

**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. 462/CHD/2017
Assessment Year : 2013-14

Chandigarh Institute of Hotel Management & Catering Technology, (CIHMCT), Sector 42-D, Chandigarh

Vs. The DCIT, Circle-1 (Exemptions), Chandigarh

PAN No. AAAC4897N

&
ITA No. 1021/CHD/2016
(U/s 12AA)

Chandigarh Institute of Hotel Management & Catering Technology, (CIHMCT), Sector 42-D, Chandigarh

Vs. The DCIT, Circle-1 (Exemptions), Chandigarh

PAN No. AAAC4897N

(Appellant)

(Respondent)

Appellant by : Sh. Rakesh Khanna, CA
Respondent by : Sh. Manoj Mishra, CIT DR

Date of Hearing : 01.08.2018
Date of Pronouncement : 21.08.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeals has been preferred by the assessee against the separate orders dated 5.12.2016 (in ITA No. 462/Chd/2017) of the Commissioner of Income Tax(A)-2, Chandigarh [hereinafter referred to as 'CIT(A)'] and dated 30.7.2016

(in ITA No.1021/Chd/2016) of Commissioner of Income Tax (Exemptions), Chandigarh [hereinafter referred to as 'CIT(E)'].

2. Since certain common issues have been raised in both the appeals, hence these were heard together and are being disposed of by this common order. **ITA No. 462/Chd/2017** is taken as lead case for narration of facts.

ITA No. 462/Chd/2017

3. Though the assessee in this appeal has taken as many as 14 grounds of appeal, however, the effective issue raised in this appeal is against the denial of exemption to the assessee claimed u/s 10(23C)(iiiab) of the Income-tax Act, 1961 (in short 'the Act').

4. The brief facts of the case are that assessee is a Society registered with Registrar of Societies, Chandigarh and the main object of the society is to undertake and to associate itself with nutritional extension and development work. The broad objectives are listed in the assessment order. The assessee is running an educational institution in the name and style of Chandigarh Institute of Hotel Management and Catering Technology and claimed exemption u/s 10(23C)(iiiab) of the Income Tax Act, 1961. The Assessing officer observed that the assessee was not fulfilling the conditions of eligibility for claiming exemption u/s 10(23C) (iiiab) of the Act. He observed that to claim exemption u/s 10(23C)(iiiab), the educational institution must be solely for the purpose of education and without any profit motive. He further observed that

though the assessee had been running hotel management course, yet, simultaneously running profitable hotel in the name of Chandigarh Hotel Beckons. Also the institute had been providing mid-day meal for government schools of Chandigarh Administration and these activities could not be said for educational purpose. Chandigarh Hotel Beckons was being run on commercial basis to earn huge profit and there was no objects shown in MOA of the assessee of running of a hotel. The Assessing officer held that assessee was not existing solely for the purpose of education and without any profit motive and thus not eligible for deduction u/s 10(23C)(iiiab) of the Act, and the same was accordingly disallowed.

5. Being aggrieved by the above order of the Assessing officer, the assessee preferred appeal before CIT(A). However, the Ld. CIT(A) confirmed the findings of the Assessing officer on the above issue. He further held that to claim exemption u/s 10(23C)(iiiab) of the Act, one of the requirement was that institution must be wholly or substantially financed by the Government. He further observed that even the assessee institution was not substantially financed by the Government which means that the grant received from the Government should be more than of 50% of the total receipts during the relevant year. However, in the case of the assessee, it was below 50%. He, therefore, held that assessee even otherwise did not satisfy the condition that it was substantially financed by the Government during the year. The Ld. CIT(A) therefore, upheld the order of the Assessing officer. The assessee, thus, has come in appeal before us.

6. Before us, Ld. Counsel for the assessee has submitted that the assessee society has been running its educational institute solely for the purpose of education and not for profit and that the assessee society has rightly claimed exemption u/s 10(23C)(iiiab) of the Act in respect of the income of its educational institute. It has been further submitted that assessee was allowed exemption u/s 10(23C)(iiiab) of the Act for the assessment years 2009-10, 2010-11 and 2012-13. However, for the year under consideration, the claim of exemption has been wrongly denied to the assessee. It has been further claimed that earlier the assessee society has been running the educational institution only. However, in the year 2007, the assessee society apart from its educational institution, established 'The Hotel Chandigarh Beckons (a unit of CIHM, Chandigarh) for providing hands on experience to the students of the Institute. As such from 2007, the society started running its hotel activity apart from its educational institute and both the activities are being run separately as two separate divisions of the society and even books of account are maintained separately for both its Educational Institute and Hotel Chandigarh Beckons. The liability of due amount of income tax is discharged for its hotel business. That the exemption is claimed only for its educational institute and not for both the educational institute and the hotel. The Ld. counsel, therefore, submitted that assessee should be allowed exemption u/s 10(23C)(iiiab) of the Act in respect of the educational institution.

7. The Ld. DR, on the other hand, has submitted that since the assessee is also involved in a business activity of running a hotel, hence, the activities of the assessee cannot be said to be solely for educational purposes and not for profit and, therefore, the deduction has rightly been denied to the assessee by the lower authorities.

8. We have considered the rival contentions and have gone through the record. The Ld. counsel has relied upon the voluminous record to submit that the activity of the assessee in respect of the running of educational institute is separate and distinct from its activity of running of a hotel and that both the activities cannot be clubbed together. That separate books of account are being maintained in respect of both the activities. Further, that educational institute run by the assessee is substantially financed by the Government and that the grants received from the Government cannot be quantified in respect of total receipts of the assessee i.e. from educational institute as well as hotel, rather, the same have to be quantified in respect of receipts of the educational institute as the same are received for funding of the educational activity only of the assessee.

9. To arrive at the proper conclusion, we deem its fit to reproduce here the relevant provisions of the Section 10(23C)(iiiab) of the Act

“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—

.....

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or
.....”

A perusal of the above recorded provisions of section 10(23C)(iiiab) reveals that they are not specific to the total income of a person, rather, they talk of exemption of income received by a person on behalf of any university or educational institute existing solely for educational purposes and not for the purpose of profit which is wholly or substantially financed by the Government; meaning thereby that part of the income of a person which is received on behalf of any institute falling under the provisions of section 10(23C)(iiiab) of the Act will be exempt, it does not mean that entire income of the ‘Person’ should be from the institute solely existing for educational purposes and not for profit and substantially financed by the Government or that the ‘person’ is barred from entering into any business activity. Hence, in our view, as per the provisions of section 10(23C)(iiiab) of the Act, that part of the income of the person will be exempt which is received from an institution solely for educational purposes and not for profit and is substantially financed by the Government. The claim of the assessee in the case in hand is for exemption u/s 10(23C)(iiiab) of the Act relating to the income received on behalf of educational institution being run by it solely for educational purposes and not for profit and which is substantially financed by the Government. However, the lower authorities have not examined this aspect. It is the claim of

the assessee that separate books of account are being maintained in respect of educational institution run by it and that it is substantially financed by the Government and is not run for profit. In view of this, the matter requires to be remanded back to the file of the Assessing officer to correctly apply the provisions of section 10(23C)(iiiab) of the Act and to examine and verify whether the educational institution run by the assessee, irrespective of the other activity of running of the hotel of the assessee, is run solely for educational purposes and not for profit and whether the said institution is substantially financed by the Government. If the institute is found to qualify the above conditions of section 10(23C)(iiiab) of the Act, the assessee will be entitled to claim exemption in respect of income received by it on behalf of such educational institution.

We accordingly set aside the impugned order of the CIT(A) and remand the matter to the Assessing officer and direct the Assessing officer to decide the issue afresh in the light of the observations made above and in accordance with law.

This appeal of the assessee is accordingly treated as allowed for statistical purposes.

ITA No. 1021/Chd/2016

10. This appeal is preferred by the assessee against the denial of registration to the assessee society u/s 12A of the Act.

11. Both the Ld. representatives of the parties have submitted that since the findings of the Ld. CIT(E)) in this case was based on the

findings of the Assessing officer holding that the assessee was running a hotel business along with an educational institute and since the matter has been restored to the file of the Assessing officer, in respect of ITA No. 462/Chd/2017 (assessment year 2013-14), as observed above, the matter in this appeal is also be restored to the file of Ld. CIT(E) to examine afresh in accordance with law.

12. In view of the above submissions of both the Ld. Representatives of the parties, the matter in this appeal is restored to the file of Ld. CIT(E) for decision afresh in accordance with law.

Both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 21.08.2018.

Sd/-
(B.R.R KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Dated :21.08.2018
Rkk

Copy to:

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