

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.562(Asr)/2017
Assessment Year:2014-15

M/s Arya Model High School, Vs. ITO, (Exemptions)
2-New Town, Jalandhar Ward,
Moga, Punjab Jalandhar

PAN:AABTA8424H

(Appellant)

(Respondent)

Appellant by: Sh. B.M. Monga &
Sh. Rohit Kaura (Ld.Adv.)
Respondent by: Sh. Charan Dass (Ld. DR)

Date of hearing: 28.05.2018
Date of pronouncement:31.05.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 27.06.2017, impugned herein, passed by the Ld. CIT(A)-4, Ludhiana, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The assessee has raised the following grounds of appeal.

"1. That the Learned Commissioner of Income Tax (Appeal) has erred in upholding the Order of Assessing Officer, without considering the explanation, evidences of the assessee,

various judicial pronouncements regarding genuineness of activities of the appellant school and its existence solely for the purpose of education only.

2. That the Learned CIT(Appeals) is not justified in upholding the Order of Assessing Officer solely on the basis of order of CIT (A), Ludhiana for earlier assessment years, without application of his independent mind, whereas, the earlier orders were based only on order of CCIT, Ludhiana, which Order itself now stands set-aside by the Hon'ble Punjab & Haryana High Court.

3. That the Learned CIT (Appeal) has erred in not keeping the appellate proceedings in abeyance despite the fact that Order of CCIT Ludhiana, rejecting exemption u/s 10(23C)(vi) itself has set aside by Hon'ble Punjab & Haryana High Court with a direction to CIT (Exemptions) to decide the application for exemption afresh, which is still pending.

4. That the learned CIT(A) has erred in upholding the order of AO, without considering that the aggregate annual receipts of the appellant from educational activity is Rs.78,04,243/- which is less than Rs. 1 crore thus entitling the appellant for exemption u/s 10(23C)(iiiad).

5. That the learned CIT(A) has erred in brushing aside the submissions of the assessee that the surplus had already been ploughed back by the appellant by purchasing land for school building, thus showing that the appellant is existing solely and exclusively for education only without any profit motive.”

3. The brief facts of the case are that the assessee society is running an educational institution and filed its return of income for the year under consideration on 30.09.2014 declaring total income of Rs. Nil claiming excess income over expenditure amount of Rs.39,98,204/- as exempt income u/s 10(23C)(iiiad) of the I.T. Act. The return was processed u/s 143 of the I.T. Act.

The claim of the assessee was denied on the grounds inter alia that the application of the assessee for grant of approval u/s 10(23C)(vi) of the Act for the year Financial Year:2012-13 relevant to Asst. Year: 2013-14 onward was rejected by the competent authority i.e., Worthy CCIT, Ludhiana vide order no. CCIT/LDH/JB/10(23C)(vi)/221/2013-14/2053 dated 03.09.2013 on the ground that the assessee society did not exist solely for the purposes of education. It was also observed by the Assessing Officer that another application filed by the assessee society on dated 25.09.2014 for grant of approval u/s 10(23C) (vi) of the Act was also rejected by the Worthy CCIT, Ludhiana vide his officer order No. CCIT/Ldh/JB/10(23C)(vi)/239/2015-16/2853 dated 30.09.2015, further, the application u/s 10(23C)(vi) of the Act was also rejected by the Ld. CIT(A) vide his office order dated 23.09.2016. The assessee has also brought to the knowledge of the Assessing Officer that appeal against the rejection order of the competent authority by which approval was denied, is pending before the Hon'ble Punjab & Haryana High Court for adjudication. However, while considering the return of the assessee on merit, it was observed by the Assessing Officer that receipts of the assessee society during the year under consideration were undoubtedly exceeded the limit of one crore and approval u/s 10(23C)(vi) of the Act has also not been granted to the assessee society. Finally, the Assessing Officer made addition of Rs.39,98,204/- which was claimed by the assessee society on the excess of income over expenditure .

The said addition was challenged by the assessee society before the Ld. CIT(A), who dismissed the appeal of the assessee society by citing the reason *inter alia* that the assessee society is not entitled for claim of exemption of its income u/s 10(23C)(iiiad) of the Act because application for approval u/s 10(23C)(vi) of the Act was rejected by the competent authority and approval of the competent authority is a mandatory condition as receipts of the assessee society for the year under consideration undoubtedly exceeded Rs.1 Crores. It was further observed by the Ld. CIT(A) that even competent authority has not passed any fresh order till date. Finally it was opined by the Ld. CIT(A) that the action of the Assessing Officer in making the addition of Rs.39,98,204/- in this case on account of denial of deduction/exemption to the assessee society on excess of income over expenditure u/s 10(23C)(iiiad) r.w. sec.10(23C)(vi) of the Act cannot be said to be unjustified.

4. On feeling aggrieved against the order passed by the Ld. CIT(A), the assessee preferred the instant appeal.

5. At the outset, the Ld. AR submitted a copy of the order dated 19.04.2018 passed u/s 10(23C)(vi) of the Act by the CIT, (Exemptions), Chandigarh, by which the Ld. CIT(E) has approved the registration u/s 10(23C)(vi) of the Act to the assessee society.

6. As we observed that both the Revenue Authorities below have denied the exemption u/s 10(23C)(iiiad) to the assessee society mainly on the ground that assessee society do not have any registration/approval u/s 10(23C)(vi) of the Act. However the same has been granted vide order dated 19th April, 2018 passed by the Ld CIT(E), per the same, the approval shall be applicable from assessment Year 2014-15 onwards because the MOA of the society was amended only on 1st January, 2014 and is further subject to conditions stipulated therein.

Keeping in view the aforesaid approval, we are inclined to set aside the order passed by the Ld. CIT(A), the order impugned herein as well as Assessment Order, however we feel it appropriate to remand back the case to the file of Assessing Officer for decision afresh while considering the conditions stipulated in the aforesaid approval, hence ordered accordingly .

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31 .05.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 31.05.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) M/s. Arya Model High School, Moga
- (2) The ITO (Exemptions), Jalandhar Ward, Jalandhar
- (3) The CIT(A)-4, Ludhiana
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order