

**2025 LiveLaw (SC) 214**

**IN THE SUPREME COURT OF INDIA**

**J.B. PARDIWALA; J., R. MAHADEVAN; J.**

SPECIAL LEAVE PETITION (CIVIL) Diary No. 19528/2018; 11-02-2025

**COMMISSIONER OF INCOME TAX EXEMPTIONS *versus* M/S INTERNATIONAL HEALTH CARE EDUCATION AND RESEARCH INSTITUTE**

**Income Tax Act, 1961; Sections 10, 11 and 12-AA - Charitable Trust - Registration under Section 12-AA - Income Tax Exemption - Proposed vs. Actual Activities - The respondent, a charitable trust engaged in education and medical aid, sought registration under Section 12-AA for tax exemptions under Sections 10 and 11. The Commissioner denied registration, citing insufficient evidence of actual charitable activities. The Appellate Tribunal reversed this, directing registration, which the High Court upheld. The Commissioner challenged this via Special Leave Petition. Held, Registration under Section 12-AA must be decided based on the trust's proposed activities rather than actual activities, as the provision pertains to registration and not assessment of what the trust has actually done, and the term 'activities' therein includes 'proposed activities'. The Commissioner must satisfy themselves of the genuineness of the trust's objects and their alignment with proposed activities for registration to claim benefits under Sections 11 and 12. However, mere registration does not guarantee exemptions under Sections 10 and 11, and the Assessing Officer may deny them if the trust's materials are not convincing or genuine. The Supreme Court rejected the Revenue's contention that actual activities should be considered and declined to refer the *Ananda Social* precedent to a larger bench. Appeal dismissed; High Court's decision affirmed. [Relied on: *Ananda Social and Educational Trust*, (2020) 17 SCC 254]. (Paras 9, 13, 15)**

[Arising out of impugned final judgment and order dated 18-07-2017 in DBITA No. 533/2009 passed by the High Court of Judicature for Rajasthan at Jaipur]

*For Petitioner(s): Mr. Raghavendra P. Shankar, ASG Mr. Karan Lahiri, Adv. Mr. Bhuvan Kapoor, Adv. Mr. S.K. Singhania, Adv. Mr. Nikhil Rohatgi, Adv. Mr. Rukhmini Bobde, Adv. Mr. Raj Bahadur, AOR Mrs. Anil Katiyar, AOR*

*For Respondent(s): Mr. Ritesh Agrawal, AOR Mr. Sanjai Pathak, Adv. Mr. Sunder Khatri, Adv. Ms. Priyanshi Sharma, Adv. Mr. Chirag Yogendra Mehta, Adv.*

**ORDER**

1. Delay condoned.
2. This petition arises from the judgment and order passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur dated 18th July, 2017 in DB Income tax Appeal No. 533 of 2009 by which the appeal filed by the Revenue came to be dismissed thereby affirming the judgment and order passed by the ITAT answering the question of law in favour of the assessee and against the revenue.
3. The short point that falls for our consideration in the present petition is relating to the true and correct interpretation of Section 12-AA of the Income Tax Act, 1961 (for short the "Act 1961").
4. The respondent herein assessee claims to be a charitable trust engaged in activities like education, medical aid etc. It is not in dispute that the trust has been registered under the Indian Trusts, 1882 Act. However, for the purpose of claiming exemption under Sections 10 and 11 respectively of the Act, 1961 they applied for being registered under Section 12-AA of the Act, 1961.

5. It appears that the registration was declined by the Commissioner on the ground that there was nothing on record to indicate that the Trust was undertaking any charitable activities. Being dissatisfied with the order passed by the Commissioner declining registration under Section 12-AA of the Act, 1961, the assessee went before the Appellate Tribunal, The Tribunal allowed the appeal observing as under: -

"3. We have heard the parties. The brief facts of the case as appearing from the order of the Id. CIT are as under: -

"The above said trust was created on 01.01.2008. It filed an application in Form No. 10A on 18.02.2008 seeking registration under section 12A(a) of the I.T. Act, 1961.

On perusal of the documents filed by the trust along with its application, it is observed that the trust tiled a copy of the trust deed along with its application for registration instead of the original trust deed as is required under Rule 17A(a) of the Income-tax Rules, 1961. No reason for not filing the original trust deed has been given.

An opportunity of being heard was afforded by this office for 14.08.2008 & 27.08.2008 vide this office letter no. CIT/ITO(Tech.)/Alwar/2008-09/999 & 1379 dated 01.08.2008 & 25.08.2008 respectively, requiring to furnish the details of Income & Expenditure account along with notes on activities carried out by the trust from its inception. On the fixed date, Shri J.N. Goyal, Secretary of the trust appeared on 14.08.2008 and later on Shri Rajeev Goyal, Advocate attended on 27.08.2008. Shri J.N. Goyal filed a written submission that the trust is a new one so past three years accounts are not available. It was submitted that corpus fund has not been utilized. Donation of Rs. 25,000/- was given by Shri J.N.Goyal himself for which no receipt was issued by the trust. The office rent was paid to Rajiv Goyal for which no receipt was obtained. Scholarship and books were given to poor students for which no evidences were provided. Medical and were given to poor people for which neither medical bills or details of persons (beneficiaries) were available. Shri Rajeev Goyal. who attended the proceedings on 27.02.2008 also not provided any supporting evidences.

A trust is required to fulfil the following two conditions for getting itself registered under section 12A(a) of the Act:

- a) The objects of the trust/ institution should be charitable in nature.
- b) The activities of the trust/ institution should be genuine. The above requirements are mandatory in nature for granting registration to a trust/ institution under section 12A(a). It is, however, observed that activities claimed to be carried out by the assessee are not verifiable till now from the date of creation of trust.

The said trust has not done any work of charitable nature till now and that by relying on the decision of Hon'ble Kerla High Court in the case of Self Employers Service Society Vs. CIT (247 ITR 118), the request/application for registration is at a premature stage and the trust should come up for registration if it had actually done any work. Head note of the judgment read as under: -

"In-the present case, admittedly, the society has not done any charitable work during the relevant period, on the other hand, the activities which they have carried on during the period were only for the purpose of generating income for its members. There were no materials before the Commissioner to be satisfied of the genuineness of the activities of the trust or institution. Under these circumstances rejection of the application cannot be termed as illegal or arbitrary."

From the above facts as discussed in forgoing paragraphs, it may be observed that in absence of any genuine activity carried by the trust the activities of the trust cannot be said to be of charitable nature as of now. It may be noted that Section 12AA(1) (b) speak as under: -

"(b) after satisfied himself above the objects of the trust or institution and the genuineness of its activities, he-

i) Shall pass an order in writing registering the trust or institution; ii) ii) Shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution.

Having regard to the facts of the case it is apparent that the trust has not been able to bring any evidence on record to establish that the activities of it till now were genuinely taken for any charitable purpose. The trust is, therefore, not eligible for registration under section 12A(a) and hence its application for registration is hereby rejected.

However, it will be open to trust to file fresh application, when its genuine activities are for charitable purpose and that time matter would be considered in accordance with law."

6. Thus, the Tribunal reversed the decision of the CIT(A) and directed to grant registration to the Trust as applied in Form-10A of the Act.

7. The revenue being dissatisfied with the order passed by the Tribunal went before the High Court. The High Court dismissed the appeal and thereby affirmed the order passed by the Tribunal. The High Court observed as under: -

"2. This court while admitting the appeal on 16.11.2009 framed substantial question of law:

Whether the learned ITAT were right in law and facts in directing the CIT to grant registration u/s 12A (a) to the respondent after having acknowledged the fact that no charitable activity was ever carried out by the trust upto 31.3.2008.

3. Counsel for the appellant has taken us to the reasoning adopting by the Commissioner of Income Tax, Alwar where the application of the assessee for registration was rejected and he has also relied upon the decision of Kerala High Court in self Employers service society vs. CIT 247 ITR 118 head note of the judgment reads as under:

"In the present Case, admittedly, the society has not done any charitable work during the relevant period, on the other hand, the activities which they have carried on during the period were only for the purpose of generating income for its members. There were no materials before the Commissioner to be satisfied of the genuineness of the activities of the trust or institution. Under these circumstances, rejection of the application cannot be termed as illegal or arbitrary."

3.1 However, tribunal while considering., the matter has rightly considered the very object of the registration in para no.4 and held as under:

"We have heard the rival contentions and perused the facts of the case. The trust was carried on 1.1.2008 and the application in form no. 10A was filed on 18.2.2008 for seeking registration u/s 12A(a) of the Act. As per Section. 12AA(1), there is a procedure for registration where the Commissioner on receipt of such application call for such documents or information to satisfy himself about the genuineness of the activities of the trust or may make such enquiries as he deems necessary in this behalf and after satisfying himself about the objects of the trust and genuineness of the activities, shall pass an order accordingly. In the present case on the date of registration and upto 31.3.2008, no activity has been carried out by the assessee. Therefore, it will be premature for the Id. CIT to take a decision that the activities are not of charitable in nature. Therefore, in such circumstances and facts of the case, the Id, CIT cannot comment on the genuineness of the its activities. As regards the object of the trust, the Id.. CIT has not pointed out any defect in the clauses of the trust deed. The application, therefore, appears to be in accordance with the requirement of Section 2(15) of the Act Therefore the Id. CIT is required to restrict himself to look into the objects of the trust when there is no activity by the assessee trust. The reliance has been placed on the decision of various courts of law on identical issue as under:

1. Fifth General Education Society vs. CIT, 158 ITR 634 (All.)"
2. New Life in Christ E. Association Vs. CIT 246 ITR 532 (Guj.)
3. N.N. Desai Charitable Trust vs. CIT 246 ITR 452 (Guj.)"

4. We are of the view that observations made by the Tribunal that Commissioner cannot comment about genuineness of its activity and he has not pointed out any defect in the clauses or the trust deed. The activity will be carried out only after the trust is registered.

5. In that view of the matter, we are in complete agreement with the view taken by the Tribunal. The issue is answered in favour of the assessee and against the department.

6. The appeal stands dismissed."

8. In such circumstances, referred to above, the revenue is here before this court with the present petition.

9. Mr. Raghavendra P. Shankar, the learned ASG appearing for the revenue at the outset very fairly pointed out that there is a three judge bench decision of this Court which goes against the revenue. He invited the attention of this Court to the decision in M/s. Ananda Social and Educational Trust vs. Commissioner of Income Tax and Anr. reported in [(2020) 17 SCC 254]. However, according to the learned ASG the decision in Ananda Social (supra) needs a relook. He made a fervent appeal to us to refer this to a larger bench. According to him having regard to the specific provision of 12-AA and more particularly the language, the ultimate findings recorded by the Court in Ananda Social (supra) in para 12 runs contrary to the very object of Section 12-AA. Para 12 of the Ananda Social (supra) reads thus: -

"12. Since Section 12-AA pertains to the registration of the trust and not to assess of what a trust has actually done, we are of the view that the term "activities" in the provision includes "proposed activities". That is to say, a Commissioner is bound to consider whether the objects of the trust are genuinely charitable in nature and whether the activities which the trust proposed to carry on are genuine in the sense that they are in line with the objects of the trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a trust under sub-section (3) of Section 12-AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the trust are not genuine being not in accordance with the objects of the trust. Similarly, the situation would be different where the trust has before applying for registration been found to have undertaken activities contrary to the objects of the trust."

10. The learned ASG would submit that the statement of law contained in para 12 that the terms "activities" in the provision includes "proposed activities" is *prima facie* not correct. According to him at the time of seeking registration under Section 12-AA, the authority must be subjectively satisfied as regards the objects and activities of the Trust. In other words, the objects and activities should be found to be genuine.

11. In such circumstances, referred to above, the learned ASG prayed that appropriate order be passed.

12. On the other hand Mr. Sanjai Pathak, the learned counsel appearing for the respondent assessee submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order. He would submit that as on date there is a direct decision of this Court as referred to above. He would further submit that Ananda Social (supra) is not the only decision on the subject but there are many previous decisions of this Court practically taking the same view.

13. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that it will be too much for this Court, to refer the matter to a larger bench doubting the correctness of the judgment in Ananda Social(supra).

14. We may agree to a certain extent with the learned ASG that the very purpose for any assessee to seek registration under Section 12AA of the Act is to claim exemption under Sections 10 and 11 respectively of the Act, as the case may be. Therefore, before seeking registration, it is essential that the Trust should adduce cogent material to the satisfaction of the Commissioner that the activities are genuinely charitable in nature.

15. To the aforesaid extent there is no problem. We may only say that mere registration under Section 12-AA automatically does not entitle any charitable trust to claim exemption under Sections 10 and 11 respectively of the Act, 1961. When a return is filed by any trust claiming exemption it is for the assessing officer to look into all the materials and satisfy itself whether the exemption has been claimed genuinely or not. If the assessing officer is not convinced it is always open for him to decline grant of exemption.

16. We need not say anything further in the matter.

17. With the aforesaid this petition stands disposed of.

18. Pending application(s), if any, stand disposed of.

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