

**IN THE INCOME TAX APPELLATE TRIBUNAL
(MEERUT CAMP, MEERUT)**

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.919/Del./2018
(ASSESSMENT YEAR : 2013-14)**

M/s. Meerut City Public School Samiti 344, Shiv Shakti Nagar, Delhi Road, Meerut Uttar Pradesh (PAN : AAAAM7372G) Appellant	Vs.	ITO (Exemption), Ghaziabad Respondent
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ASSESSEE BY : Sh. S.K.Gupta, Adv.
REVENUE BY : Shri M.R.Bihrga, Sr.DR

Date of Hearing : 11.01.2019
Date of Order : 25.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Meerut City Public School Samiti, Meerut (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 07/12/2017 passed by Ld. Commissioner of Income Tax(Appeals)-Meerut qua the Assessment Year 2013-14 on the grounds inter alia that :

“ 1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in not allowing exemption u/s 10(23C) of the I.T.Act, 1961 and treating the surplus of Rs. 20,00,747/- as income of the assessee and that too without considering the submission of assessee.

2. That in any case and any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. A.O. in making the impugned addition and framing the impugned assessment order which is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

3. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : assessee is a society registered under Society Registration Act, which is neither have been granted registration u/s 12AA of the Act, 1961 (for short ‘Act’) nor having any exemption certification u/s 10(23C) (vi) of the Act, which is running school under the name and style of Meerut City Public School, Meerut. Assessee filed audit report u/s 12A(b) for books of account, balance sheet, income and expenditure account. However, Assessing Officer taking note of the fact that assessee is neither registered u/s 12AA nor granted any exemption certificate u/s 10(23C) (vi) of the Act made addition of Rs. 20,00,747/- on account of surplus income and made further addition of Rs. 30,56,294/- on account of disallowance of claim of depreciation of the assessee.

3. Assessee carried the matter before Ld. CIT(A) by way of filing present appeal which has partly allowed the appeal. Feeling aggrieved the assessee come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by

the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly the assessee society, which is running school in the name and style of Meerut Public School Meerut, was not registered u/s 12AA nor was granted any certificate u/s 10(23C) (vi) of the Act. It is also not in dispute that the CIT(Exemption), Lakhnow has now granted registration u/s 10(23C) (vi) of the act with effect from 28.07.2014 in compliance to the directions issued by Hon'ble Allahabad High Court. It is also not in dispute that the assessee has moved an application for grant of exemption u/s 20(23C)(vi) and VIA for the year 2011-12 on 27th June, 2012, which was rejected by the CIT Exemption. It is also not in dispute that Hon'ble High Court of Allahabad vide order dated 15.09.2016 quash the order dated 01.05.2013 passed by Commissioner Exemption and thereafter exemption was granted u/s 10(23C) (vi) of the Act to the assessee vide order dated 07.05.2018.

6. The Ld. CIT(A) vide impugned order confirmed the impugned addition made by the AO in the absence of registration of the assessee u/s 10(23C)(vi) or 12AA by misinterpreting the order passed by Hon'ble High Court of Allahabad that assessee has been granted registration u/s 10(23C)(vi) of the act with effect from 28.07.2014 and as such is not applicable to the present case. When undisputedly assessee had moved application for exemption u/s 10(23C)(vi) in Form 56D on 27th June, 2012 which was rejected by Ld. CIT(A) and the said order has been set aside and thereafter registration was granted, the exemption u/s 10(23C)(vi) is to relate back to the date of filing the original application for A.Y. 2011-12.

7. So we are of the considered view that the Ld. CIT(A) has erred in

confirming the addition made by the AO on the sole ground that the assessee was not having registration u/s 10(23C)(Vi) or 12AA of the Act. In view of the matter, we deem it necessary, to achieve ends of justice, to remand this case back to the AO to decide afresh in the light of the exemption granted to the assessee u/s 10(23C) (vi) of the Act, after providing opportunity of being heard to the assessee.

8. Consequently appeal filed by the assessee is allowed.

Order pronounced in open court on this 25th January, 2019.

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated: 25/01/ 2019
BR**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.

Date of dictation	15.01.2019
Date on which the typed draft is placed before the dictating Member	16.01.2019
Date on which the typed draft is placed before the Other Member	25.01.2019
Date on which the approved draft comes to the Sr. PS/PS	25.01.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	25.01.2019
Date on which the fair order comes back to the Sr. PS/PS	25.01.2019
Date on which the final order is uploaded on the website of ITAT	25.01.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	