

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 1421/CHD/2017
Assessment Year : 2014-15**

The DCIT ,
Circle-I (Exemptions),
Chandigarh

Vs. B.C.M.Arya Model School,
Shastri Nagar, Model Town,
Ludhiana

PAN No. AAATB3979M

(Appellant)

(Respondent)

Appellant by : Sh. Gulshan Raj CIT DR
Respondent by : S/Sh. Ashish Aggarwal, Advocate
&. Subhash Aggarwal, Advocate

Date of Hearing : 16.05.2018

Date of Pronouncement : 11.06.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 5.12.2016 of the Commissioner of Income Tax(Appeals)-4, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. The Revenue has taken the following grounds of appeal :-

i. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding that the AO cannot deny exemption u/s 10(23C)(vi) even after examining that the conditions for exemptions are not fulfilled by assessee.

ii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding that once approval for exemption u/s 10(23C)(vi) is granted to

the assessee by the competent authority, the AO has no jurisdiction to look into the genuineness of the activities of the society when in fact during the course of assessment proceedings the onus is on the AO to examine the genuineness of activities of the society during that year in sync with the 13 provisos to the section and the conditions laid in the order.

- iii That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in ignoring the evidence/material available on record which was duly considered by the A.O. while framing assessment.*
- iv. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not considering the fact that in matters of taxation, there is no question of res judicata because each year's assessment is final only for that year and does not govern later years, because it determine only the tax for a particular period which has been held by the Hon'ble Supreme Court in the case of M/s Installment Supply (P) Ltd. vs the Union of India and Other (1962 AIR 53, 1962 SCR (2) 644 on 02 May 1961).*
- v. That the appellant craves to leave, add or amend the grounds of appeal on or before the appeal heard and disposed off.*

3. The facts relating to the issue under consideration are that the assessee society which was running an educational institution under the name and style of B.C.M. Arya Model School, Shastri Nagar, Model Town, Ludhiana had filed its return of income for the year

under consideration on 29.09.2014 declaring therein Nil income after claiming its entire excess of income over expenditure as exempt under section 10(23C)(vi) of the Act. The return filed by the assessee society was stated to be processed under section 143(1) of the Act and accepted at the returned income. During the course of assessment proceedings, the Assessing Officer noticed that the assessee society was not only registered under section 12AA of the Act but was also approved under section 10(23C)(vi) of the Act by the competent authority. The Assessing Officer further noticed that the assessee society during the year under consideration had shown excess of income over expenditure at Rs.4,84,27.015/- on gross receipts of Rs.16,88,24,539/-. As the assessee society had shown huge surplus, the Assessing Officer was of the opinion that the assessee society was doing its activities for profit motive and not solely existing for educational purposes. In view of the Assessing Officer, the activities of the assessee society could not be said to be charitable in nature as provided under section 2(15) of the Act and even it was not entitled to claim exemption under section 10(23C)(vi) of the Act. The Assessing Officer, therefore, denied exemption to the assessee society claimed by it under section 10(23C)(vi) of the Act at Rs.4,84.27,015/- on the ground that the assessee society, in his opinion, was not existing solely for the purpose of education but was running an educational institution on commercial basis for earning huge profits. The assessment in this case was ultimately completed by the Assessing Officer vide order under section 143(3) of the Act dated 11.11.2016 at an assessed income of Rs,4,84,27,015/- as

against Nil returned income. The penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income to the extent of Rs.4,84,27,015/- were also initiated by the Assessing Officer against the assessee society separately.

4. Being aggrieved by the above order of the Assessing officer, the assessee preferred appeal before the CIT(A). The Ld. CIT(A), however, allowed the appeal of the assessee observing as under:-

“5.2 I have considered the observations of the Assessing Officer as made by him in the assessment order while denying exemption to the assessee society claimed by it under section 10(23C)(vi) of the Act and thereafter making impugned addition. I have also considered written submissions filed by the assessee society through its learned AR vide letter dated 12.07.2017 on the issue under reference. I have further considered various judicial pronouncements relied upon by the learned AR of the assessee society as well as other material placed by him on record. On careful consideration of the assessment order, it has been noticed that the Assessing Officer had made the impugned addition after denying exemption to the assessee society claimed by it under section 10(23C)(vi) of the Act as in his opinion the assessee society is not existing solely for the purpose of education but is running an educational institution on commercial basis for making huge profits year after year. During the course of assessment proceedings, the Assessing Officer has noticed that the assessee society has shown surplus of income over expenditure at Rs.4,84,27,105/- which is 28.68% of the gross receipts shown by the assessee society at Rs.16,88,24,539/-. The

Assessing Officer is also of the opinion that the fee collected by the assessee society from the students clearly shows that the assessee society exists for making profit and not for the purpose of education. The Assessing officer is further of the opinion that the assessee society is not fulfilling the conditions of section 10(23C)(vi) of the Act and as such is not eligible to claim exemption under section 10(23C)(vi) of the Act. The Assessing Officer is further of the opinion that the assessee society is also pursuing other objects which are not provided in its main aims and objects. On the other hand, the learned AR of the assessee society has submitted that the assessee society is running an educational institution in the name of B.C.M. Arya Model Sr. Sec. School with branch under the name and style of Arya Kanya Gurukul where Vedic education along with conventional studies is being imparted to girls from the lower income group of the society and the girls are provided food, boarding and lodging at very nominal fees. It has also been submitted that the running of Gurukul is not beyond the main objects of the assessee society which is running an educational institution. As regards the generation of surplus, it has been submitted that the assessee society has been granted exemption from income tax under section 10(23C)(vi) of the Act only on the surplus generated. It has also been submitted that had there been no surplus, the issue of exemption would not have been arisen. It has again been submitted that the surplus generated by the assessee society year after year is applied wholly and exclusively for the objects of the assessee society and for giving quality education to its students. It has again been submitted that mere generation of surplus from year-to-year cannot be the sole basis for not allowing the exemption claimed by the

assessee society under section 10(23C)(vi) of the Act. In support of his submissions, the learned AR of the assessee society has also relied upon circular number 14/2015 dated 14.08.2015 issued by the CBDT. It has again been submitted that the assessment in the case of the assessee society for the A.Y. 2011-12 has been completed under section 143(3) of the Act and no such disallowance has been made inspite of the fact that there was also surplus in that year ear too. It has again been submitted that the Department should maintain consistency on issues which have been decided in earlier assessments. It has again been submitted that the same Assessing Officer under identical facts has granted exemption to another society namely M/s Governing Counsel of GHG Khalsa College, Ludhiana while completing the assessment in its case for the assessment year 2014-15 although that society has shown surplus of Rs.2,35,15,946/- on gross receipts of Rs.7,35,17,621/- which is about 32% of the gross receipts. To support his contention, the learned AR of the assessee society has also enclosed income and expenditure account as well as assessment order in the case of M/s Governing Counsel of GHG Khalsa College, Ludhiana. It has again been submitted that the same Assessing Officer is not consistent in his approach while taking decision on identical issues. In support of his submissions, the learned AR of the assessee society has also relied upon various judicial pronouncements which find mention in the written submissions as reproduced above. On careful consideration of the rival contentions. I am of the opinion that the assessee society cannot be denied exemption under section 10(23C)(vi) of the Act unless and until the approval granted to the assessee society under section 10(23C)(vi) of the Act is withdrawn by the competent authority. It has also been noticed that

in the earlier years, the Department was granting exemption to the assessee society under section 10(23C)(vi) of the Act under identical facts and circumstances. I am also of the opinion that the exemption to the assessee society under section 10(23C)(vi) of the Act cannot be denied solely on the basis that the assessee society is generating huge surpluses from its activities. I am further of the opinion that the Assessing Officer has absolutely failed to bring any material on record which will show that the assessee society is existing for the purpose other than education. As the approval granted to the assessee society under section 10(23C)(vi) of the Act is continuing in the year under consideration, the exemption to the assessee society claimed by it under section 10(23C)(vi) of the Act cannot be denied. If in the opinion of the Assessing Officer the assessee society is not fulfilling the conditions of section 10(23C)(vi) of the Act. He should have referred the case to the competent authority for withdrawal of approval granted to it under section 10(23C)(vi) of the Act. Until and unless the approval granted to the society u/s 10(23C)(vi) is withdrawn, the exemption claimed by it in my considered opinion cannot be denied. Moreover, the Department was granting exemption to the assessee society in earlier years under similar facts and circumstances and the Assessing Officer has not brought any material on record to suggest that the facts of the case of the assessee society for the year under consideration are different from the facts of the case of the assessee for earlier years. It has also been noticed that the assessee society has huge surpluses when the approval was granted to it in earlier years. Under such circumstances, the action of the Assessing Officer in denying exemption to the assessee society claimed by it

under section 10(23C)(vi) of the Act and thereafter making an addition of Rs.4,84,27,015/- cannot be said to be justified.

5.3 In view of the above stated facts and in the circumstances of the case, I am of the opinion that the Assessing Officer is not justified in denying exemption to the assessee society claimed by it under section 10(23C)(vi) of the Act and thereafter making an addition of Rs.4,84,27,015/-. The addition of Rs.4,84,27,015/- made by the Assessing Officer in this case after denying exemption to the assessee society claimed by it under section 10(23C)(vi) of the Act is, therefore, directed to be deleted. In the result, the grounds No. 1, 2, 3, 4 and 5 of appeal taken by the assessee society are allowed.

6. The ground No. 6 of appeal taken by the assessee society is general in nature and does not require any separate adjudication

7. As a result, the appeal filed by the assessee society is allowed.”

5. Being aggrieved by the above order of the CIT(A), the Revenue has come in appeal before us.

6. We have heard the rival contentions. Admittedly the assessee institution has already granted approval u/s 10(23C)(vi) of the Income-tax Act, 1961 (in short 'the Act'); which has not been withdrawn till date and was subsisting not only for the assessment year under consideration but also from the start and commencement of assessment proceedings made by the Assessing officer. The Assessing officer has denied the deduction on two counts firstly, that

the assessee had been carrying out its activities for profit motive and not solely for educational purposes and it had accumulated the huge surpluses. Secondly, that the assessee society was also pursuing objects other than that was provided in its main aims and objects, since it was running a separate institution in the name of Arya Kanya Gurukul, whereas, the assessee was registered as institution in the name of BCM Arya Model school and that the running of said Arya Kanya Gurukul was not mentioned in the objects of the assessee. The Ld. CIT(A) after considering the entire facts and circumstances has held that so far as the question of running the institution solely for educational purposes and not for profit was concerned, that had duly been examined at the time of grant of approval by the competent authority u/s 10(23C)(vi) of the Act as per the relevant provisions of the Act. The assessee was entitled to accumulate its receipts of income to the extent as is admissible under the provisions of the Act, and is required to apply / incur the same in the prescribed period for educational purposes. It is not the case of the Assessing officer that the assessee has defaulted in complying with of the statutory conditions of accumulation of application of income during the subsistence of its approval granted u/s 10(23C)(vi) of the Act. The assessee has also explained before the Ld. CIT(A) that a branch of the assessee in the name and style of Arya Kanaya Gurukul is also running where vadic education along with conventional studies is being imparted to the girls from the lower group of society and girls are provided food, boarding and lodging at a very nominal charges.

We do not find any infirmity in the order of the CIT(A) on this issue that running of above said institution is not beyond the main object of education of the Society. In view of this, we uphold the order of the CIT(A) while allowing the appeal of the assessee. Even otherwise the above issue is covered by the decision of the Hon'ble Supreme Court in the case of 'ACIT Vs. Surat City Zymkhana' (2008) 216 CTR 0023.

In view of this, there is not merit in the appeal of the Revenue and the same is accordingly dismissed.

Order pronounced in the Open Court on 11.06.2018.

Sd/-

Sd/-

(B.R.R.KUMAR)
ACCOUNTANT MEMBER

Dated : 11.06.2018

Rkk

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*

(SANJAY GARG)
JUDICIAL MEMBER