

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.570/Viz/2018

(निर्धारण वर्ष/Assessment Year : 2017-18)

M/s Hamsavahini Educational Society
3-282, Vakalapudi
Kakinada
East Godavari Dist.
[PAN :AAAAH0287P]

Vs. Commissioner of Income Tax
(Exemptions)
Hyderabad

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri P.Prabhakara Murthy, AR

प्रत्यर्थी की ओर से/ Respondent by

: Shri D.K.Sonowal, CIT DR

सुनवाई की तारीख / Date of Hearing

: 30.04.2019

घोषणा की तारीख/Date of Pronouncement

: 29.05.2019

आदेश /O R D E R

Per D.S. Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Exemptions) [CIT(E)], Hyderabad vide F.No.CIT(E)/Hyd/10(23C)/10/2017-18 dated 28.09.2018 for the Assessment Year (A.Y.) 2017-18.

2. All the grounds of appeal are related to the rejection of application for exemption u/s 10(23C) of the Act. The assessee had filed Form 56D on 21.09.2017 seeking exemption u/s 10(23C) of the Income Tax Act, 1961 (in short 'Act') from the A.Y.2017-18 onwards. Subsequently the Ld.CIT(E) sought for certain details and on the date of hearing there was no response from the assessee. Therefore, the Ld.CIT(E) decided the application of the assessee in Form No.56D ex-parte treating the application as non-est.

3. In the instant case, the assessee sought exemption u/s 10(23C) originally vide application dated 26.09.2014 which was rejected by the Ld.CCIT vide his order dated 30.09.2015. The Ld.CCIT had rejected the application of the assessee, since, the objects of the assessee include non-educational objects which are opposed for grant of exemption u/s 10(23C) of the Act. As per section 10(23C), exemption is granted to the institutions existing solely for educational purposes. On appeal before ITAT, the ITAT confirmed the order of the Ld.CCIT vide order in ITA No.390/Viz/2015 dated 18.04.2018.

4. Subsequently, the assessee filed a fresh application dated 19.09.2017 duly amending the objects of the society, solely for educational purposes.

During the second round of application, the Ld.CIT(E) observed that since the first application of the assessee was rejected by the ITAT, issue had reached finality, hence he is of the view that the assessee would not be entitled for approval u/s 10(23C) for approval for a period of three years. The Ld.CIT(E) has taken the support of Rule 2CA, wherein, it was stated that the approval granted before the first day of December 2006 shall have effect for a period of not exceeding three assessment years. Further, the Ld.CIT(E) also has taken support of CBDT Circular No.7/2010 dated 27.10.2010 and found that the assessee has to apply once in three years for getting approval u/s 10(23C), accordingly, held that the application filed by the assessee dated 21.09.2017 is non-est. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(E) in para No.4 which reads as under:

"4. The Rule 2CA was amended In the year 2006. The amended provision is asunder:-

"the approval of the Central Board of Direct Taxes or Chief Commissioner or Director General, as the case may be, granted before the first day of December 2006 shall at any one time have affect for a period of not exceeding three assessment years"

The CBDT issued clarificatory circular No. 7/2010 dated 27.10.2010. Thus, after 2006 amendment, assessee has to apply only, once for getting approval u/s. 10(23c)(v). In the case of the assessee, the assessee had applied for approval u/s. 10(23C)(vi) and the CCIT, Visakhapatnam vide his order dated 30.09.2015 rejected the application.

Assessee filed an appeal against the said order and the Hon'ble ITAT has upheld the order of the CCIT, Visakhapatnam as mentioned in earlier part Therefore, the application filed by the assessee

u/s. 10(23C)(ñ) has attained finality. Now, at this juncture, this office do not have any jurisdiction to interfere in the order of the CCII, Visakhapatnam dated 30.09.2015. Therefore, the application filed by the assessee 21.09.2017 becomes non-est. Therefore, the application filed by the assessee is hereby rejected."

5. Against the order of the Ld.CIT(E), the assessee has filed appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that the assessee has filed the application for grant of approval u/s 10(23C) duly amending the objects of the society. After amending the objects of the society, the society is existing solely for the purpose of educational objects, hence, argued that the assessee is entitled for exemption u/s 10(23C)(vi) of the Act. The Ld.CIT(E) has misunderstood the Board Circular as well as the Rule 2CA which was amended in the year 2006. The Ld.AR argued that Rule 2CA is applicable for the institutions which are granted approval u/s 10(23C), but not applicable to the cases, where the application seeking grant of approval u/s 10(23C) was rejected by the authorities. It is unreasonable and unjustified to say that once the CIT(E) rejects the application u/s 10(23C), the assessee is not permitted to make fresh application amending the objects. This view is incorrect and would cause injustice to the institutions which are rendering the services of education to the society and are charitable in nature. Therefore, submitted that once the

objects are amended and the assessee made the revised application, the CIT(E) is not permitted to reject the application as non-est and has to decide the case on merits, since, the objects are amended. Accordingly, the Ld.AR requested to set aside the order of the Ld.CIT(E) and grant exemption u/s 10(23C) of the Act.

6. On the other hand, the Ld.DR argued that the assessee has submitted the application originally in 2014 which was rejected by the CCIT vide order dated 30.09.2015 and confirmed by the Hon'ble ITAT, thereby, the orders of the CCIT had reached finality. Once the application is made by the assessee seeking grant of approval u/s 10(23C) is reached finality, the assessee is barred from making any further application for 3 years as per Rule 2CA of I.T.Rules and which was clarified by the CBDT Circular No.7/2010 dated 27.10.2010. Thus, the Ld.DR contended that once the application is made and rejected, the assessee is not permitted to make application for further 3 years. Therefore, argued that the Ld.CIT(E) has rightly rejected the application and no interference is called for in the order of the Ld.CIT(E).

7. We have heard both the parties and perused the material placed on record and gone through the relevant provisions of the Act as well as the circular cited. In the instant case, the assessee has made the application for grant of approval u/s 10(23C) originally vide application dated 26.09.2014 in Form No.56D. The said application was scrutinized by the CCIT, Visakhapatnam and on scrutiny of the application, the Ld.CCIT found that the objects of the society include educational objects and non educational objects. As approval u/s 10(23C) is granted only for the purpose of educational objects and non educational objects does not qualify for grant of approval u/s 10(23C), the Ld.CCIT had rejected the application of the assessee which was confirmed by the ITAT vide order dated 18.04.2018. Subsequently, the assessee had amended the objects. As per the amended objects, the society is existing solely for educational purposes. For the sake of clarity and convenience, we extract relevant part of the objects of the Society which is furnished in page No.11 of the paper book and reads as under :

Existing		Amended	
(i)	To establish schools in Andhra Pradesh and to promote literacy	(i)	To impart education without profit motive.

(ii)	To provide facilities for indoor and outdoor gamets for the recreation of members	(ii)	To establish schools and colleges in Andhra Pradesh for imparting education
(iii)	---	(iii)	To provide facilities for indoor and outdoor games for the recreation of pupils.

It is observed from the above, that the assessee had duly amended the objects and after amending the objects, the objects of the society are solely for the purpose of education and the assessee qualifies for grant of approval u/s 10(23C) of the Act. The question before us is whether the assessee is permitted to make a fresh application, once the original application was rejected. The Ld.CIT(E) has taken the support of Rule 2CA which was amended in the year 2006, which reads as under :

4. *The Rule 2CA was amended in the year 2006. The amended provision is asunder:-*

"the approval of the Central Board of Direct Taxes or Chief Commissioner or Director General, as the case may be, granted before the first day of December 2006 shall at any one time have affect for a period of not exceeding three assessment years"

Plain reading of Rule 2CA shows that once the approval is granted it will have effect for a period of not exceeding 3 assessment years, which shows that if the approval for exemption u/s 10(23C) is granted, the same

is valid for three assessment years. If the application of the assessee for grant of approval u/s 10(23C) is rejected there is no specific bar for making fresh application as per Rule 2CA or the Board Circular No.7/2010 dated 27.10.2010, on which the Ld.CIT(E) has placed heavy reliance. It is unjustified and unreasonable to hold that the assessee is barred from making fresh application, if it is qualified for exemption subsequent to rejection of original application. The assessee is an educational institution which is rendering the educational services to the society and should be given proper support for betterment of services. Therefore, we are of the considered opinion that there is no reason for placing bar on the assessee for no fault of the assessee. Having amended the objects, the assessee is qualified for exemption and would be entitled for the grant of approval and treating the application of the assessee as non-est is unjustifiable. Hence, we hold that the application of the assessee is valid and the Ld.CIT(E) must consider the grant of exemption u/s 10(23C) on merits. Accordingly, we set aside the order of the Ld.CIT(E) and remit the matter back to the file of the CIT(E) with a direction to consider the application of the assessee on merits and decide the issue afresh. It is needless to say that the CIT(E) should give sufficient opportunity to the assessee before deciding the

application. Accordingly, appeal of the assessee is allowed for statistical purpose.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29th May 2019.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER</p>	<p>sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
<p>विशाखापटणम /Visakhapatnam दिनांक /Dated : 29.05.2019 L.Rama, SPS</p>	

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

1. अपीलार्थी / The Appellant - M/s Hamsavahini Educational Society, 3-282, Vakalapudi, Kakinada, East Godavari Dist.
2. प्रत्यार्थी / The Respondent - Commissioner of Income Tax (Exemptions), Hyderabad
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 4.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam