

THE INCOME TAX APPELLATE TRIBUNAL  
“B” Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 613/Mum/2021 (A.Y. 2015-16)

National Education Society 17/1, Bakul Niwas Lallubhai Park, Road No. 3 Andheri West Mumbai-400 058.  PAN : AAATN0087E (Appellant)	Vs.	CIT(Exemption) 6 <sup>th</sup> Floor Piramal Chamber, Parel Lalbaug Mumbai-12.  (Respondent)
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Assessee by	Shri Subodh Ratnaparkhi
Department by	Ms. Vatsalaa Jha
Date of Hearing	08.03.2022
Date of Pronouncement	10.03.2022

ORDER

Per Shamim Yahya (AM) :

This appeal by the assessee is directed against the order of learned CIT(E) dated 1.3.2021 for assessment year 2015-16.

2. The grounds of appeal read as under :-

“1. The Hon. CIT (Exemptions) erred in not appreciating the directions of the Hon. Tribunal and instead by way of order giving effect to Hon. ITAT's order, holding the appellant to be not entitled for approval of exemption u/s 10(23C)(vi) of the Income Tax Act 1961, which action is bad-in-law and therefore the Hon. CIT(Exemptions) be directed to grant the approval u/s 10(23C)(vi) of the Income Tax Act 1961 .

2. The Hon. CIT (Exemptions) erred in not appreciating that the appellant was only running a school providing education to students upto class X<sup>th</sup> and therefore existed solely for educational purposes and denial of approval sought u/s 10(23C)(vi) was not justified by law.”

3. This is the second round of proceedings in this appeal before the ITAT. In the earlier round this ITAT by the order dated 9.10.2018 had set aside the issue to the file of learned CIT(E). The ITAT in the said order has concluded as under :-

“When going through the order of CIT(E), it is noticed that none of the above condition/scope of enquiry for rejection of approval under section 10(23C)(via) was considered by him and hence, we remand this appeal back to the file of CIT(E) for fresh consideration the issue in entirety. The order of CIT(E) is set aside.”

4. Pursuant to the said remand the matter was taken up to learned CIT(E).

In this regard learned CIT(E) issued following notice to the assessee :

“2. With respect to the above you are requested explain how the objects of your trust namely 1. To try to raise the status and dignity of the teaching profession and 2. To amend, modify substitute or add any new object for promotion of the public good,

qualify your trust as "existing solely for educational purposes and not for purposes of profit, as mentioned in section 10(23C)(vi).

3. You are accorded an opportunity to attend in person or through an Authorized Representative before the undersigned on 23/02/2021 at 3.00 p.m. at my office. Personal appearance is not necessary, and you may alternatively file a written response to this notice. You may further note that nothing is heard from you at the appointed dated, it will be presumed that you have no submissions to make. Necessary action on the matter will be taken without any further reference to you....”

5. Assessee responded as under :

“.....Sir, in fact, there were three cases namely National Education Society, Shree Ramkrishna Shikshan Mandal and Shree Ekveera Dnyan Prarak Mandal for which we had preferred appeal to WAT, Mumbai. National Education Society's case was with different bench and Shree Ramkrishna Shikshan Mandal and Shree Ekveera Dnyan Prasarak Mandal were with another bench. All the three appeals were decided in our favor. However, since the benches were different, the wordings of the orders were also slightly different.

We had already received orders giving effect to ITAT orders from your honor for the two cases i.e. Shree Ramkrishna Shikshan Mandal and Shree Ekveera Dnyan Prasarak Mandal and we enclose copies of the same for your ready reference, However, for the captioned matter for National Education Society, the effect was delayed due to time barring matters and due to covid-19 pandemics.

The above assesses trust is exclusively departing secular education upto 10th std. and no other objects is persuaded or earned. We trust (hat your honor will agree with us that the points you have highlighted are relating to carrying out and improving quality education are also the educational objects only.

We enclose the copy of TTAT order passed and the relevant supporting documents for your perusal. With the above, we request your kind honor to give due consideration to our submission and issue the order at the earliest.”

6. Learned CIT(E) rejected the assessee’s contention by observing as under:

The matter is duly considered. In its reply, the assessee trust has chosen not to answer or explain how the objects of the trust namely to try to raise the status and dignity of teaching profession and to amend, modify substitute or add any new object for promotion of the public qualify the trust as existing solely for educational purposes. Instead the assessee has chosen to give references of other trust wherein the Ld. ITAT had granted, registration in its order, itself. The facts of the present case is different in as much as the issue is to be considered de novo as per the direction of the Ld. ITAT. The assessee trust has chosen not to address the issue concerning its ability to amend or modify to include any other object for the promotion of public good. Hence, I am of the view that the conditions governing grant of approval of exemptions u/s. 10(23C)(vi)/(via) of the I.T. Act, are not met with reference to the object of the trust, as the trust cannot be said to be existing solely for the purpose of education.”

7. Against the above order assessee is in appeal before us.

8. We have heard both the parties and perused the records. Learned Counsel of the assessee contended that the ITAT has not remitted the matter to the file of the CIT(E) with certain direction. He submitted that there are some directions therein as ITAT has referred to CBDT Circular/instruction therein. He further referred to following case laws:

- i) Shree Ekveera Dhyan Prasarak Mandal Vs. CIT(E) [ITA No. 6817/Mum/2016 dated 4.9.2018]
- ii) Americal Hotel & Lodging Association Educational Institute Vs. Central Board of Direct Taxes & Ors. (301 ITR 86)

9. He further submitted that in similar group case ITAT has directed for grant of registration in similar facts. The proposition expounded by him is that the assessee can have one of the object which is not related to education as long as the other objects are for education and since the assessee has not pursued the other object which is not related to education the assessee cannot be denied registration grant on exemption under section 10(23C)(vi)/(via) of the Act.

10. Per contra learned Departmental Representative submitted that learned Counsel of the assessee' contention that the ITAT has remitted the issue with certain direction is totally contrary to the remand by the ITAT. She submitted that the remand was for de novo consideration and was remanded its entirety. She further submitted that none of the case laws or the CBDT circular referred by learned Counsel of the assessee provide that assessee can have an object which is not related to the pursuit of education but assessee can be provided registration since assessee has not yet engaged into any activity which is not related to education though mentioned in the objects.

11. Before proceeding further it may be gainful to refer to the order of learned CIT(E) in the first round rejecting the assessee request for registration.

“” I have perused the reply of the assessee in detail. However, the contentions of the applicant trust are not acceptable as the same does not fall within the purview of sec 10(23C)(vi) which reads as under;

"vi. any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority or"

6.1 Accordingly, three conditions have to be fulfilled for claiming exemption u/s. 10(23C)(vi) of the I.T. Act. These are :-

- (i) There has to be an educational institution;
- (ii) It should exist solely for the educational purposes and;
- (iii) It should not be for the purpose of profit.

6.2 The above conditions are cumulative and if even one of the conditions are not fulfilled, the trust shall not be entitled for registration u/s. 10(23C)(vi) of the Act. As discussed above, the object clause of the trust shows-that it is not exiting solely for the purpose of education. As discussed above, the objects also include objects regarding raising of status and dignity of the teaching profession which is not in the nature of imparting education directly. However, the authorization to amend the object clauses to add new objects for promotion of public good also authorizes the Managers of the trust to add any other activity which may not be educational in nature. There is no restriction in the object clause to restrict any new object to be added. Therefore, it is clear from the above mentioned facts that the trust is not existing solely for the purpose of education.

6.3 The submission of the applicant trust is of no help as the object clause and other clauses of the trust deed show that it is not existing solely for the

purpose of education and it can spend the funds on other objects also. Grant of registration u/s. 10(23C)(vi) is to be governed by the object clause and not by the actual activities carried out by the trust. Reliance is also placed on the judgement of the Hon'ble Andhra Pradesh High Court in the case of New Noble Education Society vs. CCIT 12, [Taxmann.com 267 (2011) j, wherein it has been held by the Hon'ble High Court that;

"Even if the applicant had not applied its income to achieve those non-educational objects, they would still be disentitled to the benefit of being exempted under section 10(23C)(vi), as the exemption there under is available only to the educational institutions whose existence is solely for the purpose of education."

6.4 The applicant trust has also placed reliance on the judgement of the Hon'ble Supreme Court in the case of American Hotel and Lodging Association Educational Institute vs. CBDT (301 ITR 86)(2Q08). I have carefully perused the judgement of the Hon'ble Supreme Court. However, it is noted that the issue involved before the Hon'ble Supreme Court was whether the institute was existing for the purpose of education or for the purpose of profit and in that there were other objects in the trust deed that the institute is existing for any other purpose-other than education. The Supreme Court in that case has held that it is not necessary that the institute should exist for profit. If it is existing for education, the registration may be allowed. The fact in the present case are different as the institute is not existing solely for the purpose of education and it is existing for some other objects as mentioned in the trust deed as discussed in the proceeding paras. Accordingly, the judgement of the Hon'ble Supreme Court respectfully distinguishable.

6.5 Reliance has also been placed on the judgement in the case of Queens Educational Society-vs-CIT, 371 ITR 699 (SC) (2015) and Simpkins School - vs-Director General of Income Tax (Investigation) & Others, 367 ITR 335 (All) (2014) and other judgements which have been reproduced in the preceding para. As discussed above, the facts of the present case are distinguishable from the case relied upon by the applicant trust.

6.6 Accordingly in view of the above mentioned facts and circumstances, I am of the considered opinion that the applicant trust is not existing solely for the purpose of education and is therefore not entitled for exemption u/s. 10(23C)(vi). The application for approval u/s. 10(23C)(vi) is therefore rejected."

12. Upon careful consideration we firstly note that there are two clauses to which the revenue had objected. The same read as under :-

- (i) To try to raise the status and dignity of the teaching profession.
- (ii) To amend, modify, substitute or add any new object for promotion of the public good.

13. As regards the object mentioned in (i) we are unable to accept the contention of the revenue that it is something which can be said to be not related to the field of education. The learned CIT-DR also could not rebut our observation in this regard with any cogency. Hence revenue's objection for this object in its trust deed for rejection of assessee's registration is not sustainable.

14. Now we come to the clause (ii) which as noted by us above, permits the assessee to amend, modify, substitute or add any new object for promotion of the public good.

15. A reading of the same doesn't leave any doubt that it is an object which is totally unrelated to the pursuit of education. The learned Counsel of the assessee also does not argue that this is related to the object of education. On enquiry as to why the assessee doesn't get it removed from the object clause learned counsel of the assessee submitted that it is very cumbersome to get an object removed from the office of the Commissioner of charity. We do not find this reasoning at all acceptable in allowing the assessee to get exemption registration while at the same time carrying on an object clause in the trust deed which has nothing to do with the pursuit of education. None of the case laws or the CBDT instruction referred by the teamed counsel of the assessee provide that assessee can be allowed registration with one of its object totally unrelated with its object of education as assessee has not done any activity with respect to that particular objective. Learned counsel submitted that the revenue should provide a registration with a caveat that the registration will be withdrawn if the assessee pursues that particular object. We find that the submissions of the learned Counsel of the assessee is not at all convincing. We are of the considered opinion that if the trust deed contains as one of its objects an item which is totally unrelated to its object of education revenue cannot be forced to grant exemption to the assessee with a caveat that exemption registration should be granted as long as assessee doesn't pursue that particular object and shall stand with dream otherwise. The submission of

the learned counsel of the assessee that it is very difficult to get the object altered from the office of the Commissioner of charity is also not sustainable as director of income tax exemption is also discharging a statutory duty. He cannot be directed to do something which is not permissible in law simply on the ground that it is difficult for the assessee get an object removed from its trust deed from the office of another authority. Hence we uphold the order of the learned CIT(E) in rejecting the assessee's application for the reasons mentioned by us hereinabove.

16. In the result assessee's appeal stands dismissed.

Order pronounced in the open court on 10.03.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 10/03/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(E)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS