

**IN THE INCOME TAX APPELLATE TRIBUNAL “C”
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAM LAL NEGI, JM**

आयकरअपीलसं./ I.T.A. No. 4494/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

College of Physicians & Surgens of Mumbai, Adv. Aarti Sathe, 5 B, Buona Casa, 2 nd floor, Sir PM Road, Fort, Mumbai-400 023.	बनाम/ Vs.	ITO(E)-1(2), Room No. 354, M. K. Road, Aayakar Bhavan, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AAATC0457H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Aarti Sathe, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri Amit Pratap Singh, DR
Virtual Date of Hearing	:	02.09.2020
Date of Pronouncement	:	17.09.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 3 in short referred as ‘Ld. CIT(A)’, Mumbai dated 01.03.2018 for Assessment Year (in short AY) 2013-14.

2. The brief facts of the case are, assessee is educational trust registered with the Director of Income Tax (Exemp), Mumbai, u/s 12A of the I.T. Act 1961 (in short 'Act') vide Reg. No. INS/11914 dated 19th July 1977.

3. The assessee had applied for grant of exemption or continuance thereof u/s 10(23C) (vi) & (via) of the Act in Form No. 56D on 22nd September 2014 for the AY 2011-12 to 2013-14 to the DIT(Exmp), HO and these applications are pending before the authorities as on the date of assessment order passed u/s 143(1) of the Act i.e. on 29th March, 2015. Accordingly, AO raised a demand of Rs. 2,52,09,743/-.

4. Aggrieved with the above order, assessee filed a rectification application u/s 154 of the Act on 29th April 2015 before the jurisdictional AO i.e. present ITO. AO issued notice asking assessee to produce the copy of approval letter received from CCIT in respect of exemption u/s 10(23C)(vi) for verification.

5. In response, assessee informed that it had applied for grant of exemption u/s 10(23C)(vi) and the said application is still

pending. Since there is no approval, AO dismissed the rectification application filed by the assessee.

6. Aggrieved with the above, assessee filed the appeal before Ld. CIT(A) and Ld. CIT(A) observed as under:-

i) Assessee is not eligible u/s 10(23C)(vi) of the Act without proper approval.

ii) The issue before him is whether or not there was an error in the intimation. The issue is whether there was a mistake in the assessment which are apparent from the record.

iii) Since, there is no mistake in the intimation passed u/s 143(1) of the Act, accordingly, the rectification application filed u/s 154 is dismissed.

7. Aggrieved with the above order, assessee is in appeal before us.

8. At the time of hearing, Ld. AR submitted that at the time of assessment and filing of appeal before Ld. CIT(A), assessee did not have proper approval of exemption u/s 10(23C)(vi) of the Act. Now assessee has received proper approval of exemption from CIT(Exmp) dated 30th September 2019 and she filed the

copy of relevant approval alongwith approval from CBDT for condonation of delay and grant of approval of exemption. Ld. AR brought to our notice the above facts and submitted the relevant documents in support of the submissions and copy of approvals.

9. Considered the rival submission and material placed on record. Ld. AR submitted the copy of the approvals from CBDT and CIT(Exmp), as per which, assessee is eligible to claim exemption u/s 10(23C)(vi) of the Act. However, due to non-availability of the approval, assessee was denied benefit of claiming exemption in intimation u/s 143(1) of the Act. Since, the tax authorities itself condoned the delay of filing applications of exemptions u/s 10(23C)(vi) of the Act and now granted the approval for exemption. In our considered view, the appeal filed by the assessee becomes infructuous and we are remitting this issue back to the file of AO to rectify the intimation passed u/s 143(1) and consider the rectification application filed by the assessee. Accordingly allow the exemption available to the assessee in pursuant to the approval granted by CBDT and CIT(Exmp). Therefore, this appeal stands allowed in favour of

the assessee and we are directing the AO to pass the appropriate order in accordance with law.

10. In the net result, the appeal filed by the assessee is **allowed for statistical purposes.**

Order pronounced in the open court on 17.09.2020.

<i>Sd/-</i> (R. L. Negi) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 17.09.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**