

**IN THE INCOME TAX APPELLATE TRIBUNAL "J"  
BENCH, MUMBAI**

**BEFORE HON'BLE SH. SHAMIM YAHYA, AM &  
HON'BLE SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 6817/Mum/2016

Shree EkveeraDhyanPrasarak Mandal, Kandivali, Mahatma Gandhi Road, Charkop, Kandivali (west), Mumbai-400 067	<b>बनाम/ Vs.</b>	CIT (Exemp.) 6 <sup>th</sup> floor, Piramal Chamber, Parel, Mumbai-400 012
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABTS9231J		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri SubodhRatnaparkhi, AR
प्रत्यर्थीकीओरसे/Respondentby	:	ShriBhupendra Kumar Singh, DR

सुनवाईकीतारीख/ Date of Hearing	:	05.06.2018
घोषणाकीतारीख / Date of Pronouncement	:	04.09.2018

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present Appeal filed by the assesseeis against the order of Ld. CIT (Exemp), Mumbai dated 28.09.16 on the grounds mentioned herein below:-

*1. On facts and in law, the Hon. CIT (Exemptions) erred in holding the appellant notentitled for exemption u/s 10(23C)(vi) & (via) of the Income Tax Act 1961.*

*2. On facts and in law, the Hon. CIT (Exemptions) erred in not appreciating that theappellant was only running a school providing education to students upto class XIIth and therefore existed solely for educational purposes and denial of exemption sought u/s 10(23C)(vi) & (via) was not justified by law.*

*3. The appellant craves leave to add, alter, amend or delete any of the above groundof appeal.*

2. The brief facts of the case are thatthe assessee is registered with the office of the Charity Commissioner Mumbai and registration u/s 12A dated 24.10.88 has been issued to the assessee trust. The application of the assessee u/s 10(23C)(vi) & (via) of the I.T. Act has been rejected by Ld. CIT(E) on the

ground that the assessee's institution is not existing 'solely' for the purpose of education.

Aggrieved by the order of Ld. CIT(E), the assessee has preferred the present appeal before us by raising the above grounds.

**Ground No. 1& 2**

3. These grounds raised by the assessee are inter connected and inter related and relates to challenging the order of Ld. CIT(E) in holding that assessee is not entitled for exemption u/s u/s 10(23C)(vi) & (via) of the I.T. Act, therefore we thought it fit to dispose of the same by this common order.

4. We have heard counsels for both the parties at length and we have also perused the material placed on record, judgment cited by both the parties as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(E). The Ld. CIT(E) has

dealt with the above grounds raised by the revenue in para no. 1 to 6 of its order. The operative portion of the order of Ld. CIT(E) is contained in para no. 6(6.1 to 6.7) of its order and the same is reproduced below:-

*6. I have perused the reply of the assessee in detail. However, the contentions of the applicant trust are not acceptable as the same does not fall within the purview of sec 10(23C)(vi) which reads as under;*

*"vi. any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority or"-*

*6.1 Accordingly, three conditions have to be fulfilled for claiming exemption u/s. 10(23C)(vi) of the I.T. Act. These are :-*

*(i) There has to be an educational institution;*

*(ii) It should exist solely for the educational purposes and;*

*(iii) It should not be for the purpose of profit.*

*6.2 The above conditions are cumulative and if even one of the conditions are not fulfilled, the trust shall not be entitled for registration u/s. 10(23C)(vi) of the Act. As discussed above, the object clause of the trust shows that it is not existing solely for the purpose of education. It shows that the trust deed authorizes the trustees to do any other act of public welfare which can be other than education also. There is no restriction clause to register the public welfare only to the field of education. The object clause clearly authorizes the trustees or the Managers to do any other act of social welfare or charity which can be other than educational activity. There is no restriction to do the charitable activity only for educational purposes. Therefore, it is clear from the above mentioned facts that the trust is not existing solely for the purpose of education.*

*6.3 The submission of the applicant trust is of no help as the object clause and other clauses of the trust deed show that it is not existing solely for the purpose of education and it can spend the funds on other objects also. Grant of registration u/s. 10(23C)(vi) is to be governed by the object clause and not by the actual activities carried out by the trust. Reliance is also placed on the judgement of the Hon'ble Andhra Pradesh High Court in the case of New Noble*

*Education Society vs. CCIT 12, [Taxmann.com 267 (2011.) ], wherein it has been held by the Hon'ble High Court that;*

*"Even if the applicant had not applied its income to achieve those noneducational objects, they would still be disentitled to the benefit of being exempted under section 1 O(23C)(vi), as the exemption there under is available only to the educational institutions whose existence is solely for the purpose of education."*

*6.4 The applicant trust has also placed reliance on the judgement of the Hon'ble Supreme Court in the case of American Hotel and Lodging Association Educational Institute vs. CBDT (301 ITR 86)(2008). I have carefully perused the judgement of the Hon'ble Supreme Court. However, it is noted that the issue involved before the Hon'ble Supreme Court was whether the institute was existing for the purpose of education or for the purpose of profit and in that there were other objects in the trust deed that the institute is existing for any other purpose other than education. The Supreme Court in that case has held that it is not necessary that the institute should exist for profit. If it is existing for education, the registration may be allowed. The fact in the present case are different as the institute is not*

*existing solely for the purpose of education and it is existing for some other objects as mentioned in the trust deed as discussed in the preceding paras. Accordingly, the judgement of the Hon'ble Supreme Court is respectfully distinguishable.*

*6.5 Reliance has also been placed on the judgement in the case of Queens Educational Society-vs-CIT, 371 ITR 699 (SC) (2015) and Simpkins School - vs-Director General of Income Tax (Investigation) & Others, 367 ITR 335 (All) (2014) and other judgements which have been reproduced in the preceding para. As discussed above, the facts of the present case are distinguishable from the case relied upon by the applicant trust.*

*6.6 Accordingly in view of the above mentioned facts and circumstances, I am of the considered opinion that the applicant trust is not existing solely for the purpose of education and is therefore not entitled for exemption u/s. 10(23C)(vi). The application for approval u/s. 10(23C)(vi) is therefore rejected.*

After having gone through the facts of the present case, we find that Ld. CIT(E) has rejected the application for approval u/s 10(23C)(vi) of the I.T. Act on the ground that assessee is not

existing 'solely' for the purpose of education. Whereas Ld. AR appearing on behalf of the assessee drawn our attention to the written submission filed by the assessee before Ld. CIT(E) which is contained in para no. 5 of its order and the same is reproduced below:-

*5. In response to the letter, Shri M. T. Phadnis, C.A. and authorized representative of the applicant trust attended on 07.09.2016 and filed letter dated 07.09.2016 and made the following submissions, the relevant portion of which is reproduced hereunder :-*

*As had been stated in the earlier correspondence on the issue, we are a educational institutional engaged solely in providing education to school students upto class XIth Standard in the school run and managed by our institution at Charkop village, Kandivali (W), Mumbai.*

*(1) We have alongwith our application placed on record our trustdeed. The main objects of the trust deed are of secular education only."*

*(2) As can be seen from the activity carried out by our trust as wellas the objects enumerated in the*

*trust deed, our trust exists solely for educational purposes and not for the purposes of profit.*

*(3) Your honour has vide the above mentioned letter requested us to explain as to why our application for registration u/s. 10(23C)(vi) & (vii) of the LT. Act should not be rejected on the ground that the sole object of the trust is not education.*

*We once again categorically state that we are solely engaged in providing education to school students by running the school at Charkop village, Kandivali (W), Mumbai and in no other activity. This fact can be identified from our earlier submissions and the financial statements for all the earlier assessment years placed on record.*

*With regards to the issue raised by your honour, we humbly draw your honours kind attention to certain judicial pronouncements.*

*6.1 The Hon. Supreme Court in the case of American Hotel & Lodging Associations, Educational Institute - vs - CBDT, 301 ITR 86 analysed the provisions of section 10(23C) and clarified that if the petitioner fulfilled the threshold conditions of actual existence of an educational institution u/s 10(23C) (vi) of the I.T. Act 1961, the authority could not reject the application.*

*The Hon. Supreme Court in the recent decision in the case of Queens Educational Society-vs-CIT, 371 ITR 699 (SC) (2015) has said that for examining as to whether the institution qualifies for registration u/s 10(23C) the predominant object test must be applied. The purposes of education must not be submerged by a profit making motive.*

*Applying the ratio laid down by the above decision, we submit that in the case of our institution not only predominant but sole objective of our institution is to provide education to school students only.*

*The Hon. Allahabad High Court in the case of Simpkins School - vs-Director General of Income Tax (Investigation) & Others, 367 ITR 335 (All) (2014) held that where the petitioner society was running an educational institution and merely because there are other objects of the society would not mean that the educational institution did not exist solely for educational purposes. The Hon. Court explained that the word "solely" was in relation to the educational institution which is not running for the purpose of making profit and is not in a relation to object of the society.*

*Similar view has been taken in the case of Allahabad Young Mens Chris Association-vs-Chief Commissioner of Income Tax & Others, 371 ITR 23 (All) (2015).*

*Similar view has also been taken in a recent decision in the case of Manas Sew Samiti&Ors. -. vs - Chief Commissioner of Income Tax & another, 282 CTR 302 (All) (2016) where out of several objects of a society, one the object was to establish educational institution.*

*We once again submit that we are in educational institution running a school solely providing education to students upto class XIIth at our school premises at Charkop village, Kandivali (W), Mumbai. We do not carry on any other activity and therefore exist solely for the educational purposes only. In view of the facts of our matter, the provisions of law and the decisions in support of our submission cited above, we humbly request that the registration u/s. 10(23C)(vi) of the I.T. Act may kindly be granted to us"*

From the record and after hearing the parties at length, we find that assessee is an educational institution engaged in providing education to school students upto class XIIth Standard

in the school run and managed by our institution at Charkop village, Kandivali (west), Mumbai.

We have also gone through the documents placed on record in the shape of registration certificate under Bombay Public Trust, certificate of Registration u/s 12(a) of the I.T Act, certificate issued u/s 80G of the I.T. Act, English Translation of trust deed agreement and audited financial statements.

The Hon. Supreme Court in the case of American Hotel & Lodging Associations Educational Institute - vs – CBDT reported in 301 ITR 86 has categorically held that after analyzing the provisions of section 10(23C), it is clarified that if the petitioner fulfilled the threshold conditions of actual existence of an educational institution u/s 10(23C) (vi) of the I.T. Act 1961, the authority could not reject the application.

The Hon. Supreme Court also in the case of Queens Educational Society-vs-CIT, 371 ITR 699 (SC) (2015) has categorically held that for examining as to whether the institution

qualifies for registration u/s 10(23C) the predominant object test must be applied. The purposes of education must not be submerged by a profit making motive. As per the petitioner, the sole objective of their institution to provide education to school students only.

We also find that Ld. CIT(E) while rejecting the application had held that the object clause of the petitioner trust shows, it is not existing *solely* for the purpose of education but rather dividends other than the education. Whereas on the contrary, from the objects of the petitioner, it is clearly reflecting that the predominant and the *sole objective* of the institution is to provide education to the school students only. Merely because, the petitioner is authorized to render help to implementation of act which will enhance the public welfare in general but which will be away from making any kind of profit would not mean that educational institution does not exist solely for education purpose. The main object of the appellant trust as per trust deed is of secular education only. Since the appellant is carrying out the activities of the trust as objects for educational purposes and

not for the purpose of profit. Providing education to the school students by running the school at Charkop, Kandivali (W), Mumbai, this fact also identified from the financial statement of all the earlier assessment years.

The judgment referred by Ld. CIT(E) in order to reject the permission u/s 10(23C) are not applicable to the facts of the present case. Whereas on the contrary, the judgments of Hon'ble Supreme Court in the case of **American Hotel and Lodging Association Educational Institute Vrs. CBDT (301 ITR 86) (2008)** and **Queens Educational Society vrs. CIT 371 ITR 699 (SC) (2015)** are applicable to the facts of the present case. Thus in our considered view, the Ld. CIT(E) has wrongly rejected the approval exemption sought by petitioner u/s 10(23C)(vi) & (via) of the Income Tax Act 1961, which is sustainable in law. Resultantly, this ground raised by the assessee stands **allowed.**

**Ground No. 3**

5. This ground raised by the assessee is general in nature, thus requires no specific adjudication.

6. In the net result, the appeal filed by the assessee stands **allowed** with no order as to cost.

*Order pronounced in the open court on 4<sup>th</sup> Sept., 2018*

*Sd/-* (ShamimYahya) *Sd/-* (Sandeep Gosain)  
लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member  
मुंबई Mumbai;दिनांकDated : 04 .09.2018  
*Sr.PS. Dhananjay*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**  
(Dy./Asstt.Registrar)  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**