

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्यके समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.1930 & 1931/Chny/2019

(निर्धारणवर्ष / Assessment Years: 2010-11 & 2012-13)

M/s. PKD Trust P.K.D. Matric School, Coimbatore Road, Pollachi-642 001.	Vs	The Deputy Commissioner of Income Tax, (Exemptions), Coimbatore.
PAN:AAAAP 1297K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. N.Arunraj,C.A for Mr. S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. J.Pavithran Kumar , JCIT,

सुनवाईकीतारीख/Date of hearing	:	29.09.2020
घोषणाकीतारीख /Date of Pronouncement	:	29.09.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-2,Coimbatore, both dated 06.05.2019 and pertain to the assessment year 2010-11 & 2012-13. Since, facts are identical and issues are common, for the sake of convenience these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both the assessment years. Therefore, for the sake of

brevity, the grounds of appeal filed for the assessment year 2010-11

are reproduced as under:-

"1. The order of the Commissioner of Income Tax (Appeals) - 2, Coimbatore dated 06.05.2019 in I.T.A.No40/17 -18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the order of the Assessing Officer passed in consequence to the order of the Appellate Tribunal in not granting the benefit of tax exemption u/s 10(23C)(vi)/benefit of tax exemption computation u/s 11 of the Act without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the decision of the Appellate Tribunal in the first round has not become final and pending before the Madras High Court in T.C.Appeal Nos.286 to 288/2018 and ought to have appreciated that the benefit of tax exemption in such circumstances was wrongly rejected in view of the narrow and wrong interpretation of the related provisions of the Act in the first round of litigation.

4. The CIT (Appeals) erred in sustaining the order of the Assessing Officer passed in consequence to the order of the Appellate Tribunal in the first round and ought to have appreciated that the directions issued by the Appellate Tribunal in their order were narrow while not properly implemented, thereby vitiating the computation of taxable total income on various grounds.

5. The CIT (Appeals) failed to appreciate that the taxation of the income from PKD Matric Higher Secondary School and PKD School Hostel upon rejecting the claim for tax exemption u/s 10(23C)(vi) of the Act in view of the threshold limit prescribed for such tax exemption should be reckoned as bad in law on various grounds.

6. The CIT (Appeals) failed to appreciate that despite the activity of providing support services, namely, providing hostel services for the students, denial of tax exemption as claimed based on the recording of the finding in para 5.1.3 and para 5.1.4 of the impugned order was wrong, erroneous, unjustified, incorrect and not sustainable in law.

7. The CIT(Appeals) failed to appreciate that the misconstruction of the provisions of section 10(23C)(vi) of the Act in denying the benefit

of tax exemption would vitiate the decision rendered in relation thereto.

8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”

3. The brief facts of the case are that assessee is a trust evidenced by a Trust deed dated 09.09.1992 is engaged in running educational institutions filed its return of income for the assessment year 2010-11 on 07.10.2010 declaring Nil total income after claiming exemption u/s.10(23C) of the Income Tax Act, 1961 (hereinafter referred to as “Act”). In the original assessment order passed on 23.01.2013, the claim of exemption under section 10(23C) of the Act was denied consequent to rejection of application filed by the assessee for registration of trust by the Chief Commissioner of Income Tax, Coimbatore, because the assessee trust was not registered under section 12A of the Act. Further, while rejecting the claim of exemption, the learned Assessing Officer held that since the total receipts of the trust exceeding Rs. one crore, in order to claim the benefit of exemption under section 10(23C) of the Act, the assessee trust ought to have obtained approval from the prescribed authority. Since, the assessee trust failed to do so, the exemption claimed under section

10(23C) of the Act has been denied and income was brought to tax. Aggrieved by the assessment order, assessee has filed an appeal before the learned Commissioner of Income Tax (Appeals), Coimbatore. The learned CIT(A) vide order dated 29.05.2014 has confirmed the order of the Assessing Officer on the ground that the Chief Commissioner of Income Tax, Coimbatore vide order dated 24.06.2013 had rejected the application filed by the assessee for approval under section 10(23C) of the Act. The assessee carried the matter in further appeal before ITAT. The Tribunal vide its order dated 10.12.2017 in ITA No.2053/Mds/2014 has remanded the issue regarding recognition of assessee trust under section 10(23C) of the Act to the file of the Assessing Officer for fresh consideration. In compliance to the order of the ITAT, the case was taken up for hearing on 09.05.2017 and assessee was required to furnish necessary details to prove its eligibility for claiming benefit of exemption under section 10(23C) of the Act. In response, the assessee has filed all details and stated that out of the five educational institutions under the trust, gross receipts of PKD Matriculation Higher Secondary School is above Rs.one crore and corresponding income relating to that school is only available for taxation for the relevant assessment year . The Assessing

Officer after considering the relevant submissions of the assessee and also taken note of provisions of section 10(23C) of the Act, observed that there is no merit in the arguments of the assessee that for the purpose of assessment of a trust each unit including hostels should be separately considered and if PKD School hostel is taken out from PKD Matric Higher Secondary School, then the income of PKD Matric Higher Secondary School only available for taxation is incorrect, because hostel of a school cannot be considered as a separate entity for the purpose of exemption for the reason that the same set of students are beneficiaries of the school and the hostel attached to it as part of institution which is offering education, therefore rejected the explanation furnished by the assessee and assessed the income of PKD Matric Higher Secondary School and PKD School Hostel as one institution. Since, the gross receipts of the institution is more than Rs. One crore and also the assessee was not having the benefit of registration u/s.10(23C) of the Act, denied exemption claimed and assessed the total income as an AOP assessable at maximum marginal rate tax.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). The learned CIT(A) vide its order

dated 06.05.2019 has upheld the findings of the Assessing Officer and rejected the claim of exemption under section 10(23C) of the Act on the ground that income of PKD Matric Higher Secondary School is assessable to tax as it is not qualified for exemption under section 10(23C) because gross annual receipts exceeded Rs. One crore and the income of PKD School Hostel is not qualified for exemption u/s.10(23C) as it is not an educational institution. Aggrieved by the order of the learned CIT(A), the assessee is appeal before us.

5. The learned Authorized Representative for the assessee, at the time of hearing, submitted that both the appeals need to go back to the file of the Assessing Officer for fresh consideration, because the Hon'ble Jurisdictional High Court in Tax Case Appeal Nos.286, 287 and 288 of 2018 has set aside the order of Tribunal and remitted the matter back to the Chief Commissioner of Income Tax, Coimbatore for fresh decision after considering the entire financials and all other records that may be placed before him for considering the entitlement for exemption u/s.10(23C) of the Act. The learned AR further submitted that the Hon'ble Jurisdictional High Court also set aside the orders passed by the Assessing Officer, denying exemption u/s.10(23C) and restored the issues

back to the file of the Assessing Officer, because assessment orders are based upon the rejection of prayer for exemption u/s.10(23C). Therefore, he requested that the appeals may be remitted back to the file of the Assessing Officer by setting aside the impugned orders for fresh consideration in the light of observations of the Hon'ble Jurisdictional High Court .

6. The learned DR, on the other hand, fairly accepted that the matter needs to be go back to the file of the Assessing Officer in the light of the observations of the Hon'ble Jurisdictional High Court , where substantial issue of denial of exemption u/s.10(23C) had been restored back to the file of the Chief Commissioner of Income Tax for reconsideration and accordingly the consequential assessment orders framed by the Assessing Officer needs to be reconsidered after the outcome of the order passed by Chief Commissioner of Income Tax regarding assessee's entitlement for exemption u/s.10(23C) of the Act.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We have also carefully considered the decision of the Hon'ble Jurisdictional High Court in Tax Case Appeal Nos.286, 287 and

288 of 2018 dated 11.06.2019 and find that the Hon'ble High Court has set aside the order of Tribunal regarding denial of exemption claimed by the assessee u/s.10(23C) of the Act. We further noted that the Hon'ble High Court has also set aside the assessment order framed by the Assessing Officer for the assessment year 2010-11 and 2012-13 on the ground that both the assessments are based upon rejection of prayer for exemption u/s.10(23C) of the Act. Since these two appeals are filed by the assessee against the orders of the Assessing Officer in denying benefit of exemption claimed u/s.10(23C) of the Act and the very same matter has been gone back to the file of the Chief Commissioner of Income-tax, Coimbatore for reconsideration, the assessment orders passed by the Assessing Officer consequential to rejection of exemption claimed u/s.10(23C) of the Act cannot survive under the law. Therefore, we are of the considered view that appeals filed by the assessee for assessment years 2010-11 and 2012-13 need to go back to the file of the learned Assessing Officer for re-consideration of the issue after the outcome of the proceedings before the Chief Commissioner of Income-tax, Coimbatore regarding eligibility of the assessee for exemption u/s.10 (23C) of the Act. Hence, we set aside the impugned orders and

remit both the appeals back to the file of the Assessing Officer and direct him to redo the assessments in accordance with the law.

8. In the result, appeals filed by the assessee for both assessment years are allowed for statistical purposes.

Order pronounced in the open court on 29th September, 2020

Sd/-

(वी.दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

Sd/-

(जी.मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 29th September, 2020

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.