

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.34/Ind/2017
Assessment Year: 2016-17**

Ratlam Ahinsa Shiksha Samiti, 25, DR Radhakrishan Nagar, Sagod Road, Ratlam 457001, (Revenue)	<u>बनाम/</u> Vs.	CIT-(Exemption), Bhopal (Respondent)
P.A. No.AACTR3146A		

**ITA No.35/Ind/2017
Assessment Year: 2016-17**

Ratlam Maa Sharda Uchch Shiksha Samiti,81/34, SSIT, Near RTO officer, Jaora Road, Ratlam 457001, (M.P.) (Revenue)	<u>बनाम/</u> Vs.	CIT-(Exemption), Bhopal (Respondent)
P.A. No.AACTR7622K		

Appellant by	Shri Kaide Kangsawala & T. H. Khamosi, CAs
Respondent by	Shri Lal Chand, CIT-DR
Date of Hearing:	11.01.2018
Date of Pronouncement:	16.01.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

Both appeal by the Assessee are directed against the order of Ld. Commissioner of Income Tax(Exemption), Bhopal, (in short 'CIT(E)'), dated 17.01.2017 for the A.Y. 2016-17.

First we take up ITA No.34/Ind/2017, Ratlam Ahinsa Shiksha Samiti

The assessee has raised following grounds of appeal as under:

1. *Your appellant Prays for the following:*
 - *on the facts and in the circumstances of the case, the Hon'ble CIT (Exemption) has erred in denying the exemption sought under section 10(23C) (vi) without considering the provision of 10(23C) (vi) of the Income Tax Act, 1961.*
 - **As per the 14th proviso of section 10(23C) condition 1 for Governing Exemption-** *Application for grant of exemption or Continuance there of shall have to be during the financial year immediately preceding the assessment year from which such exemption assessment year 2009-10 to extend the time-limit up to 6 months after the end of the financial year .For instance, for the previous year 2008-09 (A.Y.2009-10), the application can be made on or before September 30,2009. The Hon'ble CIT (Exemption) has no right to deny exemption on the ground of application being premature.*
 - *Note 3 of Form No. 56D Clearly provides that after of the application, the applicant shall furnish any other documents or information as required by the Chief Commissioner or any other Authority authorizes by the Chief Commissioner, as the case may be. If the application is moved prior to 1st April of the Assessment Year, from which the exemption is sought, during the pendency of such application, if any relevant information is required, the Authorities are well within their rights to ask for the same before taking a final decision on the application.*

2. Briefly stated facts are that the assessee filed an application on 31.03.2016 seeking issuance of exemption certificate u/s 10(23C)(vi) of the Income Tax Act 1961(hereinafter called as 'the Act'). The said application was rejected on the ground that the application so filed being premature.

3. Aggrieved by this the assessee filed the present appeal before this Tribunal.

4. Apropos ground no.1 the Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. The submissions of the assessee are reproduced as under:

1. *The Assesses is an educational institution running school.*
2. *It was registered on 16-12-1999 under the provision of Societies Registration Act, 1973.*
3. *Even though the assesses has also applied for 12A/AA before the Hon'ble CIT (Exemption), Bhopal on 31-03-2016 and the same is approved/registered by the same authority.*
4. *Assesses Society in the F.Y. 2015-16 (A.Y. 2016-17), as its receipts exceeded Rs. 1 Corer, through an application dated 31-03-2016, applied to the commissioner of Income Tax (Exemption), Bhopal Seeking exemption under section 10(23C) (vi) of the Act. As required,*
5. *In pursuance to the said application, though letter dated 18.04.2016, objects of the petitioner and returns of income filed earlier, Copy enclosed with paper book.*
6. *A show cause notice dated 08-12-2016 was issued by Hon'ble CIT (Exemption), Bhopal for clarification of the financial year for which the Approval is sought.*
7. *Assesses clarified that the exemption was sought for the A.Y. 2016-17 (F.Y.2015-16) through letter dated 21-12-2016 7 09-09-2017.*
8. *The Hon'ble CIT (Exemption), Bhopal referred the 14th Proviso of Section 10(23C)(vi) of the Act 1961*

As per the 14th proviso of section 10(23C) condition 1 for Governing Exemption – Application For grant of exemption or continuance There of shall have to be filed during the financial year immediately preceding the assessment year from which such exemption is sought. This provision has been amended with effect from the assessment year 2009-10to extend the time-limit up to 6 months after the end of the financial year. For instance, for the previous year 2008-09 (A.Y.2009-10), the application can be made on or before September 30, 2009. The Hon'ble CIT (Exemption), Bhopal had rejected the Application on the ground that assesses filed the application before closing of financial year i.e. before 01/04/2016 and applied prematurely.

9. *The Hon'ble CIT (Exemption), Bhopal rejected the Application on the basis that assesses filed the application before closing of financial year i.e. before 01/04/2016 and applied prematurely though order dated 17-01-2017.*

10. *The facts and circumstances of the Assesses case are squarely covered under the below PUNJAB AND HARYANA High Court Decision in case of Shri Guru Ram Dass Ji Educational Trust September 28, 2016, copy enclosed.*

A plain reading of the 14th proviso to section 10(23C), as reproduced above, leaves no doubt in our minds that application under the same can be filed on or before 30th September of the relevant Assessment year, from which the exemption is sought. The said proviso simply gives an outer date for making the application, which is 30th September of the Assessment year, for which the exemption is sought. The proviso does not say that the application is to be made between 1st April and 30th September of the Assessment year, for which the exemption is sought. the plain and simple meaning as made out on reading the proviso, is unambiguous. No. external aid is necessary. If the stand of the respondent is to be accepted, then we would have to necessarily add to the 14th proviso a condition that the application shall be made after 1st April and before 30th September of the relevant Assessment year, from which the exemption is sought.

Further Note 1(a) to Form No. 56-D provides that an application can be filed before the specified date and Note 3 clearly provides that after filing of the application shall furnish any other documents or information as required by the Chief Commissioner or any other Authority authorized by the Chief Commissioner, as the case may be these Notes Clearly indicate that application can be filed even prior to 1st April of the relevant Assessment Year, from which the exemption is sought.

The assesses application under section 10(23C) (vi) fully squarely covered with the above decision and light of the above law, the application filed for grant of exemption under section 10(23C) of the Act may please be considered.”

5. During the course of hearing Ld. counsel for the assessee drew our attention to the provisions of section 10(23C)(vi) and relied

upon the judgment of Hon'ble Punjab and Haryana High Court rendered in the case of Shri Guru Ram Dass Ji Education Trust vs. Chief CIT, Amritsar, C.W.P. No.14010 of 2016 dated 28th September, 2016.

6. On the contrary, the Ld. DR opposed the submissions and supported the orders of the authorities below.

7. We have heard the rival submissions and perused material available on record and gone through the order of the authorities below. The application of the assessee seeking exemption u/s 10(23C)(vi) of the Act was rejected by the Ld. CIT(E), on the ground that the application so filed being premature. As per the proviso to section 10(23C)(vi), the application is required to be filed on or before 30th September, of the relevant A.Y. from which the exemption is sought in a case where the application is made on or after first day of June 2006. The Ld. CIT(A) construed these provision as if the assessee is required to file subsequent to the F.Y. i.e. after 1st April, 2016. The identical case came up before the Hon'ble' Punjab and Haryana High Court in the case of Shri Guru Ram Dass Ji Education Trust vs. Chief CIT(Supra) wherein the application was made on 25th December 2014 relevant to the A.Y. 2014-15. Hon'ble court after examining the provision when the Hon'ble High Court held as under:

“It is the un rebutted case of the petitioner that the above quoted columns were the same even prior to the above said amendment made in the year 2009. At that time, applications for seeking exemption could be made only prior to 31st March of the relevant Financial Year, for which the exemption was being sought. The

information supplied by the applicant against these columns at that time was considered adequate by the Department.

Even otherwise, if an application under the 14th proviso, as it stands today, is filed prior to 1st April of the relevant Assessment Year, for which exemption is sought for and after the filling there of, any further information is still needed by the respondent Authorities, before taking a final decision thereupon, that Information can be sought for form the applicant. As observed earlier, that was done in the case in hand, in which all the accounts for the petitioner much before the passing of the order impugned before us.

Note 1(a) to form no. 56-D provides that an application can be filed before the specified date and Note-3 clearly provides that after of the Application, an applicant shall furnish any other documents or information as required by the Chief Commissioner or any other Authority authorized by the Chief Commissioner, as the case may be. These Notes clearly indicate that application can be filed even prior to 1st April of the relevant Assessment Year, from which the exemption is sought.

In view of the above, the impugned order 03.03.2015 passed by the Chief Commissioner is set aside with a direction to the Chief Commissioner to consider the application filed by the petitioner for grant of exemption under section 10(23C)of the Act, on merits.”

8. We find that the order of rejecting application was passed on 17.01.2017. It is fairly conceded by the Ld. counsel for the assessee when the application was pending before the Ld. CIT(E). The judgment of Hon'ble Punjab and Haryana High Court was not brought to his notice. Under these facts we deem it proper in the interest of justice to set aside the order of Ld. CIT(E) and restore the application of the assessee for reconsideration on merits in the light of the judgment of Hon'ble Punjab and Haryana High Court in the case of Shri Guru Ram Dass Ji Education Trust vs. Chief

CIT(Supra). Since no other contrary binding precedent is brought to our notice.

9. As a result, appeal of the assessee is allowed for statistical purposes.

Now we take up ITA No.35/Ind/2017, Ratlam Maa Sharda Uchch Shiksha Samiti

The assessee is has raised following grounds of appeal:

2. *Your appellant Prays for the following:*

- *on the facts and in the circumstances of the case, the Hon'ble CIT (Exemption) has erred in denying the exemption sought under section 10(23C) (vi) without considering the provision of 10(23C) (vi) of the Income Tax Act, 1961.*

- **As per the 14th proviso of section 10(23C) condition 1 for Governing Exemption-** *Application for grant of exemption or Continuance there of shall have to be during the financial year immediately preceding the assessment year from which such exemption assessment year 2009-10 to extend the time-limit up to 6 months after the end of the financial year .For instance, for the previous year 2008-09 (A.Y.2009-10), the application can be made on or before September 30,2009. The Hon'ble CIT (Exemption) has no right to deny exemption on the ground of application being premature.*

- *Note 3 of Form No. 56D Cleary provides that after of the application, the applicant shall furnish any other documents or information as required by the Chief Commissioner or any other Authority authorizes by the Chief Commissioner, as the case may be. If the application is moved prior to 1st April of the Assessment Year, from which the exemption is sought, during the pendency of such application, if any relevant information is required, the Authorities are well within their rights to ask for the same before taking a final decision on the application.*

10. At the outset, the Ld. Counsel for the assessee submitted that the facts are same as per ITA No.35/Ind/2014 in the case of Ratlam Ahinsa Shiksha Samiti. The facts are identical as were in the case of Ratlam Ahinsa Shiksha Samiti,(supra). Both the parties have adopted the same arguments.

11. We have heard the Ld. Representative of the parties and perused the material on record. Since the facts are identical as were in ITA No.35/Ind/2014 in the case of Ratlam Ahinsa Shiksha Samiti taking a consistent view, we hereby, set aside the order of the Ld. CIT(E) and direct him to decide this application afresh on merit. Thus, grounds raised in this appeal are partly allowed for statistical purposes.

12. In the result, both appeals of the Assessee are partly allowed for statistical purposes.

Order was pronounced in the open court on 16.01.2018.

Sd/-
(MANISH BORAD)
CCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 16/ 01/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore