

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

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 676/(Asr)/2017

Assessment Year:

Sutlej Educational Charitable
Trust, Village Hawas,
Rahon Road, Ludhiana.
[PAN: AACTS 4183Q]
(Appellant)

Vs. Commissioner of Income Tax
(Exemptions), Chandigarh.

(Respondent)

Appellant by : Sh. P. C. Goyal, C.A. (A.R.)

Respondent by: Smt. Prabhjot Kaur, CIT (D.R.)

Date of Hearing: 08.03.2018

Date of Pronouncement: 09.05.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee-Applicant directed against the Order u/s. 10(23C)(vi) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 26.09.2017 by the Commissioner of Income Tax (Exemptions), Chandigarh ('CIT(E)', or the 'competent authority', for short).

2. The assessee is a Trust, formed and registered (under the Societies Registration Act, 1860) on 01.4.2001 and 18.04.2001 respectively. The trust deed stood amended (with effect from 01.01.2003) on 11.02.2003, again registered with the office of the Sub-registrar, Ludhiana (East). It is running a School by the name 'Sutlej Public Senior Secondary School' at village Hawas, Rahon Road, Ludhiana

– which is also the registered address of the trust, since the year 2002. The school, presently up to Class XII (PB pg. 78), has been, subject to the conditions specified by it, vide its' letter dated 03.05.2015, and the further conditions as may be intimated from time to time, granted provisional affiliation up to 31.03.2020 by the Central Board of Secondary Education, Delhi (CBSE) (PB pgs. 76-77.) There is nothing on record to suggest the withdrawal of the said affiliation, nor, again, of it being regularized. Prior to its application under section 10(23C)(vi), made on 23.09.2016, the appellant-trust had been availing exemption u/s. 10(23C)(iiiad) in respect of the income of the said school.

3. A perusal of the impugned order reveals that the following reasons prevailed with the competent authority in rejecting the assessee's application u/s. 10(23C)(vi):

- a) the appellant-trust has several objects, i.e., besides the establishment and running of educational institutions, which, rather, constitute the majority of the object clauses in the trust deed. There is in fact no mention of the educational institution (which is being run) therein. The primary condition of the institution *existing solely for education* is thus not satisfied.
- b) the affairs of the trust are to be, as per the trust deed, restricted to one family, which holds the entire power to control the same. This is as the trustees other than the lifetime trustees, which together constitute the Board of Trustees (or 'Board' for short) – the final arbiter of all decisions of the trust, are to be appointed by the lifetime trustees themselves, and which are to be from the family of the settler, who is also the lifetime trustee and Chairman of the Board, and who is to further appoint the secretary and treasurer, the other two office bearers of the trust. This impinges on the second condition '*not for profit*' of section 10(23C)(vi).

In other words, neither the condition of 'existing solely for the purposes of education' nor 'not for the purposes of profit' of the said provision stand satisfied, even as non-fulfillment of either would make the assessee ineligible for approval u/s.10(23C)(vi). The same being decided thus, the assessee is in appeal.

4. We have heard the parties, and perused the material on record.

4.1 Section 10(23C)(vi) reads as under:

‘Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(23C) any income received by any person on behalf of—

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (*iiiab*) or sub-clause (*iiiad*) and which may be approved by the prescribed authority; or’

The provision is followed by several *provisos*, (below sec. 10(23C)(via)) which, *inter alia*, provide for the various monitoring conditions subject to fulfillment of which only the exemption can be availed. The same would thus stand to be verified by the assessing authority at the time of assessment. Some *provisos* provide the procedure to be followed for seeking the approval.

4.2 Before us, while the Revenue relied on the impugned order, the assessee’s case, as advanced, was that, true, the assessee had several objects, it was yet engaged only in educational activity by way of running a school at village Hawas, Ludhiana, Punjab. The existence of various objects must not therefore be construed to imply that the assessee does not exist solely for education. On being enquired during hearing by the Bench, alluding to the decision in *Delhi Stock Exchange Association Ltd. v. CIT* [1997] 225 ITR 235 (SC), as to what would prevent the assessee-trust to pursue any other activity, i.e., other than education, listed in the object clause (clause 3) of its trust-deed (at PB pgs. 15-20), or to use the surplus funds generated from the educational activity for achieving or pursuing any other

(non-educational) object – which are several in number, he had no answer, but would reiterate that the trust does not ‘intend’ to engage in any other activity. As regards the vesting of the power of management in the members of one family, so that it loses its public character, he would refer to Circular No. 14/2015, dated 17.08.2015, by the CBDT (copy on record). At para 5 thereof, it stands clarified that though the answer to such a situation would normally depend on the factual implication of such an arrangement, the same should generally not be a ground for denying exemption, i.e., unless the nature of the activities of the trust/institution get changed or modified or no longer remain as existing solely for the purposes of education and not for the purposes of profit. No such finding, the assessee’s counsel, Sh. Goyal, would argue, stands issued by the Id. CIT(E), so that his inference that the said restrictive clauses in the trust deed impinge adversely on the condition of ‘not for profit’ is not valid.

4.3 We shall examine each of the two objections raised per the impugned order, i.e., in light of the requirement of law, coupled with the facts of the case. Exemption u/s. 10(23C)(vi) is available to any person in respect of any income arising to or received by it on behalf of any educational institution or university. The two conditions of ‘existing solely for purposes of education’ and ‘not for the purposes of profit’, attach to or are incident on, not the said person receiving such income (as understood by the Id. CIT(E)), but to the educational institution/university, whose income is being received by such person. In the present case, it is the appellant-trust which receives the income of the Sutlej Public Senior Secondary School (SPSSS) – the educational institution. The application u/s. 10(23C)(vi) is to be or can however only be by the trust (such person), while the approval – in case of a positive satisfaction of the said conditions, granted to the said school – the educational institution, in-as-much as it is the income of the said institution – to be

received by the person owning it, that would be exempt under section 10(23C)(vi). How does it matter, then, that the name of the said institution is not mentioned in the trust deed, the constituting document; it being undisputed that the said school is owned and managed by the assessee trust.

4.4 Continuing further, without doubt, SPSSS exists solely for the purpose of education, having 585 students (from class LKG to XII) on its rolls (for the academic session 2017-18), undergoing scholastic training, under affiliation to CBSE, which also prescribes the syllabi, the course curriculum, including facilities, viz. for sports, science labs, music, etc. to be provided to its students. It, as it appears, under its' guidelines (or the Right to Education Act), is extending concession in fee to the economically backward students, etc. (PB pg. 34). How could, then, one may ask, it be said or regarded as not existing solely for education? Why, the motto of the trust itself so suggests (cl. 2 of the trust deed).

4.5 The next objection is *qua* the condition of 'not for the purposes of profit'. We, again, find no correspondence between the restrictive clauses of the deed, confining the management of the trust/school effectively to the members of the settler or his immediate family, including their descendants (clauses 4 to 9). Clause 18 states that the trust is irrevocable. Clause 17 states that on dissolution the assets of the trust shall be transferred to another trust with similar objects, and in no circumstance would be distributed among the trustees/members of the managing committee. Clause 19 stipulates that the funds or income of the trust shall be utilized solely for achieving its objects, and no part thereof utilized for the benefit of the trustees/members. The only issue that may arise is about the character of the trust – public or private, i.e., in view of the restrictive clauses *qua* the power to constitute the Board vesting in the members of one family. We regard the same as not relevant as the members of the said family are not to be the beneficiaries of the

trust, which is to extend to all persons, irrespective of their caste, creed or religion. Rather, we observe the members of the Settler's family to have advanced interest-free funds to the school. Further, the land on which the School is situate is also, as it appears, gifted/donated to the trust by them. The operating statements of the trust (for yrs. 2014-15 to 2016-17) have also been perused by us to find the profit rate, as a percentage of the gross receipt, as reasonable. There is thus little merit in the Revenue's objection of the said restrictive clauses impinging adversely on the condition as to existing 'not for the purpose of profit' in section 10(23C)(vi).

4.6 The only issue, thus, that survives is that the funds (or income) of the educational institution are (or, is) not to be utilized by the assessee-trust, owning and managing it, for any other (non-educational) object/purpose, which, as aforementioned, there are several (also refer para 2 of the impugned order/cl. 3 of the trust deed). That is as where the funds of an educational institution are used by the person in receipt thereof for any other purpose, even if charitable, it cannot be said that the said educational institution exists solely for (the purpose of) education. The same also contravenes the third *proviso* to section 10(23C)(vi). We have perused the balance-sheets as at 31.3.2015 to 31.03.2017 (at PB pages 21 – 33), to find no such diversion. The same being in the nature of a continuing condition could be stipulated by the competent authority while granting the approval. Subject to this, we find no valid reason not to grant approval to the assessee trust *qua* the Sutlej Public Senior Secondary School at Village Hawas, District Ludhiana.

5. In view of the foregoing, we, vacating the findings by the Id. CIT(E), direct the grant of approval under section 10(23C)(vi) to the assessee trust *qua* SPSSS, an educational institution existing solely for the purposes of education and not for the purposes of profit. This, of course, would be subject to the capital/funds of the school being not used for any other (non-educational) activity (object) by the

assessee-trust, or any other condition deemed fit and proper, viz. as to maintenance and audit of school accounts separately, etc., in accordance with and as contemplated by law, that the competent authority may impose while granting the said approval. We decide accordingly.

6. In the result, the assessee's appeal is allowed on the aforesaid terms.

Order pronounced in the open court on May 09, 2018

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 09.05.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Sutlej Educational Charitable Trust, Ludhiana.
- (2) The Respondent: Commissioner of Income Tax (Exemptions), Chandigarh.
- (3) The Pr. CIT, Chandigarh.
- (4) The CIT-DR, I.T.A.T.

True Copy

By Order