

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' : NEW DELHI

BEFORE SHRI G.S. PANNU, VICE PRESIDENT

ITA No.1223/Del/2019  
Assessment Year : 2016-17

M/s Kamla Nehru Public  
School Society,  
Near Community Centre,  
Sector-46,  
Faridabad,  
Haryana – 121 003.  
PAN : AABAK1483H.  
(Appellant)

Vs. Deputy Commissioner of  
Income Tax,  
CPC, Bangalore.

(Respondent)

Appellant by : Shri Dinesh Kumar Aggarwal, CA.  
Respondent by : Ms. Ekta Vishnoi, Senior DR.

Date of hearing : 24.09.2019  
Date of pronouncement : 31.10.2019

**ORDER**

This appeal by the assessee is directed against the order of learned CIT(A), Faridabad dated 17<sup>th</sup> December, 2018 which in turn has arisen from the order of the Assessing Officer passed under Section 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 19<sup>th</sup> June, 2017 for the assessment year 2016-17.

2. In this appeal, although assessee has raised multiple grounds of appeal, but, essentially, the grievance emanates from the decision of CIT(A) in upholding action of the Assessing Officer in denying exemption to the assessee under Section 10(23C)(iiiad) of the Act in the intimation passed under Section 143(1) of the Act dated 19<sup>th</sup> June, 2017.

3. In order to appreciate the rival stands, the following discussion is relevant. The appellant before me is a Society registered under the Societies Registration Act, 1860 with the main objective of running educational institution. It has been explained that assessee is running an educational institution and it exists solely for educational purposes and not for purposes of profit. It has also been brought out that the aggregate annual receipt of the educational institution is ₹17,50,582/-, which is within the limit prescribed for the purposes of exemption under Section 10(23C)(iiiad) of the Act. Explaining the background of the dispute, the learned representative of the assessee pointed out that while filing the return of income, assessee had returned nil tax liability on the plea that the surplus on account of educational activities of ₹2,49,859/- was exempt from tax in view of Section 10(23C)(iiiad) of the Act. The Assessing Officer, while framing the intimation under Section 143(1) of the Act, instead, treated the aforesaid sum as taxable and accordingly, a tax liability of ₹96,280/- has been raised. The CIT(A) has also affirmed the aforesaid action.

4. A perusal of the orders of authorities below reveal that the primary reason weighing with the lower authorities was that in the return of income filed, no specific claim for exemption has been made under Section 10(23C)(iiiad) of the Act. In this context, it is noticeable that the return of income was furnished by the assessee in Form No.5 instead of Form No.7, which was the correct Form in which the return of income ought to have been filed. In this context, the stand of the assessee has been that in view of Section 139(4C) of the Act read with Section 10(23C)(iiiad) of the Act and Rule 2BC of the Income-tax Rules, 1962, all the requirements of the exemption under Section 10(23C)(iiiad) stand fulfilled and the prescribed Form for filing the return of income was indeed Form No.7. Before the lower authorities as well as before me, it has been explained by the assessee that the PAN number allotted by the Department was in the status of an AOP

and, as a consequence, the return was filed erroneously in Form No.5 although the correct Form was ITR 7. Since in Form No.5 there was no specific column in order to enumerate the claim of exemption under Section 10(23C)(iiiad), it could not be appropriately filled up. In the aforesaid factual matrix, the CIT(A) proceeded to deny the exemption on the ground that the same was not appropriately filled up in the return of income, which is merely a technical error. Substantively speaking, there is no dispute that the assertions of the assessee for its entitlement for exemption under Section 10(23C)(iiiad) of the Act are justified. Therefore, in my considered opinion, it would be in the fitness of things that the exemption under Section 10(23C)(iiiad) of the Act is allowed to the assessee. I direct accordingly.

5. In the result, the appeal of the assessee is allowed as above.  
Decision pronounced in the open Court on 31<sup>st</sup> October, 2019.

Sd/-  
**(G.S. PANNU)**  
**VICE PRESIDENT**

VK.

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1. Appellant : **M/s Kamla Nehru Public School Society,  
Near Community Centre, Sector-46,  
Faridabad, Haryana – 121 003.**
2. Respondent : **Deputy Commissioner of Income Tax,  
CPC, Bangalore.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar