

**Court No. - 3**

**Case :- INCOME TAX APPEAL No. - 33 of 2017**

**Appellant :- Commissioner Of Income Tax (Exemption) Lucknow**

**Respondent :- M/S Shreedhar Sewa Trust Asharfi Bhawan, Ayodhya, Faizabad**

**Counsel for Appellant :- Alok Mathur**

**Hon'ble Sudhir Agarwal, J.**

**Hon'ble Ravindra Nath Mishra-II, J.**

1. Heard Sri Alok Mathur, learned counsel for appellant and perused the record.
2. This appeal under Section 260-A of Income Tax Act, 1961 (*hereinafter referred to as the "Act, 1961"*) has arisen from judgment and order dated 12.04.2017 passed by Income Tax Appellate Tribunal, Lucknow Bench 'A', Lucknow (*hereinafter referred to as the "Tribunal"*) in ITA No. 492/LKW/2016.
3. Learned counsel for appellant could not dispute that issue raised in this appeal is squarely covered by Division Bench judgment of this Court in **Commissioner of Income Tax-II Vs. R.S. Bajaj Society, (2014) 222 TAXMAN 111**. The judgment reads as under:

1. *The appeal by the revenue under Section 260A of the Income-tax Act, 1961 arises from a judgment of the Income Tax Appellate Tribunal, Lucknow Bench dated 7 August 2013. The assessee had challenged before the Tribunal an order of the Commissioner of Income-tax-II, Lucknow dated 6 September 2012 declining to grant registration under Section 12AA of the Income-tax Act, 1961. The only ground on which the CIT rejected the application for registration was that though the society was established in August 2011 with a dominant object of imparting higher medical education by establishing Medical Colleges, Hospitals and Research Centres, such charitable activities had not still been commenced. The provisions of Section 12AA have been construed in the judgments of several High Courts which have been relied upon in a judgment of a Division Bench in *Hardayal Charitable & Educational Trust v. CIT: [2013] 355 ITR 534/214 Taxman 655/32 taxmann.com 341 (All.)*. While following the view which was taken by the High Courts of Karnataka, Delhi and Punjab and Haryana, the Division Bench has held as follows:*

*The preponderance of the judicial opinion of all the High Courts including this court is that at the time of registration under section 12AA of the Income-tax Act, which is necessary for claiming exemption under sections 11 and 12 of the Act, the Commissioner of Income-tax is not required to look into the activities, where such activities have not or are in the process of its initiation. Where a trust, set up to achieve its objects of establishing educational institution, is in the process of establishing such institutions, and receives donations, the registration under section 12AA cannot be refused, on the ground that the trust has not yet commenced the charitable or religious activity. Any enquiry of the nature would amount to putting the cart before the horse. At this stage, only the genuineness of the objects has to be tested and not the activities, which have not commenced. The enquiry of the Commissioner of Income-tax at such preliminary stage should be restricted to the genuineness of the objects and not the activities unless such activities have commenced. The trust or society cannot claim exemption, unless it is registered under section 12AA of the Act and thus at that such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused.*

*2. The ITAT has held that in view of the judgment of the Division Bench of this Court in Hardayal Charitable & Educational Trust case (supra), the order of rejection by the Commissioner was contrary to the law as laid down. Moreover, the Commissioner did not raise any issue about the objects of the trust which the Tribunal found are clearly charitable in nature. Thus, the only ground which weighed with the Commissioner in declining to grant registration has been found to be contrary to law. The Tribunal has in the circumstance while allowing the appeal directed the Commissioner to grant registration under Section 12AA. The view of the Tribunal is based on the judgment of a Division Bench of this Court which follows the consistent body of law.*

*3. The learned counsel appearing on behalf of the revenue has also relied upon a judgment of the Kerala High Court in the case of Self Employers Service Society v. CIT: [2001] 247 ITR 18/[2000] 113 Taxman 703. The facts in that case are clearly distinguishable. The proposal to start a technical educational institution was made only after the rejection of the application by the Commissioner. Moreover, it was held by the Kerala High Court that the society had not done any charitable work and its activities on the contrary had been carried out only for the purpose of generating incomes for its members.*

*4. Similarly, the judgment of the Punjab and Haryana High Court in Aman Shiv Mandir Trust v. C/r: [2008] 296 ITR 415/[2007] 162 Taxman 412 is also distinguishable because in that case, it was found that the application filed by the assessee was delayed by more than four years. Nothing had been spent during the previous five years on any charitable purpose. Moreover, huge amounts of fixed deposits were found in the name of a trustee who had later approached the Settlement Commission admitting his guilt. Hence, it is clear that both these judgments are on the peculiar facts as slated hereinabove and are distinguishable. The appeal would, therefore, not give rise to any*

*substantial question of law and it is, accordingly, dismissed. There shall be no order as to costs.”*

4. For the reasons stated in aforesaid judgment and in view of exposition of law laid down therein, we do not find that any substantial question of law has arisen in this appeal.

5. Appeal is accordingly dismissed.

**Order Date :- 07.09.2017**

**AK**