

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE
SHRI N.K. SAINI, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 4939/Del/2015
Assessment Year: 2011-12**

Vaish Model Senior Secondary School, Loharu Road, Bhiwani, Haryana-127021 (PAN: AAATV6211C) (Appellant)	vs	ITO, Ward-1, Bhiwani. (Respondent)
--	-----------	--

**Department by : Shri R.P. Basia, CA
Assessee by : Shri Sridhar Dora, Sr. DR**

**Date of hearing: 15.11.2018
Date of pronouncement: 28.01.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

1. This appeal is preferred by the assessee against the order of the Ld. CIT (Appeals), Hisar vide order dated 13.02.2015 for assessment year 2011-12.

2.0 Brief facts of the case are that the assessee is a educational society and had applied for approval u/s 10(23C)(vi) of the Income Tax Act, 1961 (hereinafter called 'the Act') from assessment year 2008-09 onwards after its receipts had crossed Rs 1 Crore. Earlier it had claimed exemption under section

10(23C)(iiiad) of the Act. The approval sought by the assessee Society was denied for the second time by the prescribed Authority vide order dated 28.12.2010. Aggrieved, the assessee society filed a writ petition before the Hon'ble Punjab & Haryana High Court vide Petition No. 7735 of 2011. The Hon'ble High Court of Punjab & Haryana set aside the impugned order and remanded the matter to the Ld. Commissioner of Income Tax (Exemptions) for passing a fresh order in accordance with the law. Pursuant to the order of Hon'ble High Court of Punjab & Haryana, Ld. Commissioner of Income Tax (Exemptions), Chandigarh, vide order dated 15.06.2015, passed an order and approved the assessee society (viz. Vaish Model Senior Secondary School Education Society) under the provisions of Section 10(23C)(vi) of the Act with effect from the Assessment Year 2008-09.

2.1 However, in the meanwhile, the return of income for the captioned year was filed declaring income at nil after claiming exemption u/s 10(23C)(vi) of the Act to the tune of Rs. 52,28,440/- which was excess of income over expenditure from running the school in the name of Vaish Model Senior Secondary School. The Assessing Officer treated the building fund and

building maintenance fund amounting to Rs. 62,97,300/- as revenue receipts and added the same to the income of the assessee. The Assessing Officer further disallowed the assessee's claim of exemption u/s 10(23C)(vi) of the Act. The assessment was completed at an income of Rs. 1,15,235,740/-.

2.2 Subsequently, the assessee's appeal before the Ld. CIT (Appeals) was also dismissed on the ground that at the time of assessment, the assessee was not having any approval u/s 10(23C)(vi) of the Act. Now, the assessee is before the ITAT and has challenged the action of the Ld. CIT (Appeals) in dismissing the assessee's appeal and the following grounds of appeal have been raised:-

"The addition of Rs. 1,15,25,740/- made by the Ld. Income Tax Officer and denial of benefits under section 10(23C)(vi) of Income Tax Act, 1961 by the Ld. Income Tax Officer is untenable for the following reasons:-

1. *The Ld. Assessing Officer have wrongly denied the exemption under section 10(23C)(vi) of The Income Tax Act, 1961 without giving appropriate opportunity and ignoring all merits of the case.*

2. *That application of exemption has been wrongly denied by the Ld. CCIT, Panchkula despite the same having been allowed by the Hon'ble High Court of Punjab & Haryana vide its order dated 17.08.2010. The appellant society has re-filed a Civil Writs petition with the Hon'ble High Court of Punjab & Haryana, the decision*

in which case has now come on 09.04.2015 setting aside the order of Hon'ble Chief Commissioner of Income Tax , Panchkula and referred the matter to the Hon'ble Commissioner of Income Tax (Exemptions), Chandigarh, now the prescribed authority for granting exemptions under Section 10(23C)(vi) , for a fresh consideration as per guidelines mentioned in the order of Hon'ble High Court of Punjab & Haryana .

3. The Hon'ble Commissioner of Income Tax (Exemptions), Chandigarh, after considering afresh on the matter, has now granted the approval through his order vide No.CIT(E)/Chd/10(23C)/2014-15/1918 dated 15.06.2015 w.e.f A/Y 2008-09, as required under the provisions of Section 10(23C)(vi). A copy of the order of Hon'ble Commissioner of Income Tax (Exemptions), Chandigarh is enclosed.

4. That the Ld. Assessing Officer cum Income Tax Officer has also erred both in law and on facts in making the addition of Rs. 62,97,300/- being capital receipts on account of Building Fund and Building Maintenance fund received especially for the purpose of construction and/or maintenance of Building during the year.

5. That the Ld. Assessing Officer cum Income Tax Officer has also erred both in law and on facts in denying capital expenditure of Rs. 62, 97, 300/- and as per Principal of law summed up by Pinegrove International Charitable Trust "capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income and is allowable expenditure while calculating income in respect of construction and/or maintenance of building during the year". Therefore, Capital expenditure is an allowable expenditure and Ld. Assessing Officer has not given this benefit to the assessee society.

6. That the Ld. Assessing Officer wrongly denied the exemption of Rs. 5228440/- on excess of income over expenditure.

7. That the Ld. Assessing Officer has wrongly issued show cause notice under section 271 read with section 274 for concealment of income which is against the facts and the details submitted.”

3.0 At the outset, the Ld. AR submitted that the issue stood covered in favour of the assessee in assessee's own case for assessment years 2008-09, 2009-10 and 2010-11. Copies of the orders of the ITAT were also placed on record.

4.0 The Ld. Sr. DR placed reliance on the concurrent findings of both the lower authorities and also highlighted the fact that at the time of assessment, the assessee did not have the benefit of approval u/s 10(23C)(vi) and, therefore, the Assessing Officer was correct in disallowing the assessee's claim of exemption.

5.0 Having heard both the parties and after having perused the material on record, we find that the issue is covered in favour of the assessee by the order of the Tribunal in assessee's own case for assessment years 2010-11 in ITA No. 1687/Del/2014 wherein, vide order dated 11.3.2016, the Coordinate Bench of the

Tribunal has made the following observations in paragraphs 7 and 8:-

“7. Undisputedly, CIT Exemption vide order dated 15/6/2015 accorded approval to the assessee society u/s 10(23C) (vi) of the Act subject to the terms and conditions laid down in the order (Supra).

8. Primarily the A.O has disallowed, the exemption and made the addition of Rs.97,27,160/-by denying the benefit of Sec 10(23C) (vi) of the Act on the sole ground that the assessee has failed to prove the approval of CCIT to claim exemption u/s 10(23C) (vi) of the Act. Perusal of the order passed by CIT Exemption lying at Page 8 of the paper book filed by the assessee, apparently shows that the application in Form 56D for claiming exemption u/s 10(23C) (vi) of the Act was filed on 15/03/2008 by the assessee and consequently CIT Exemption accorded the approval with effect from the Assessment Year 2008-09.”

5.1 Therefore, without going into the merits of the case at this juncture, respectfully following the order of the Coordinate Bench in assessee's own case for assessment year 2010-11, we restore the issue to the file of the Assessing Officer to decide the matter afresh in light of the order of approval u/s 10(23C)(vi) of the Act, vide order dated 15.6.2015, and having retrospective effect after providing adequate opportunity to the assessee.

6.0 In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 28th JANUARY 2019.

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

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 28th JANUARY , 2019
'GS'

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

ASSTT. REGISTRAR

te of dictation	
te on which the typed draft is placed before the dictating Member	
te on which the typed draft is placed before the Other Member	
te on which the approved draft comes to the Sr.PS/PS	
te on which the fair order is placed before the Dictating Member for pronouncement	
te on which the fair order comes back to the Sr.PS/PS	
te on which the final order is uploaded on the website of ITAT	
te on which the file goes to the Bench Clerk	
te on which the file goes to the Head Clerk	
e date on which the file goes to the Assistant Registrar for signature on the order	
te of dispatch of the Order	1