

**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. 174/Asr/2020  
Assessment Year: 2017-18**

Lord Shiva Educational Welfare Society, Kotkapura Road, National Highway 15, Faridkot. [PAN: AAAAL6969J] <b>(Appellant)</b>	<b>Vs.</b>	CIT (Exemption) Chandigarh.  <b>(Respondent)</b>
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Appellant by	Sh. Sudhir Sehgal, Adv.
Respondent by	Sh. Rahul Dhawan, CIT.DR

Date of Hearing	20.09.2021
Date of Pronouncement	14.10.2021

**ORDER**

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

1. The captioned appeal by the assessee is directed against the order of the CIT(E), Chandigarh dated 23.10.2020 in respect of Assessment Year 2017-18.
2. The assessee has raised the following grounds:

*“1. That the Ld. PR.CIT (Exemptions), Chandigarh has erred in not granting registration u/s 12AA of the Income Tax Act, 1961 vide order, dated 23.10.2020.*

*2. That the denial of exemption u/s 12AA on the issue that the assessee is a “franchisees of Zee Learn Ltd.”, is not valid, since the Hon’ble ITAT, Amritsar bench, Amritsar in ITA No. 605/Asr/2017, vide order, dated 10.09.2018 has already considered this issue and decided the issue in favour of assessee and that finding has attained finality and, therefore, non-granting of registration u/s 12AA on the issue of being a frenchisees of Zee Learn Ltd., is bad in law and, as such, this finding deserves to be quashed.*

*3. That the Ld.Pr.CIT(Exemptions) having not drawn any adverse inference on account of the issues which have been set aside by the Hon’ble ITAT, Amritsar Bench, Amritsar in ITA No. 605/Asr/2017 and, therefore, the refusal of registration u/s 12AA on the issue of Zee Learn Ltd. only, which has already attained finality is bad in law.*

*4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

**3.** Briefly, the facts are that an application in Form No.10A was filed by the appellant society on 28.02.2017 in the office of PCIT(Exp), Chandigarh seeking registration u/s 12A of the Income Tax Act, 1961. The application revealed that the society is an ongoing entity that has been in operation since 30.01.2013.

**4.** This is a second round of the appeal before the Bench as in this case, the ITAT had earlier partly set aside the issue to the Ld.

Commissioner of Income Tax (Exemptions), vide its order, dated 10.09.2018. Earlier an order u/s 12AA of the Income Tax Act was passed by the Commissioner of Income Tax (E), Chandigarh in this case on 30.08.2017 rejecting the application for grant of registration u/s 12AA. The applicant trust preferred an appeal before the Hon'ble Income Tax Appellate Tribunal, Amritsar against the order of the Commissioner of Income Tax (E), Chandigarh. The Hon'ble ITAT, Amritsar has restored back the case of the applicant trust for fresh consideration in ITA No. 605/Asr/2017 dated 10.09.2018 by observing as under: -

*" We, accordingly, i.e., in view of the foregoing, only consider it proper to restore the matter back to the file of the competent authority to allow the assessee an opportunity to exhibit its' activities as being undertaken toward and in satisfaction of its stated object/s, which no doubt constitute a charitable purpose under the Act. Before parting, we may also add, and even as clarified by us during hearing, that in view of the assessee's objects, the reliance on the decisions by the tribunal in the context of other schools run as franchisees of Zee Learn Ltd., is rendered of little moment; we ourselves holding that profit-making per se cannot be regarded as detrimental as long as it feeds a charitable purpose (of education). For the same reason/s, and to the same effect, would be the assessee's reliance on the decisions by the Hon'ble jurisdictional High Court, placed in the assessee's compilation, which, even though not referred to during hearing, have been perused by us*

*to find ourselves as in agreement therewith in principle. Further, as regards the observation of the assessee's principal asset, the school building, as not secured, being on a leasehold land, an aspect which again impinges on the genuineness of its' activities, may require being addressed in a legal framework, as per a legal undertaking, etc. We decide accordingly.*

*6. In the result, the assessee's appeal is allowed for statistical purposes."*

5. Consequently, after receiving the order passed by the Hon'ble ITAT, the case of the applicant was fixed on 22.04.2019 to give appeal effect to the Hon'ble ITAT's order dated 10.09.2018 and in compliance, the applicant has submitted its reply. On the basis of reply submitted by the applicant, the additional queries were sent to applicant on 21.05.2019 to submit the clarifications/submissions on or before 27.05.2019. The applicant has submitted the response to the additional queries raised on 21.05.2019. The applicant has further submitted the written response on 17.07.2020.

6. As mentioned in Para 4 above, the ITAT has set aside the case on three points which are, hereby, being discussed issue-wise in separate paras elaborately below.

7. As regards to the issue of being a franchisee of Zee Learn Ltd. the Tribunal has held in Para 5 of its order that

*"even as clarified by us during hearing, that in view of the assessee's objects, the reliance on the decisions by the tribunal in the context of other schools run as franchisees of Zee Learn Ltd., is rendered of little moment; we ourselves holding that profit-making per se cannot be regarded as detrimental as long*

*as it feeds a charitable purpose (of education). For the same reason/s, and to the same effect, would be the assessee's reliance on the decisions by the Hon'ble jurisdictional High Court, placed in the assessee's compilation, which, even though not referred to during hearing, have been perused by us to find ourselves as in agreement therewith in principle"*

8. Further, in its order at Para 4.2, the Hon'ble ITAT has observed as under:

*"4.2 The question, therefore, is whether the earning of profits, i.e., in a regular and systematic manner - on which there could hardly be any doubt, even as the Id. CIT(E) was at pains to emphasize, by managing its affairs adopting standard and well accepted/recognized business management practices and principles, on commercial or market driven basis, could be said to exclude an activity geared to achieve an object otherwise constituting a charitable purpose. The Hon'ble Apex Court has, per a series of decisions, as in Sole Trustee, Loka Shikshana Trust v. CIT [1975] 101 ITR 234 (SC); Indian Chamber of Commerce v. CIT [1975] 101 ITR 796 (SC); Dharmadeepti v. CIT [1978] 114 ITR 454 (SC); CIT v. Surat Art Silk Cloth Manufacturers' Association [1980] 121 ITR 1 (SC); Aditanar Educational Institution v. CIT (Addl.) [1997] 224 ITR 310 (SC); American Hotel & Lodging Assn. Educational Institute v. CBDT [2008] 301 ITR 86 (SC); and Queens' Educational Society v. CIT [2015] 372 ITR 699 (SC), the last also approving the decision by the Hon'ble jurisdictional High Court in Pine Grove International Charitable Trust vs. Union of India (2010) 327 ITR 273 (P & H) settled the law, explaining that on an overall view of the matter the object should not be make profit, i.e., 'profit-making' should not be the predominant object, as where the charitable purpose gets submerged by the profit motive, the*

*latter masquerading under the guise of the former. As long as it is not so, so that the activity carried on does not have profit-making as its' predominant object, it is not excluded. However these decisions again, are all rendered in the context of the charitable purpose being the advancement of an object of general public utility' qualified by the defining provision of alw itself by a bar with reference to profit, or in the context of sec. 10(23C)(iiiad)/(vi) specifically providing for the educational institution, income from which gets exempt there under, to be existing solely for education and not for profit, so that the apex court found it useful to refer to the elucidation of and the connotation of the preposition for per its earlier decisions, which is the reason for our enlisting it's decisions over time, which thus document the progression of law in the matter. For the other objects constituting a charitable purpose, the genuineness of the purpose gets tested by the obligation created to spend the income exclusively or essentially on charity, i.e., its' charitable objects. We, therefore, fully endorse the assessee's stand that profit-making, or running the school on business or commercial principles, would not exclude it from being regarded as existing for a charitable purpose. Why, even regarding it as a business; education admittedly being a service that has become increasingly competitive and professional over time, which rather gets borne out by the fact of the same being provided through franchisee units, paying a franchise fee and royalty, so that it may not incorrect to regard it as so, would not though bar the profits and gains from it as being regarded as income liable for exemption u/s. 11(1) (a) where the 'business' is incidental to or subserves the charitable purpose (refer s. 11(4A)). The restriction, prior to sec. 11(4A), was spelt out u/s. 13(1)(bb), since omitted, stipulating a more stringent requirement of the business being carried on in the course of carrying out the primary purpose of the trust or institution, which is also satisfied in the present case as the education is being*

*provided only through the school. The Hon'ble Courts, as a reading of the various decisions in the matter shows, have refrained from providing a quantitative test for the income generated from the activity carried on in pursuance of or for achieving a charitable purpose/object. Nothing, therefore, turns on the assessee stating before us of its' expenditure exceeding income; the expenditure including a handsome component of depreciation (Rs. 37 lacs for AY 2015-16), so that there is substantial cash profit and, two, the depreciation stands provided on an accelerated (WDV) basis at the rates prescribed under the Act for determining business income, which inflates the charge for the initial years, as against being applied uniformly over the life of the asset. Before us, the Id. counsel sought to justify the fees which, on an annual basis, ranges from Rs. 40,000/- to Rs. 50,000/-, with reference to the quality of the education; the school also providing training in Robotics, a new discipline. Without doubt, the cost of education, as of any other service, cannot be properly compared without taking into account its' quality; rather, the quality of both the input resources as well as the output. We have however, already clarified that no quantitative tests (viz. the rate of profit; the rate of return on investment, etc) in this regard have been laid down, which the Hon'ble Courts have eschewed for perhaps precisely this reason, i.e., as a number of variables impinge thereon, and which aspect is therefore best left for the regulating authority (as CBSE) or the market place to decide. Our decision in this regard is thus consistent with the decisions by the Tribunal cited before us in respect of similar schools run as franchisee units of Zee Learn Ltd."*

- 9.** The Ld. Counsel Sh. Sudhir Sehgal, Advocate for the assessee submitted that the denial of exemption u/s 12AA on the issue that the assessee is a "franchisees of Zee Learn Ltd.", is not valid, since the Hon'ble ITAT, Amritsar bench, Amritsar in ITA No. 605/Asr/2017, vide

order, dated 10.09.2018 has already considered this issue and decided the issue in favour of assessee and that finding has attained finality and, therefore, non-granting of registration u/s 12AA on the issue of being a franchisees of Zee Learn Ltd., is bad in law. He further submitted that the Ld. PCIT(Exmp) having not drawn any adverse inference on account of the issues which have been set aside by the Hon'ble ITAT, Amritsar Bench, Amritsar in ITA No. 605/Asr/2017 and, therefore, the refusal of registration u/s 12AA on the issue of Zee Learn Ltd. only, which has already attained finality is bad in law. He also contended that nothing has been doubted by the Ld. PCIT(Exp), Chandigarh, and that for the purpose of 12A only two conditions are required to be satisfied that one with regard to the activities of the trust and the second with regard to the aims & objects of the society as per the decided case laws on this issue which have been addressed in favor of the assessee by the earlier order of the Hon'ble ITAT (APB, Pg. 1-10). He has filed a brief synopsis in support of the contentions pleaded before us on 20.09.2021, as under:

1. *It is submitted that this is a second round of our appeal before the Hon'ble Bench of the ITAT and in this case, the Hon'ble ITAT had earlier passed an order, dated 10.09.2018 and partly set aside the issue to the Ld. Commissioner of Income Tax (Exemptions), which finding has been recorded in para 5 of the order of ITAT at page 9 of Paper Book, which is being reproduced as under:-*

**Para 5 Page 9**

***“5. We, accordingly, i.e., in view of the foregoing, only consider it proper to restore the matter back to the file of the competent authority to allow the assessee an opportunity to exhibit its' activities as being undertaken toward and in satisfaction of its stated object/s, which no doubt constitute a charitable purpose under the Act. Before parting, we may also add, and even as***

clarified by us during hearing, that in view of the assessee's objects, the reliance on the decisions by the tribunal in the context of other schools run as franchisees of Zee Learn Ltd., is rendered of little moment; we ourselves holding that profit-making per se cannot be regarded as detrimental as long as it feeds a charitable purpose (of education). For the same reason/s, and to the same effect, would be the assessee's reliance on the decisions by the Hon'ble jurisdictional High Court, placed in the assessee's compilation, which, even though not referred to during hearing, have been perused by us to find ourselves as in agreement therewith in principle. Further, as regards the observation of the assessee's principal asset, the school building, as not secured, being on a leasehold land, an aspect which again impinges on the genuineness of its' activities, may require being addressed in a legal framework, as per a legal undertaking, etc. We decide accordingly."

2. From the above, it is clear that on two issues only, matter had been 'set aside' to the Commissioner of Income Tax (Exemptions), Chandigarh, i.e. one was with regard to the opportunity to exhibit the activities of the school and the second was with regard to the 'lease hold land', which was taken by the society from 'Sh. Chaman Lal Gulati' at a nominal lease money. However, the Hon'ble Bench of the ITAT, has held that the payment of franchisee fee to "Zee Learn Ltd." is justified, because the same have been paid for achieving the objects of the society and which finding has been given in the order of ITAT at page-8, where following finding has been given:-

**"Our decision in this regard is thus consistent with the decisions by the Tribunal cited before us in respect of similar schools run as franchisee units ( of Zee Learn Ltd.)"**.

The said finding is to be read with the finding in para 5, as reproduced above.

3. After the issue had been remanded back, the assessee appeared before the Ld. CIT (Exemptions), Chandigarh and filed a reply, dated 16.07.2020, placed in the Paper Book at pages 11 to 13 and other details with regard to the activities of the school, 'fee concession' given to the student in various years and certain photographs to show about the activities and popularity of the school in Faridkot area and the relevant Index and the documents

as submitted to the CIT (Exemptions is at pages 23 to 24 of the 'Paper Book'.

4. The CIT (Exemptions) has not doubted the charitable activities of the school and the assessee has placed in the paper book substantial evidences of concession fee, given to the poor & deserving students, some sample copies of which have been placed at pages 26 to 58, 73 to 74 and other details at page no. 75 to 78, where substantial number of students have been 100% and 50% concession along with the letter from Sewa Bharti, the copy of which has been placed at page no. 75 of the paper book and the Ld. CIT (Exemption), has not doubted this aspect in Para No. 6.3 and as only observed as under:

**“6.4 .....The perusal of the same reveals that certain students have been given concessions in their fees by the school/ but only this aspect would not suffice to prove that the institution being. run by the society is completely charitable and is not being run for profit. The activities of the school have to be charitable as a whole where the intent of any institution is not for profit making and profit sharing through franchisees.”**

5. From the above, it is very clear that nothing having been doubted and if there is complete waiver of fee, how the school would run and what more evidence was required to be given has not been substantiated by the CIT (Exemption) and according to us, that on this issue no adverse inference have been drawn and main object of the society is to carry-out the object of the education only and not doubted.

Further, regarding lease of land, the CIT in para 7.4 after considering the affidavit and submissions of the assessee as per Para no. 7.3 of his order has accepted the contention of the assessee. The same para is reproduced as under:

**“7.4 The affidavit and the submission of the assessee in this regard have been filed and no adverse inference in this particular aspect is drawn.”**

6. In para 7.4, the CIT (Exemptions) has referred to the order of ITAT, Chandigarh Bench in the case of 'Jiwan Dass Kartar Singh Charitable Trust' with regard to the payment of Franchisee fee to the "Zee Learn Ltd." and held that the case is squarely covered by the

judgment of Chandigarh Bench of the ITAT in the above said case and the relevant finding of CIT(Exemptions) is in para-8 of his order, which is being reproduced as under:-

**Para 8**

*“In view of the above discussion and the fact that no clear direction has been given by the Hon’ble ITAT, Amritsar for granting registration u/s 12AA in the case, I am inclined to respectfully follow the order passed by the Hon’ble ITAT, Chandigarh in the case of ‘M/s Jiwan Dass Kartar Singh Charitable Trust, Karnal v. The CIT (E), Chandigarh’ in ITA No. 426/Chd/2018, dated 01.05.2019, wherein clear findings have been given upholding the order passed by the department. The present case is squarely covered by the said judgment passed by the Hon’ble ITAT, Chandigarh. Accordingly, keeping in view all the above, the present application for grant of registration under section 12AA of the I.T.Act is, hereby, rejected.”*

7. From the above, it is very clear that the only objection of the CIT(Exemptions) for the denial of registration had been made on the basis of fact that the society is paying franchisee fee to “Zee Learn Ltd.”.

8. It is vehemently submitted that the Hon’ble Bench in his order, dated 10.09.2018 in ITA No.605/Asr/2017 has clearly held that no adverse view is drawn in respect of franchisee fee paid to “Zee Learn Ltd.” and the decision of the Hon’ble Bench is in consonance that the decision cited, before the Bench during the course of hearing and in para 5 of the order of ITAT, the Hon’ble Bench has not drawn any adverse inference on account of “Zee Learn Ltd.”

9. Therefore, the issue has been set aside only for the limited purpose and the CIT (Exemptions) cannot over ride the finding of the Hon’ble Bench and has only to look into those aspects for which, the case had been set aside and, therefore, the issue of “Zee Learn Ltd.” having already been decided in favour of assessee, no adverse view can be drawn against the assessee on such issue, since the department had not carried the matter to the Hon’ble High Court. Thus, the jurisdiction of the CIT(Exemptions) was limited to verification of two issues, one with regard to the ‘lease hold land’ and the second about the fee

concession and on both accounts, the CIT (Exemptions) has not drawn any adverse inference and, therefore, it is prayed that the order of CIT(Exemptions) denying the registration u/s 12AA is bad in laws. The finding of CIT (Exemptions) in para 6.3 with regard to "fee concession" and all such details were filed in the Paper Book at pages 26 to 58 (sample copies) and at pages 73 to 74, the letter was filed from 'Sewa Bharti' about the 'fee concession' at page 75 and details of 'fee concession' year wise at pages 76 to 78 and various appreciation cum recognition letters at page 85 onwards.

*Thus, nothing has been doubted and for the purpose of 12A only two conditions are to be required to be satisfied that one with regard to the activities of the trust and the second with regard to the aims & objects of the society as per the decided case laws on this issue which have been addressed in favor of the assessee by the earlier order of the Hon'ble ITAT as placed in the paper book at page no. 1 to 10.*

10. *On the issue of profit motive, it had clearly been held that profit motive should not be predominant and for that various decisions have been cited at page 6, para 2.4 of the order of the Hon'ble Bench and the Ld. CIT (Exemptions) in para-8 of the order has held that the denial of registration is being made following the order of the Hon'ble ITAT, Chandigarh Bench on the issue of the franchise fee paid to 'M/s. Zee Learn Ltd.' and which finding is already in favor of the assessee in the earlier order of ITAT in ITA No. 605/Asr/2017 and, therefore, the CIT (Exemptions) not following the order of the Hon'ble ITAT and rejecting the application for registration u/s 12AA, which issue had already attained finality is bad in law and, thus, the CIT (Exemptions) may be directed to grant registration to the assessee u/s 12AA.*

**10.** Per contra, the Ld. CIT (DR) stands by the findings of the PCIT(Exp), Chandigarh. He contended that in the instant case, as the character of the school is commercial per se and is hit by the provisions of Section 2(15) of the Act, giving fee concessions to some of its students would not take away the commercial character of the school/society. Since the primary issue of the society/school remains to

be commercial with the profit motive through commercial agreement, the admissions of certain poor students by giving them fee concessions would not undermine the non-charitable character of the society. The case of the society, as already discussed in Para 5, is exactly similar to the case of 'M/s Jiwan Dass Kartar Singh Charitable Trust, Karnai vs. PCIT (E), Chandigarh' which has been adjudicated by the Hon'ble ITAT, Chandigarh on exactly similar issues. Therefore, just because the school is providing fee concessions to some of its students, the activities of the society cannot be considered as charitable. In view of that the school being run commercially for making profits which has also been made clear through conclusive findings given by the Hon'ble ITAT, Chandigarh in the aforesaid judgement, he prayed for upholding the impugned order.

**11.** We have heard the rival contentions, perused the impugned order, ITAT Amritsar Bench Order, written submissions and case law citations filed by both the parties during the hearing.

**12.** In compliance to the directions of the Tribunal, the applicant was granted opportunity vide department's queries dated 22.04.2019 and 21.05.2019 which were duly complied with by the applicant by its written submissions dated 07.05.2019; 27.05.2019 and 17.07.2020. These submissions have been examined and placed on record. The assessee, in respect of the franchise agreement of the society with Zee Learn Ltd., has submitted that the franchise agreement with Zee Learn Ltd. was entered only to achieve the object of providing quality education to all the sections of the society and there was no profit earning motive by the franchisee.

**13.** The Coordinate Bench while remanding the matter back to the competent Authority for limited purpose observing in para 5.3 that to allow the assessee an opportunity to exhibit its' activities as being undertaken toward and in satisfaction of its stated object/s, which no doubt constitute a charitable purpose under the Act and that before parting, we may also add, and even as clarified by us during hearing, that in view of the assessee's objects, the reliance on the decisions by the tribunal in the context of other schools run as franchisees of Zee Learn Ltd., is rendered of little moment; we ourselves holding that profit-making per se cannot be regarded as detrimental as long as it feeds a charitable purpose (of education). For the same reason/s, and to the same effect, the Tribunal had perused the Hon'ble jurisdictional High Court, placed in the assessee's compilation, to find the bench as in agreement therewith in principle.

**14.** The Ld. PCIT(Exp), Chandigarh has states that the Hon'ble ITAT has not given any clear direction for considering the franchise agreement as charitable in nature is factually wrong. The ITAT, has held that the payment of franchisee fee to "Zee Learn Ltd." is justified, because the same have been paid for achieving the objects of the society by observing in the order at pg. 8, as under:

*"Our decision in this regard is thus consistent with the decisions by the Tribunal cited before us in respect of similar schools run as franchisee units of Zee Learn Ltd."*

**15.** The Ld. AR argued that before the Ld. PCIT (E), Chandigarh the assessee has filed a reply, dated 16.07.2020, (APB, Pg.11 to 13) and other details with regard to the activities of the school, 'fee

concession' given to the student in various years: and certain photographs to show about the activities and popularity of the school in Faridkot area and that the relevant Index with the documents (APB, Pg. 23 to 24).

**16.** It is seen that the PCIT(E) has not doubted the charitable activities of the school in view of the substantial evidences of concession fee, given to the poor & deserving students, some sample copies of which have been placed n record (APB, Pg. 26 to 58, 73 to 74 and 75 to 78), where number of students have been given 100% and 50% concession along with the letter from Sewa Bharti, (APB, Pg. 75) which have not been doubted by the Ld. CIT (E), as app evident from Para No. 6.4 of the impugned order where he has only observed as under:

***“6.4 .....The perusal of the same reveals that certain students have been given concessions in their fees by the school/ but only this aspect would not suffice to prove that the institution being. run by the society is completely charitable and is not being run for profit. The activities of the school have to be charitable as a whole where the intent of any institution is not for profit making and profit sharing through franchisees.”***

**17.** From the above, we understand that as such nothing having been doubted as regard to the aims and activities of the Assessee society being charitable is concerned. However, we note that if there is complete waver of fee, how the society would run the school and

further whatever more evidence was required to be given has not been substantiated by the CIT (E). In our view, if on this issue, no adverse inference have been drawn by the PCIT(E) by accepting main object of the society is to carry-out the object of the education only, then refusal to grant 12 AA to the assessee society was not justified. Further, the CIT in para 7.4 of his order has accepted the contention of the assessee regarding lease of land, as follows:

***“7.4 The affidavit and the submission of the assessee in this regard have been filed and no adverse inference in this particular aspect is drawn.”***

18. The CIT (E) has referred to the order of ITAT, Chandigarh Bench in the case of ‘Jiwan Dass Kartar Singh Charitable Trust’ with regard to the payment of Franchisee fee to the “Zee Learn Ltd.” and held that the case is squarely covered by the judgment of Chandigarh Bench of the ITAT by observing vide 8 of the impugned order, as under:-

**Para 8**

***“In view of the above discussion and the fact that no clear direction has been given by the Hon’ble ITAT, Amritsar for granting registration u/s 12AA in the case, I am inclined to respectfully follow the order passed by the Hon’ble ITAT, Chandigarh in the case of ‘M/s Jiwan Dass Kartar Singh Charitable Trust, Karnal v. The CIT (E), Chandigarh’ in ITA No. 426/Chd/2018, dated 01.05.2019, wherein clear***

***findings have been given upholding the order passed by the department. The present case is squarely covered by the said judgment passed by the Hon'ble ITAT, Chandigarh. Accordingly, keeping in view all the above, the present application for grant of registration under section 12AA of the I.T.Act is, hereby, rejected."***

**19.** From the above, it is very clear that the only objection of the CIT(E) for the denial of registration had been made on the basis of fact that the society is paying franchisee fee to "Zee Learn Ltd.". The Ld.AR has vehemently contended that the coordinate Bench in his order, dated 10.09.2018 in ITA No.605/Asr/2017 has clearly held that no adverse view is drawn in respect of franchisee fee paid to "Zee Learn Ltd." and the decision of the Hon'ble Bench is in consonance that the decision cited, before the Bench during the course of hearing and in para 5 of the order of ITAT, as above we do not find any adversssity in the observation of the coordinate Bench decision on account of franchise fee paid to "Zee Learn Ltd."

**20.** Since, the issue being set aside with specific findings and hence, the PCIT (E) cannot over ride the finding of the Coordinate Bench and was required only to look into those aspects for which, the case had been set aside and, since, the issue of "Zee Learn Ltd." having already been decided in favour of assessee, no adverse view can be drawn against the assessee on such issue, as the department had not carried the matter to the Hon'ble High Court.

**21.** Thus, nothing has been doubted and for the purpose of 12A only two conditions are to be required to be satisfied that one with regard to the activities of the trust and the second with regard to the aims & objects of the society as per the decided case laws on this issue which have been addressed in favor of the assessee by the earlier order of the Coordinate Bench as placed in the paper book at page no. 1 to 10.

**22.** As regards to the issue of profit motive, it had clearly been held that profit motive should not be predominant and for that various decisions have been cited at page 6, para 2.4 of the order of the Hon'ble Bench and the Ld. CIT (E) in para-8 of the order has held that the denial of registration is being made following the order of the Hon'ble ITAT, Chandigarh Bench on the issue of the franchise fee paid to 'M/s. Zee Learn Ltd.' and ignoring the finding is already in favor of the assessee in the earlier order of ITAT in ITA No. 605/Asr/2017 and, therefore, the CIT (E) not following the order of the Hon'ble ITAT is against judicial discipline and rejecting the application for registration u/s 12AA, which issue had already attained finality is bad in law and, thus, the PCIT (E) was required to grant registration to the assessee u/s 12AA.

**23.** In view of the above facts, we are of the considered view, that the jurisdiction of the PCIT(E) was being limited to verification of two issues, one with regard to the 'lease hold land' and the second about the fee concession and on both accounts, and since, the CIT (E) has

not drawn any adverse inference and, therefore, in our view, the order of CIT(E) denying the registration u/s 12AA is bad in law.

**24.** In the above view, we are of the considered opinion that the assessee is entitled to registration under section 12AA of the Income Tax Act 1961. Accordingly, we direct the PCIT(E), Chandigarh to grant registration to the assessee society from the date of its application.

**Order pronounced in the open court on 14.10.2021**

**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.

True Copy  
By Order