

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.389/Vizag/2016
(निर्धारण वर्ष / Assessment Year: 2014-15)

The Desales Educational Society
Visakhapatnam
[PAN No.AAAAD6147Q]
(अपीलार्थी / Appellant)

The Pr. CIT (Exemptions)
Visakhapatnam
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by
प्रत्यार्थी की ओर से / Respondent by

: Shri C.V.S. Murthy, AR
: Shri Deba Kumar Sonowal,
DR

सुनवाई की तारीख / Date of hearing

: 21.05.2018

घोषणा की तारीख / Date of Pronouncement

: 30.05.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Exemptions), Hyderabad vide order No.CIT(E)/Hyd/10(23C)/H.C. Writ/2016-17 dated 4.8.2016 for the assessment year 2014-15.

2. All the grounds of appeal are related to the rejection of approval u/s 10(23C)(vi) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). The assessee is an educational institution applied in form No.56D seeking exemption of its income u/s 10(23C)(vi) of the Act for the assessment year 2013-14 on 29.9.2014 before the Chief Commissioner of Income Tax, Visakhapatnam. The Chief Commissioner of Income Tax found that the assessee society's objects are included other than the educational objects as per the Memorandum of association as under:

a) To encourage sportsman and adventurous spirit in the pupils and those connected with the institution.

b) to print, publish and exhibit films, journals, periodicals, books for the diffusion of useful knowledge.

c) To provide residential accommodation either free of cost and educate, train, assist financially the social workers, staff, students, orphans.

3. The primary requirement for approval u/s 10(23C)(vi) of the Act is solely educational objects, since the assessee is also having other than educational objects, the assessee's application for grant of approval u/s 10(23C)(vi) of the Act was rejected by an order dated 30.09.2015. Against the order of the Commissioner of Income Tax u/s 10(23C)(vi), the assessee filed a writ petition before the Hon'ble High Court of Andhra Pradesh and Telengana State and the Hon'ble A.P. High Court in it's order in Writ petition No.8375 of 2016 dated 22/03/2016 observed that the objects of the assessee are not solely for

educational purposes and directed the Ld. CCIT to verify whether objects other than for education are held to be ancillary and incidental to the primary dominant object of the assessee society. The Hon'ble High court further stated in it's order that merely because of such objects which are ancillary and incidental objects are also being perused would not disentitle the assessee for claiming exemption u/s 10(23C) of the Act and the Commissioner of Income Tax did not record any such finding, with regard to the objects cited are ancillary and incidental to the education objects or not, hence, remitted the matter back to the file of the Commissioner of Income Tax to consider the matter afresh after giving opportunity to the assessee for reconsidering the issues on merits. Meanwhile, due to restructuring of the department, the jurisdiction has been transferred to the Commissioner of Income Tax (Exemptions) {CIT(E)}, Hyderabad. Hence, the CIT(E) posted the case for hearing and the authorized representative of the assessee appeared before the CIT(E) and furnished the necessary information. After considering the submissions made by the Ld.AR of the assessee, the Ld. CIT(E) found that all the objects mentioned hereunder are primary/dominant objects independent of other objects with distinctive nature and they are not

ancillary or incidental to any of the other objects mentioned in the Memorandum of association:

- 1. To encourage sportsman and adventurous spirit in the pupils and those connected with the institution.*
- 2. To provide residential accommodation either free of cost and educate, train, assist financially the social workers, staff, students, orphans."*

The Ld. CIT(E) further observed that it cannot be inferred that each and every one of the objects is related to the education in order to allow the benefit u/s 10(23C)(vi) of the Act. The said objects are clearly non educational and are the main objects of the society. They cannot be considered as ancillary or incidental to any of the primary objects as contended by the representative of the assessee society. Hence, held that the society does not exist solely and exclusively for the purpose of education and relied on the decision of Hon'ble A.P. High Court in the case of M/s. New Noble Educational Society Vs. CIT and Others reported in (2011) 12 Taxmann.com 267 (Andhra Pradesh) and the decision of Reliance Motor Company Ltd. Vs. CIT of Hon'ble High Court of Madras reported in 213 ITR 733 and rejected the application of the assessee for approval u/s 10(23C) of the Act.

4. Aggrieved by the order of the CIT(E), the assessee is in appeal before this Tribunal. Appearing for the assessee, Ld. A.R. argued that

the above objects are ancillary or incidental to the objects of the primary objects, hence requested for conditional exemption considering the objects of the society mentioned (supra). The Ld. A.R. argued that though there are objects other than educational objects, the assessee society is engaged solely for the purpose of education. Hence, argued that the assessee society is entitled for approval u/s 10(23C) of the Act. The Ld. A.R. relied on the decision of ITAT 'B' Bench Hyderabad in the case of Ganga Educational Society, Nizamabad Vs. CIT (E), Hyderabad in ITA No.1471/Hyd/2016 dated 20.12.2017 and the decision of Allahabad High Court in the case of All Yougmen Christian Association Vs. CCIT and Others 274 CTR 283. Per contra, the Ld.DR supported the CIT(E) order.

5. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is an educational institution running the school in the name of Saint Francis Desales Schools, Visakhapatnam. Though objects of the society include educational purpose, the following objects are other than educational objects:

a) To encourage sportsman and adventurous spirit in the pupils and those connected with the institution.

b) to print, publish and exhibit films, journals, periodicals, books for the diffusion of useful knowledge.

c) To provide residential accommodation either free of cost and educate, train, assist financially the social workers, staff, students, orphans.

6. As per section 10(23C)(vi) of the Act, approval for institution must be solely for educational purpose. For ready reference, we extract relevant section 10(23C)(vi) of the Act which reads as under:

“(vi) any university or other educational institution existing⁸² solely for educational purposes⁸² and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiid) and which may be approved⁸³ by the prescribed authority.”

Plain reading of section 10(23C)(vi) clearly show that for grant of approval under section 10(23C)(vi) the institution must exist solely for educational purpose and not for profit, The Ld. CIT(E) in his order has given a clear finding that the other objects on MOA are primarily dominant objects independent of other objects with distinctive nature and they are not ancillary or incidental to any other objects mentioned in the Memorandum of Association. The Ld. A.R. could not controvert the finding of the Commissioner of Income Tax in its order. The Ld. CIT(E) rejected the assessee's application placing reliance on the decision of Hon'ble jurisdictional High court in the case of New Educational Society cited (supra) which reads as under:

"If there are several objects of a society some of which relate to "education", and others which do not, and the trustee or the managers, in their discretion, are entitled to apply the income or property to any of those objects, the institution would not be liable to be regarded as one existing solely for the educational purposes, and no part of its income

would be exempt from tax. In other words, where the main objects are distributive, each and every one must relate to "education" in order that the institution may be held entitled for the benefit under section 10(23C)(vi) of the Act."

7. Further, the Ld. CIT(E) relied on the decision of Hon'ble High Court of Madras in the case of Reliance Motor Company Limited Vs. CIT (supra), wherein it was held as follows:

*"The argument of learned counsel that though the trust deed mentions charitable and religious purposes, but in actuality only a school has been run, has no relevant in view of the clear language of clause of (ii) and (iii) of sub-section (5) of section 80G of the Act. It is not the actual user but **the likelihood of it being used and the capacity of the trust to do so, which is important.** In this view of the matter **the assessee is not entitled to the relief** under section 80G of the Act in respect of the donations made to the said trust."*

8. The CIT(E) considered the decision of Hon'ble A.P. High Court in WPA No.12076, 26976, 27599, 27600, 27601, 27602 and 27603 of 2010 in order dated 16.11.2010 on the issue of eligibility u/s 10(23C) of the Act wherein it was held as follows:

"the entire surplus income of the educational institution has been spent only on educational activities and nothing else, is of no consequences in as much as the petitioners societies' non educational objects would enable them, at their discretion, to apply the funds of the society for such non educational objects also. Since the basic requirement of the section 10(23C)(vi) of the Act is that the educational institution must exist solely for the purpose of education, not for the purpose of profit, inclusion of non-educational objects in the memorandum of association/bye laws of the society would disentitle them from claiming the benefit of exemption under section 10(23C)(vi) of the Act. The aforesaid objects cannot be characterized as ancillary or incidental to, or to be integrally connected with, the object of imparting education. Since the assessee societies also have non-educational objects, as part of their objects, the Chief Commissioner of Income Tax cannot be faulted for refusing to grant exemption under section 10(23C)(vi) of the Act."

9. As per the provisions of section 10(23C) of the Act, the primary requirement is the assessee should exist solely for the purpose of education. In the instant case, the objects mentioned include non educational objects and the assessee is not satisfied the condition of existence solely for educational purposes. The assessee relied on the decision of Ganga Educational Society Vs. CIT(E) cited (supra) of ITAT Hyderabad Bench. The facts of the cases are distinguishable and not applicable to the assessee. In the cited case of Ganga education society the Hon'ble ITAT observed that the objects of the society are incidental and ancillary to the primary objects. The facts of the Allahabad High Court decision in the case of Yougmen Christian Association Vs. CIT 274 ITR 383 (All.) are distinguishable on the facts of the assessee's case. In the cited case Allahabad High court in Yougmen Christian Association (YMCA) the institution was existing for educational purpose from 1910 and the department could not prove any other activity. For denying the exemption various objections were given such as not having a car and claiming the depreciation and expenses for repair and giving loans etc. Hence the both the case laws relied up on by the assessee do not any way come to it's help. In the instant case the other objects are clearly non educational and are the main

objects of the society. As observed by the Ld. CIT(E), they cannot be considered as ancillary or incidental objects to the primary objects as argued by the Ld. A.R. The assessee argued for conditional grant of approval but there is no such provision in the Act for conditional grant of approval. As discussed earlier the approval would be granted only if the institution exists solely for educational purposes. Hon'ble A.P High Court in New Noble Educational Society considered the identical issue and held as under:

"9. In order to be eligible for exemption, under section 10(23C)(vi) of the Act, it is necessary that there must exist an educational institution. Secondly, such institution must exist solely for educational purposes and, thirdly, the institution should not exist for the purpose of profit.—CIT v. Sorabji Nusserwanji Parekh [1993] 201 ITR 939/ 66 Taxman 411 (Guj.). In deciding the character of the recipient of the income, it is necessary to consider the nature of the activities undertaken. If the activity has no co-relation to education, exemption has to be denied. The recipient of the income must have the character of an educational institution to be ascertained from its objects. —Aditanar Educational Institution's case (supra). The emphasis in section 10(23C)(vi) is on the word "solely". "Solely" means exclusively and not primarily.—CIT v. Gurukul Ghatkeswar Trust [2011] 332 ITR 611 (AP); CIT v. Maharaja Sawai Mansinghji Museum Trust [1987] 33 Taxman 279 / [1988] 169 ITR 379 (Raj.). In using the said expression, the Legislature has made it clear that it intends to exempt the income of the institutions established solely for educational purposes and not for commercial activities.—Oxford University Press v. CIT [2001] 247 ITR 658 / 115 Taxman 69 (SC). This requirement would militate against an institution pursuing the objects other than education. - Vanita Vishram Trust v. Chief CIT [2010] 327 ITR 121 / 192 Taxman 389 (Bom.). Even if one of the objects enables the institution to undertake commercial activities, it would not be entitled for approval under section 10(23C)(vi) of the Act.—American Hotel & Lodging Association Educational Institute's case (supra). It is only if the objects reveal that the very being of the assessee-society, as an educational institution, is

exclusively for educational purposes and not for profit, the assessee would be entitled for exemption under section 10(23C)(vi) of the Act.—Gurukul Ghatkeswar Trust's case (supra)."

10. In the instant case the assessee is having objects other than educational objects and during hearing the Id.AR could not controvert that the said objects are non-educational and primary objects. Therefore, we do not find any error in the order of the Ld. CIT(E) in rejecting the application of the assessee for grant of approval u/s 10(23C) of the Act. Accordingly, we uphold the order of the Ld. CIT(E) and dismiss the appeal of the assessee.

11. In the result, the appeal filed by the assessee is dismissed.

The above order was pronounced in the open court on 30th May'18.

Sd/- (वी. दुर्गराव) (V. DURGA RAO) न्यायिक सदस्य/ JUDICIAL MEMBER	Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ ACCOUNTANT MEMBER
विशाखापटणम /Visakhapatnam:	
दिनांक /Dated : 30.05.2018	
VG/SPS	

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – De-Sales Educational Society,D.No.50-1-25, St. Francis De Sales Schools, (SFS), School Building, Seethammadhara, Visakhapatnam-530 013.
2. प्रत्यार्थी / The Respondent – The Pr. CIT (Exemptions), Visakhapatnam
3. आयकर आयुक्त / The CIT(E), Hyderabad
4. आयकर आयुक्त / The CIT (E), Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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Sr. Private Secretary
ITAT, VISAKHAPATNAM