

**IN THE INCOME TAX APPELLATE TRIBUNAL
CAMP BENCH AT JALANDHAR**

**Before Sh. N. K. Saini, Hon'ble Vice President
and
Sh. Ravish Sood, Judicial Member**

ITA No.761/Asr./2017 : Asstt. Year : N.A.

The Rural Education & Women Welfare Society VPO Mukandpur, Distt. SBS Nagar Punjab	Vs	CIT(Exemptions) Chandigarh
(APPELLANT)		(RESPONDENT)
PAN No. AADAT0585B		

**Assessee by : Sh. Y.K. Sud, C.A.
Revenue by : Sh. Lalit Mohan Jindal, DR**

Date of Hearing : 16.01.2019	Date of Pronouncement : 17.01.2019
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ORDER

Per N. K. Saini, Vice President:

This is an appeal by the assessee against the order dated 31.10.2017 of the CIT(E), Chandigarh. Following grounds have been raised in this appeal:-

- 1. That on the facts and in the circumstances of the case the Commissioner of Income Tax(Exemption) was not justified in rejecting the applications of the appellant for exemption/approval u/s 10(23C)(vi) of the Income Tax Act.*
- 2. That the claim of the appellant for exemption/approval u/s 10(23C)(vi) has been rejected on irrelevant erroneous and unwarranted considerations.*
- 3. That the CIT(Exemption) has travelled beyond the scope of enquiry envisaged u/s 10(23C)(vi) for granting exemption/approval and as such his order is against the law and facts of the case.*
- 4. The CIT(E) was not justified in commenting that the institution was emphasizing in adding on vehicles and buses and generating another source of income. He failed to appreciate that the vehicles purchased were solely for ferrying of the children to the school from the radius of about 15-20 kilometers which is*

essential for any school.

5. *That the CIT(E) was not justified in giving a finding that the institution is not set up solely for education.*
6. *That the order passed by the CIT(E) is barred by limitation since the same has been passed and communicated to the counsel of the assessee after 31st October 2017.*
7. *That the order of the CIT(Exemption) is against the law and facts of the case.*

2. From the above grounds, it is gathered that the only grievance of the assessee in this appeal relates to the rejection of the application moved by the assessee for exemption/approval under section 10(23C)(vi) of the Income Tax Act, 1961.

3. During the course of hearing, the learned counsel for the assessee at the very outset stated that this issue is covered in favour of the assessee vide order dated 7.3.2017 of the ITAT Amritsar Bench in assessee's own case which has been approved by the Hon'ble jurisdictional High Court vide order dated 22.10.2018 in ITA No. 422/2017. Copy of the said order was furnished which is placed on record. The aforesaid contention of the learned counsel for the assessee was not controverted by the learned DR.

4. After considering the submissions of both the parties, it is noticed that a similar issue was decided by the ITAT Amritsar Bench in ITA No. 546/Asr/2016 vide order dated 7.3.2017, against the said order, the department moved an appeal before the Hon'ble jurisdictional High Court in ITA No. 422/2017 wherein vide order dated 22.10.2018 the appeal of the department was dismissed. The Hon'ble High Court also reproduced the relevant findings given by the Tribunal in para 6 and 8 of the said order of the ITAT in para 4 of the order dated 22.10.2018. The relevant findings given by the Hon'ble jurisdictional High Court in para 4 and 5 of the order dated 22.10.2018 read as under:-

“4. The Tribunal has noticed that the assets of the assessee, i.e., its land and building etc. had been created out of the donations received for the setting up of the school of the society and the objection of the CIT(E) that the assessee had amassed capital funds to the tune of Rs. 5.59 crores and fixed assets to the extent of Rs. 5.85 crores neither impinged on the objects nor the genuineness of the activities of the assessee. The object of the society is 'To Promote the Quality and Scope of Education in Rural Area and Manage the affairs of Sadhu Singh Rural Public School, Mukandpur. Therefore, the contention of the assessee that the corpus got created from such donations as received for the setting up of the school, had not been rebutted by producing any material to the contrary on record. Regarding creation of assets, the Tribunal had recorded nothing had been brought on record to show that the assets of the assessee were meant for any purposes other than its aims and objects which included managing the affairs of the school and that as per the balance sheets, the entire expenditure incurred by it had been for the purposes of school only. Further, at the time of considering the grant of registration, only the objects and genuineness of the activities of the assessee were to be got verified. Accordingly, the Tribunal directed the CIT (E) to grant registration to the respondent. The relevant findings recorded by the Tribunal in paras 6 to 8 of the order read thus:-

“6. While refusing registration to the assessee society, the Objection raised by the Id. CIT(E) is that the applicant has amassed capital funds to the tune of Rs.5.59 crore and fixed assets to the extent of? 5.85 crore. This observation, it is seen, impinges on neither the objects of the applicant, nor the genuineness of its activities. It has been submitted before us that the assets of the applicant, i.e., its land and building etc., have been created out of donations received for the setting up of the school of the society. As per Object (APB-1), as set out in the Memorandum of Association of the applicant society, the applicant is “To Promote the Quality and Scope of Education in Rural Area and Managed the Affairs of Sadhu Singh Rural Public School, Mukand Pur”. In its reply (APB 23-29) (Dated 12.08.2016) to the Questionnaire (APB 21-22) (Dated 04.08.2016) the applicant stated that the details of donations received were being Annexed. The contention that the corpus got created from such donations received for the setting up of the school, has not been rebutted based on anything to the contrary on record. And be that as it may, the fact remains that the observation in this regard in the impugned order fails to carry out the statutory mandate of satisfaction regarding the objects and genuineness of activities of the applicant. It is, therefore,

superfluous and not detrimental to the applicant's claim for registration.

7. So far as regards, the observation that the fee receipts of the applicant have consistently been in excess of Rs. 2 crore, again, this objection does not pertain either to the objects or to the genuineness of the activities of the applicant. The contention that the fees received have been spent on the running of the school has not been controverted with any material on record. Moreover, to reiterate, examination of application of income can be undertaken only at the time of assessment.

8. Likewise, the Objection regarding the emphasis of the applicant allegedly being on creation of assets, rather than, on deployment of funds for education, does not render the claim for registration untenable, inasmuch as, even if this observation is taken, for the sake of argument to be correct, despite there being no basis for it spelt out in the order, nothing has been brought on record that the assets of the applicant are meant for any purposes other than its avowed aims and objects, which include managing the affairs of the school. Too it has not been refuted that as seen from the three balance sheets filed by the applicant, the entire expenditure incurred by it, has been for the purposes of the school only. Then, the assets of the applicant have also not been shown to be existing, much less utilized, for any purposes other than that of the school. Further, once again, as to how the question of application of income is germane to the grant of registration, is not evincible from the order.

5. In view of the above, no illegality or perversity could be pointed out by the learned counsel for the appellant-revenue which may warrant interference by this Court. No question of law, much less, the substantial question of law arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.”

5. Since the issue has now been settled by the Hon'ble Jurisdictional High Court therefore, we direct the learned CIT(E) to grant the approval to the assessee since the same was denied for the reason that the registration under section 12AA of the Act has been denied to the assessee. It is also relevant to point out that the learned CIT(E) in para 6 of the impugned order has mentioned that the appeal against the order of the ITAT was pending before the Hon'ble

jurisdictional High Court. In view of the above, the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 17/01/2019)

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 17/01/2019

SH

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	16.01.2019		PS
2.	Draft placed before author	17.01.2019		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			