

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 1002/Kol/2016
Assessment Year: 2015-16

Modella Caretaker Centre & School (PAN: AABTM0003G)	Vs.	Commissioner of Income-tax (Exemption), Kolkata.
Appellant		Respondent

Date of Hearing	14.08.2018
Date of Pronouncement	16.10.2018
For the Appellant	Shri Rip Das, FCA
For the Respondent	Shri P. K. Srihari, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of the Ld. CIT(E), Kolkata dated 04.02.2016 for AY 2015-16.

2. At the outset, we note the appeal of assessee is time barred by 23 days and a condonation petition has been filed along with an affidavit explaining the reasons for the delay. We note that there is reasonable cause for the said delay in filing the appeal for the assessee because assessee is running a school at Siliguri and the order impugned is of Ld. CIT(E), Kolkata and, therefore, the time taken for delay in filing of appeal has been explained to our satisfaction. Hence, we condone the delay and admit the appeal for hearing.

3. The sole issue involved in this appeal of assessee is against the action of Ld. CIT(E) in rejecting the application of assessee for approval for exemption u/s. 10(23C)(vi) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

4. Brief facts of the case are that the assessee filed an application in Form 56D dated 17.03.2015 to CCIT, Kolkata-6 for approval of notification for exemption u/s. 10(23C)(vi) of the Act. During the course of the proceedings u/s. 10(23C)(vi) of the Act the assessee filed copies of Balance Sheet and Annual Report for AYs. 2012-13 and 2013-14 and also filed copy of provisional affiliation of CBSE, Delhi and details of cost towards technical and non-technical staff. During the proceeding before Ld. CIT(E), the assessee was also asked to produce the following details:

- (i) Copies of accounts for FY 2014-15,
- (ii) Form 10B for FYs 2011-12 to 2013-14
- (iii) Details of donations received during the years
- (iv) Accounts of the society.

5 During the hearing before Ld. CIT(E), the assessee was asked to explain on the following:

(i) From the Return of Income for the AY 2015-16, it has been found the assessee claimed exemption of Rs.15,38,559/-. He was asked to clarify the nature of exemption claimed whether u/s. 11 or u/s. 10(23C)(vi) of the I. T. Act, 1961.

(ii) He was asked to furnish details of donations received for building during the year and also asked to clarify whether such donation were voluntary or forced in nature or through new admission. He was asked to furnish student wise receipt during the year 2015-16.

(iii) He was asked to furnish details of donations received from students during the previous 3 years.

(iv) Copy of returns for the assessment years 2010-11 to 2013-14.

(v) From the receipts and payments accounts for the FY 2014-15, it has been found that maintenance fees of Rs.10,83,950/- shown as revenue receipts collected from the students. He was asked to explain why such fee would not be treated as fees collected out of non-educational activities.

(vi) From the Receipt and Payment accounts, it has been observed that advance made to the President of the Trust Smt. Rekha Bose. He was asked to explain the purpose for such advance made and whether any interest charged on such advance.

(vii) He was asked to furnish all transactions with Smt. Rekha Bose and other members of the Trust for the period from 01.04.2012 to 31.03.2015.

(viii) He was asked to produce cash book for the assessment years 2013-14 to 2015-16.

6. According to Ld. CIT(E), since none turned up to explain the aforesaid questions he was constrained to proceed the adjudication of application on merits and observed that the basic condition for approval u/s. 10(23C) of the Act of any educational institution lies in the fact that the institution must be running for sole purpose of education and not for purpose of profit. According to Ld. CIT(E), the following queries need to be answered properly by the assessee so that he can determine the purpose of the institution:

- i) The query regarding claim of exemption by the assessee remained unexplained in absence of document showing approval u/s. 12AA or 10(23C) or any other section duly approved by any authority.
- ii) The nature of donation received by the assessee is not apparent to be clear since maintenance fee collected from the students does not have any relation with the educational activity, the receipt of which is not for the sole purpose of education.
- iii) The purpose and procurement of advance made to the President of the Trust lies unexplained so far as purpose of the institution concerned.
- iv) Maintenance fee collected from the students indicates the profit making purpose of the institution since not related with educational purpose.

7. Since the assessee failed to furnish any answers to the aforesaid queries, according to Ld. CIT(E) the purpose of the assessee for running the institution is not established for satisfying the basic and primary conditions as laid down in section 10(23C)(vi) of the Act, and, therefore, the Ld. CIT(E) rejected the assessee's application for approval of notification for exemption u/s. 10(23C)(vi) of the Act. Aggrieved, assessee is in appeal before us.

8. We have heard rival submissions and gone through the facts and circumstances of the case. We note that assessee is an educational institution which is a registered society (as per certificate of registration granted by Registrar of Societies vide certificate No. S/67339 of

1990-91 and West Bengal Act XXVI of 1961). According to Ld. AR, the educational institution was started as a primary school on 05.02.1979 and gradually upgraded to Higher Secondary School under affiliation to CBSE on 13.03.2003 (for Arts & Commerce) and on 03.01.2006 (for Science). It was brought to our notice by the Ld. AR that assessee educational institute maintains regular books of account and are duly audited as required by statute and it was pointed out to us that Audit Report in Form No. 10BB read with Rule 16CC as required by educational institution was filed before Ld. CIT(E).

9. The Ld. AR pointed out that for all the assessment years upto AY 2004-05, since the income of educational institution fell within the limit as prescribed by sec. 10(23C)(iiiad), the assessee did not apply for approval u/s. 10(23C)(vi) for those years as there was no statutory requirement to do so. According to Ld. AR, since the assessee educational institution fulfilled all the conditions required for approval u/s. 10(23C)(vi) of the Act, it applied for the first time for AY 2005-06 and pointed out the following to bolster its case for being eligible –

- (a) the applicant for approval sought u/s. 10(23C)(vi) was undisputedly an educational institution,
- (b) the applicant institution is existing for solely running the institution for educational purpose,
- (c) it was not run for profit,
- (d) it was not hit by provisions of any of the provision u/s. 10(23C)(via) of the Act.

Therefore, it was eligible for approval u/s. 10(23C)(vi) of the Act.

8. It was brought to our notice that the Ld. CIT(E) asked for so many documents and since the applicant was situated at a faraway place at Siliguri from Kolkata, the applicant was not able to produce all the documents required by the Ld. CIT(E) which prompted him to draw adverse inference against the applicant. Here, we would like to clarify that at the time of granting approval u/s. 10(23C)(vi) the Ld. CIT(E) is to be satisfied that the institution/applicant existed during the relevant year solely for educational purposes and not

for profit. Once the Ld. CIT(E) is satisfied about fulfillment of this criteria, i.e. the threshold pre-conditions of actual existence of an educational institution u/s. 10(23C)(vi), it would not be justifiable to deny approval on other grounds especially where the compliance depends on events that have not taken place on the date on which the application for grant of approval has been made. We would hasten to add that the Ld. CIT(E) while granting approval u/s. 10(23C)(vi) can insist on the approval being granted subject to such terms and conditions which falls within the framework of various provisos to the said clause of sec. 10 of the Act. It is also clarified here that while granting approval u/s. 10(23C)(vi) the Ld. CIT(E) cannot insist on sec. 12A registration because sec. 10(23C)(vi) does not prescribe any such stipulation. Even though for registration u/s. 12A and sec. 10(23C)(vi) some of the compliance criterion may be common to both, does not mean that Ld. CIT(E) can insist the applicant for registration u/s. 12A, when sec. 10(23C)(vi) does not prescribe such a requirement. With the aforesaid observation, we set aside the impugned order and remand the application for approval u/s. 10(23C)(vi) back to the file of Ld. CIT(E) for de-nova consideration and with a direction to pass a reasoned order on the application filed by the assessee institution in accordance to law and while doing so can take guidance from ratio laid by Hon'ble Apex Court order in American Hotel and Lodging Association Vs CBDT(301 ITR 86), after hearing the assessee. Therefore the appeal of assessee is allowed for statistical purposes.

9. In the result, the appeal of assessee is allowed for statistical purposes.

Order is pronounced in the open court on 16/10/2018

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 16th October, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Modella Caretaker Centre & School, 27, Church Road, Siliguri, Darjeeling-734001.
- 2 Respondent – CIT(E), Kolkata.
- 3 CIT , Kolkata
- 4 DR, Kolkata Benches, Kolkata (sent through e-mail)
- 5

/True Copy,

By order,

Sr. Pvt. Secretary