

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'B' KOLKATA

[Before Hon'ble Shri S.S.Godara, JM & Shri M.Balaganesh, AM]

ITA.No.2198/Kol//2017
Assessment year : 2012-13

Sree Jain Swetamber Terapanthi
Vidyalaya (Society)KolkataVs C.I.T.(Exemption)
Kolkata(PAN: AAFTS 2205 J)
(Appellant)

(Respondent)

For the Appellant: Shri Ananya Rath, Advocate
For the Respondent: Md. Usman, CIT(DR)

Date of Hearing : 26.06.2018.

Date of Pronouncement : 29.06.2018.

ORDER

PER S.S.GODARA, JM

This assessee's appeal for A.Y.2012-13 falls into question the CIT(Exemption),Kolkata's order dated 28.08.2017 declining its approval sought u/s 10(23C)(vi) of the Income Tax Act, 1961 (in short the 'Act ') applied in Form 56D on 05.08.2016.

2. We have heard both the parties. Case file perused. It emerges at the outset that the CIT(Exemption) has rejected the relevant approval to the assessee while following the detail discussion :

"According to the provision to the provisions of section 10(23C) (vi) of the Income Tax Act, 1961 the primary conditions for getting approval of an institution under the proviso is

- (i) the institution is existing solely for educational purposes and
(ii) not for the purpose of profit*

During the course of proceedings u/s. 10(23C)(vi) of the Income Tax Act. 1961, the fact was communicated to the society. In reply, the President of the Society stated that "the main object of the society is to run, administer and manage the affairs of the said school including other schools and/ or educational institutions, presently we are running the undernoted schools, both schools are managed by separate body, namely:-

i) Shree Jain Swetamber Terapanthl Vidyalaya (Boy's)

(ii)Shree Jain Swetamber Terapanthi Vidyalaya (Girl's)

In our above said educational institutions. everyone is allowed to be admitted in our schools irrespective of cast, creed & religion."

However, the objects of the society do not support the contention of the President. A society is run according to its objects. Without being suspicious about the genuineness of the declaration of the President, it is well settled that the conditions for approval of exemptions u/s. 11 or 10 are guided by the objects of the institution. The institution may perform activity according to one or more clauses- of its declared objectives and also it has the right to adopt the other activities during the course of its running at any time as suitable. Hence, the sole purpose or education is not applicable in the instant case. Moreover, the President is silent about the clause for investment by the society as is not according to the conditions laid down in sections 11 to 13 of the Income Tax Act, 1961. The matter has been discussed and the Ld. A/R requested for adjournment so that proposed amendments are done as required. It has been submitted vide letter dated 25.08.2017 that the Trust made necessary amendments and filed Form IV before the Register of Societies. The Ld. A/R. proposed to appear on 28.08.2017 along with the relevant papers and documents. However, no such amendment duly registered with registrar of societies has been submitted till date.

In view of above, the application for approval u/s. 10(23C)(vi) of the Income Tax Act, 1961 filed. by the Trust is rejected.

3. Learned counsel appearing at assessee's behest undertakes that it shall file all the relevant details in case one more inning is granted in the relevant proceedings before CIT(Exemption). She highlights the fact that the assessee had been appearing on all occasions except the last one because of communication gap. Learned Departmental Representative fails to dispute the fact that the assessee had placed on record all the relevant details except the ones sought at the fag end of the lower proceedings. We therefore restore the instant approval issue u/s 10(23C) (vi) of the Act back to the CIT(Exemption) for adjudication as per law after affording adequate opportunity of hearing.

4. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the Court on 29.06.2018.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[S.S.Godara]
Judicial Member

Dated : 29.06.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1.Sree Jain Swetamber Terapanthi Vidyalaya (Society), 3, Sahid Nityananda Saha Sarani, (Portugese Chrch Street), Kolkata-700001.

2 C.I.T.(Exemption) Kolkata.

3. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O, ITAT Kolkata Benches