

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-B, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 996 & 995/JP/2017
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

M/s Gurukul Vidhya Peeth Shiksha Samiti, Village- Late Ka Bas, Shahpura, Jaipur	बनाम Vs.	ITO (Exemption) Ward-Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAG9400B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Nikhilesh Kataria (CA)
राजस्व की ओर से / Revenue by: Shri Ashok Khanna (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/12/2018
उदघोषणा की तारीख / Date of Pronouncement : 31/12/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the orders of the Id. CIT(A), Alwar dated 16.07.2017 & 18.10.2017 for AY 2012-13 & 2013-14 respectively.

2. In its grounds of appeal, the assessee has taken various grounds of appeal, however, the only ground of appeal which was pressed during the course of hearing relates to denial of exemption

u/s 10 (23C)(iiiad) of the Income Tax Act, 1961. Hence, rest all grounds of appeal are dismissed as not pressed.

3. Briefly stated, the facts of the case are that the assessee is a society registered with Registrar of Society, Jaipur and is running a school at village Lat ka Bass, Shahpura (Distt.- Jaipur). It filed its return of income disclosing total income of Rs. 135,010 for AY 2012-13 which was assessed to tax at income of Rs. 278,990/- u/s 143(3) of the Act.

4. During the course of appellate proceedings before the Id. CIT(A), the assessee took the additional ground of appeal relating to claim of exemption u/s 10(23C)(iiiad) of the Act. However, the Id. CIT(A) dismissed the said ground stating that the assessee has neither filed any details in support of its claim u/s 10(23C)(iiiad) during the assessment proceedings or during the appellate proceedings.

5. During the course of hearing, the Id. AR submitted that the complete details were filed before the Id. CIT(A) and no further details were required by the Id. CIT(A). It was accordingly submitted that it is incorrect on the part of the Id. CIT(A) to state that no details were filed before him. It was further submitted that where the Id. CIT(A) require any further details, he could have asked the assessee and given an appropriate opportunity to file such details to meet the principle of natural justice.

6. On merits, the Id AR submitted that all the conditions laid down u/s 10(23C)(iiiad) have been fulfilled by the assessee society. It was submitted that it is an educational institution duly approved by the

Department of School Education and it exists solely for educational purposes and not for the purposes of profit. In support reliance was placed Hon'ble Supreme Court decision in case of Queen's Educational Society vs. CIT 275 CTR 449 (SC). It was further submitted that its receipts for the year is below Rs. 1 crore which is not disputed by the Revenue authorities. It was further submitted that though the assessee has not made the claim for exemption in the return of income. However, such mistake was bona fide and their remain no advantage with the assessee in not making claim in the return of income or before the Assessing Officer. It was further submitted that all the relevant information was before the Assessing Officer and the Assessing Officer was duty bound to allow all the deduction and exemption to the assessee and the Department cannot take advantage of any ignorance or omission on the part of assessee and in support, reliance was placed on CBDT's Circular No. 14(XL-35) dt. 11.04.1955. Further reliance was placed on the Hon'ble Allahabad High Court in case of CIT vs. Lucknow Public Education Society 318 ITR 223 (All) and in case of CIT vs. Muzaffarnagar District Co-operative Bank Ltd. 100 CCH 91 (All) (HC). It was further submitted that even where the claim was not made before the Assessing Officer, the claim of exemption u/s 10(23C)(iiiad) is purely a question of law and the term "education" has been held to be worded widely as held by the Kerala High Court in case of CIT vs. St. Mary's Malankara Seminary 348 ITR 69 (Ker) (HC) and the claim of exemption should have been entertained by the Id. CIT(A). Further reliance was placed on the decision of Hon'ble Rajasthan High Court in case of CIT vs. Rajasthan Fasteners Pvt. Ltd. 363 ITR 271 (Raj.).

7. The Id. DR is heard who has relied on the order of the lower authorities. The Id DR drawn our reference to the assessment order for AY 2013-14 wherein besides receipts from school, the assessee has also shown receipts in form of grants from M/s ILFS Cluster Development limited sanctioned by the Ministry of Rural Development, Government of India for running a training programme. Per contra, the Id AR submitted that such training programme falls within the broad definition of "education" and so long as the assessee society is running the school and also such educational programmes, running of such training programmes cannot be held against the assessee society as not falling within the definition of education.

8. We have heard the rival contentions and perused the material available on record. We find that in respect of claim of exemption under section 10(23C)(iiad), the assessee has raised an additional ground before the Id CIT(A) and certain information has been filed during the course of appellate proceedings in form of copy of registration certificates issued by the Registrar of Society and by the Department of School Education, Jaipur, copy of income and expenditure account, etc. It would have been appropriate where the Id CIT(A) have examined such a claim of the assessee society U/s 10(23C)(iiad) and sought further information/clarification as may be desired. However, given that there is no finding recorded by the Id CIT(A) on merits, we are constrained to remand the matter back to the file of the Id CIT(A) who shall examine the said claim of the assessee society on merits as per law after providing reasonable opportunity to the assessee and the latter shall be free to raise the contentions before him as so raised before us.

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 31/12/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 31/12/2018

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Gurukul Vidhya Peeth, Jaipur
2. प्रत्यर्थी / The Respondent- ITO (Exemption), Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 996 & 995/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar