be complied with and the Ld. CIT is depriving off the appellant from claiming any legal exemption with

otherwise law provides to the appellant on account of promotion of education.

In the matter of [CIT vs. Shreedhar Sewa Trust \(Allahabad High Court\)](#) it has been held as under:-

**S. 12AA: At the time of registration of a charitable institution u/s 12AA, the CIT is not required to look into the activities, where such activities have not or are in the process of its initiation. The registration cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. At this stage, only the genuineness of the objects has to be tested and not the activities, unless such activities have commenced**

Trust deed which has been formed clearly stated the Objects and Benefit of the trust as under:-

### **OBJECTS OF THE TRUST**

The Objects of the applicant trust are to impart education among the society without any caste, creed and Colour. Therefore, the trust deed submitted before the Ld. CIT was quite explanatory of the fact that the trust was created for imparting education.

### **BENEFITS OF THE TRUST**

The benefits of the trust are open to all irrespective of caste, creed, colour, sex and religion. The trust will not carry any activities with an intention of earning profits.

Therefore at this stage the Ld. CIT ought to have gone through the trust deed and register the trust

In the light of my Humble submissions and grounds of appeal raised it prayed that registration U/S 12AA of the income Tax Act 1961 may be granted to the appellant so that the appellant can claim exemption U\S 11 of the Income Tax Act 1961 on income that the appellant may derive.

6. The Ld. CIT(DR) on the other side placed reliance on the impugned order.
7. We have heard rival contentions, perused the material relevant on record and citations relied in support. It is admitted fact that the main Object of the applicant trust are to impart education among the society without any caste, creed and Colour. We find that the trust deed submitted before the Ld. CIT was quite explanatory of the fact that the trust was created for imparting education.
8. It is also admitted fact on record that in the 2<sup>nd</sup> round of proceedings, the CIT(E), Chandigarh has rejected the application filed for registration u/s 12AA(1)(b)(ii) of the Act, exparte qua the assessee society during the covid period without appreciating the genuine difficulty and the circumstanced beyond the control of the assessee which prevented it to appear and make submission before the CIT(E) and that further he proceeded without considering the material documents on record and the direction of the Hon'ble ITAT, Amritsar Bench, Amritsar in the instant case. The contention raised by the Ld. AR that the Ld. CIT (E) has totally ignored the ground realities as were existing in Kashmir valley since August, 2019 due to abrogation of Article 370 and 35A of the Indian Constitution followed by complete lockdown due to COVID-19, which prevented the appellant assessee to pursue his proceedings before the Ld. Commissioner of Income Tax (Exemptions) Chandigarh, certainly be considered in view of principles of natural Justice. Since, this matter has been come up in 2<sup>nd</sup> round before us, and taking into consideration of the genuine difficulty of the applicant, we proceed to decide it on merits of the case.
9. We observed that appellant society namely Anwar sultana Charitable Trust is solely created for imparting education. In compliance to the order of the Honorable Bench of ITAT Amritsar, the appellant submitted all the papers and

documents required for the purpose of grant of Registration. However, the Worthy CIT(E) again rejected vide impugned order.

10. It is evident from the Order passed by the Ld. CIT Exemption dated 20, July 2020 that during the period of 12AA proceeding between 2018 to 2020, the Kashmir valley was closed since August, 2019 due to abrogation of Article 370 and 35A of the Indian Constitution followed by complete lockdown due to COVID-19, and almost whole the country was come to stand still and further physical appearance was not allowed in the Income Tax Department due to COVID-19. Thus, the CIT(E) has arbitrarily rejected the application of the assessee trust for registration u/s 12AA of the Act by a non-speaking exparte order.

11. We have seen that the appellant had submitted deed of trust and note on activities of the trust, Balance Sheet, Income and Expenditure account etc. The Ld. CIT(E) ought to have enquired into and investigate into genuineness of activities of the of the trust if so required. However, at the stage of registration, deep investigation into the matter is quite pre mature. The AR has filed the requisite detailed called for by the CIT(A) vide APB, Pg. 10,11 and 42).

12. In the case of “Fifth Generation Education Society v. CIT”,(Supra) held that the question of application of income need not be considered - While considering the assessee’s application for grant of registration under section 12A, all that the Commissioner may examine is whether the application is made in accordance with the requirements of that section read with rule 17A, and whether Form 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At that stage, it is not proper to examine the application of income.

13. In case of “UP Forest Corporation Vs CIT”, the Honorable supreme Court has held that unless and until institution is registered U/S 12AA, of the Income Tax Act 1961 it cannot claim exemption U/S 11 or 12 Of the Income Tax Act 1961. Therefore, registration U/S 12AA is not blanket exemption that the Ld. Commissioner of Income Tax Should consider at this stage but it is a pre requisite and a formality to be complied with and the Ld. CIT is depriving off the appellant from claiming any legal exemption with otherwise law provides to the appellant on account of promotion of education.

14. In the matter of ‘CIT vs. Shreedhar Sewa Trust’, (Allahabad High Court) held that at the time of registration of a charitable institution u/s 12AA, the CIT is not required to look into the activities, where such activities have not or are in the process of its initiation. The registration cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. At this stage, only the genuineness of the objects has to be tested and not the activities, unless such activities have commenced.

15. Again, the Hon'ble Allahabad High Court in the case of CIT Vs Red Rose School (2007) 163 Taxman 19 (Allahabad) held that:

*"Section 12AA, which lays down the procedure for registration, does not speak anywhere that the Commissioner, 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 that they are in consonance with the objects of the trust/institution, and are not mere camouflage but are real,*

*pure and sincere and not 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. [Para 34]*

16. We find that Ld. CIT(E), while passing impugned order seems to be under hurry in passing exparte order in 2<sup>nd</sup> round and further to understand the definition of 'charitable activities' de hors requirement of law would only enable an institution to be granted registration under section 12AA of the Act as once registration is granted, the entire income of the institution would become exempt. The said view, in the light of precedents referred above is wholly opposed to law. Under section 12AA of the Act, 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 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 of the Act. 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 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 life span and the registration granted to it cannot be life time guarantee that it would remain so, that is why the law prescribes procedure for withdrawal of registration once granted.

17. In view of the peculiar facts and circumstances of the case, the order under appeal is unsustainable and thus reversed. The Ld. CIT(E) is directed to grant registration to the appellant forthwith, preferably within one month time of furnishing copy of this order.

**Order pronounced in the open court on 16.08.2021**

Sd/-  
**(Laliet Kumar)**  
**Judicial Member**  
*\*doc*

Sd/-  
**(Dr. M. L. Meena)**  
**Accountant Member**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By Order