

**आयकर अपीलिय अधिकरण, "चेन्नई" न्यायपीठ चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**  
**AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3401/CHNY/2018**

**Assessment Year: 2017-18**

<b>Ubaidulla Educational Foundation</b> 5/2, Jamalia Street Rajagiri, Papanasam District - Thanjavur [Tamil Nadu] <b>Pin -614207</b> <b>[PAN: AABCU6415D]</b>	Vs	<b>C.I.T. (Exemption), Chennai</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri S. Sridhar, Advocate
Revenue by :	Shri AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 24/05/2022  
घोषणा की तारीख /Date of Pronouncement : 19/08/2022

**आदेश/O R D E R**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER :**

This appeal by the assessee is arising out of the order of the learned Commissioner of Income Tax (Exemptions) - Chennai [hereinafter the "Id. CIT(E)"] vide File No. CIT(E) No. 3(10)/2017-18, vide order dt. 31/10/2018, wherein the Id. CIT(E) has rejected the application made by the assessee for exemption u/s 10(23C)(vi) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act')

2. Assessee was directed to file revised ground of appeal to make them precise and concise in terms of Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 (hereinafter referred to as the "ITAT Rules"). The revised grounds as filed by the assessee are reproduced as under:-

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“1. The Id. C.I.T (Exemptions), Chennai, erred in law and on facts, in rejecting the appellant's application in Form No.56D dated 19.09.2017 seeking approval for exemption under Section 10(23C)(vi) of the Income Tax Act, from 2017-18 assessment.

2 The Id. C.I.T (Exemptions), Chennai, ought to have held that the application in the prescribed Form No.56D read with rule 2CA of the I.T. Rules dated 19.09.2017, was correctly sent to the Chief Commissioner of Income- tax, Trichy, having jurisdiction over the appellant, by registered post AD, within the specified date viz. 30.09.2017.

3. The Id. C.I.T (Exemptions), Chennai, ought to have held that he was also authorized by the C.B.D.T. as prescribed authority for the purpose of Section 10(23C)(vi) of the Income Tax Act with effect from 15.11.2014.

4. The Id. C.I.T (Exemptions), Chennai, has not disputed, the fact, that the application in the prescribed Form No-56D, was received by the prescribed authority on 25.09.2017, which was confirmed by the Assessing Officer (Exemptions Ward), Trichy, in his letter dated 30.10.2017.

5. The Id. C.I.T (Exemptions), Chennai, ought to have held, that the time limit for disposal of the application filed in Form 56D of the I.T. Rules on 25.09.2017, expired on 30.09.2018 and the order passed on 31.10.2018 was time barred and not valid in law.

6. The Id. C.I.T (Exemptions), Chennai, ought to have held that the pre-requisite conditions for granting approval u/s 10 (23C) (vi) of the Income Tax Act, viz. that the appellant existed during the relevant year solely for educational purposes and not for profit, having been fulfilled, denying of approval is arbitrary, illegal and against the directions given in the C.B.D.T. circular. 376 ITR 16(Statute) and (2008) 301 ITR 86 SC

7. The Id. C.I.T (Exemptions), Chennai, ought to have held, that the appellant educational institution was granted exemption u/s 10(23C)(iiiad) of the Income Tax Act, in earlier years would, prima facie indicate the conditions for exemption are satisfied.

8. The Id. C.I.T (Exemptions), Chennai, ought to have held that the appellant exists solely for educational purposes and merely because the memorandum of association has many other incidental objects, which were not carried out, cannot be denied exemption u/s 10(23C) (vi) of the Income Tax Act - 337 ITR 335 (All).

9. The appellant, therefore prays that the order of the C.I.T (Exemptions), Chennai dated 31.10.2018 rejecting approval u/s 10(23C) (vi) of the Income tax Act may be held time barred and consequently the exemption sought for shall be deemed to have granted.

10. *The appellant also prays that the Hon'ble Income tax Appellate Tribunal 'A' Bench, Chennai may pass such other order as it may deem fit in accordance with law.*

11. *The appellant further prays that it may be permitted to file additional grounds, if any, at the time of hearing."*

3. Brief facts of the case as culled out from the record are that the assessee is a company incorporated u/s 25 of the Companies Act, 1956, under the name and style of "M/s. Ubaidullah Educational Foundation". It is a company limited by guarantee and not having share capital. The liability of the members of this company is limited, as stated in the memorandum of association of the assessee placed on record. This assessee has filed an application in Form No. 56D seeking exemption u/s 10(23C)(vi) of the Act pursuant to its main object of carrying out educational activities. The said application was filed before the Income Tax Officer (Exemptions Ward) - Trichy, for which the acknowledgement date as noted on the communication made by the Income Tax Officer (Exemptions Ward) - Trichy, to the Id. CIT(E), Chennai is 25/09/2017. This communication by the Income Tax Officer (Exemptions Ward) - Trichy, was received in the office of the Id. CIT(E), Chennai on 16/10/2017, acknowledged under the seal and stamp of the said office. Based on this date of receipt i.e., 16/10/2017, Id. CIT(E), took it as the date of filing of application for claiming exemption by the assessee. Id. CIT(E) called for reports from the Assessing Officer and JCIT (Exemptions), Chennai, based on which a show cause notice was issued to the assessee to explain its case seeking exemption. The main points which were raised in the said show cause notice related to:-

*"i) From the incidental and ancillary objects of the assessee it was observed that it did not exist solely for the purpose of education.*

*ii) In respect of the main objects of the assessee, the aim of the assessee with special and particular interest for the development of education of Muslim minority section.*

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*iii) The application filed by the assessee is time barred for the approval under section 10(23C)(vi) for the assessment year 2017-18, since it ought to have been filed on or before 30/09/2017.*

*iv) There is violation of provisions of Section 13(1)(b) of the Act.*

*v) The fees charged by the assessee from the students was in excess of what has been fixed by the fee fixation committee."*

4. Assessee submitted its detailed reply explaining the issues raised in the said show cause notice and substantiated it by furnishing corroborative documents placed on record in the paper book. Ld. CIT(E) rejected the application of the assessee by holding that assessee does not exist solely for the purpose of education since there are several objects which are of general public utility. He also held that provisions of Section 13(1)(b) of the Act are violated and also that fees collected is over and above what has been fixed by the Fee Fixation Committee as the assessee has charged and collected capitation fees from the students.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. Before us, Shri S. Sridhar, Advocate, represented the assessee and Shri AR V Sreenivasan, Addl. CIT, represented the Department. Ld. Counsel for the assessee, pointed out that a detailed written submission along with a paper book containing 65 pages and a case-law paper book containing nine citations as well as a separate compilation of statement of accounts for the years covering Financial Years 2014-15 to 2020-21 are placed on record. In respect of the first issue relating to the Ld. CIT(E) holding the application filed by the assessee in Form 56D, as time barred, the Ld. Counsel for the assessee, pointed out to the letter of the Income Tax Officer (Exemptions Ward) - Trichy, dt. 30/12/2017 placed at page no. 49 of the paper book which is addressed to the assessee seeking certain details in respect of the

application made by the assessee, for grant of exemption under section 10(23C)(vi) of the Act. In this letter, the reference made is to the application filed by the assessee with the Id. CIT(E), Chennai on 25/09/2017. Reference to another communication by Income Tax Officer (Exemptions Ward) - Trichy, to the Id. CIT(E), Chennai, received by the office of the Id. CIT(E) on 16/10/2017, wherein also the acknowledgement date has been mentioned as 25/09/2017, to demonstrate that the said application was filed within due date prescribed i.e., on or before 30/09/2017. Thus, Id. Counsel for the assessee emphasized that rejection of the application by holding it as time barred is factually incorrect and bad in law. Ld. Counsel further submitted that law requires the order granting exemption or rejecting the application, ought to have been passed within 12 months from the end of the month in which such application is received and, therefore, the impugned order which is dt. 31/10/2018, ought to have been passed on or before 30/09/2018. According to the Id. Counsel, the impugned order is bad in law and, therefore, the exemption sought by the assessee u/s 10(23C)(vi) of the Act is deemed to have been granted.

7. Ld. Counsel for the assessee further submitted that the main object as contained in the memorandum of association of the assessee is to promote the educational interest of Indian community as a whole with special and particular interest for the development of education for Muslim minority section by establishing primary, middle and higher secondary schools, colleges etc. as well as training institutions and conducting industrial training, workshops etc. The Id. Counsel for the assessee, further emphasised on the fact that the assessee has been existing solely for the purpose of education by referring to the financial statements placed on record for the past seven years i.e., from financial years 2014-15 up to 2020-21.

7.1. Ld. Counsel for the assessee took the bench through the income and expenditure account for all these seven financial years to demonstrate that the income of the assessee comprised of only school fees, surplus on sale of text books and notebooks, identity cards and photos and interest income on certain miscellaneous assets. From the balance sheets of these years, Ld. Counsel pointed out that the fixed assets owned by the assessee include land and building, furniture and fitting, equipments, all of which are in respect of the school that is being run by the assessee. He further referred to the two assessment orders passed u/s 143(3) of the Act for Assessment Year 2015-16 dt. 20/07/2017 & for Assessment Year 2016-17 dt. 22/10/2018, both of which are placed on record in the paper book and submitted that the Income Tax Officer (Exemptions Ward) - Trichy, has categorically noted the fact about the assessee that it is an educational institution and that the assessee's only activity is running the matriculation school at Rajagiri under the name and style of "Ubaidull Matriculation Higher Secondary School". In both these years the assessee has claimed exemption u/s 10(23C) (iiiad) of the Act, which was allowed by the Income Tax Officer (Exemptions Ward) - Trichy. By verifying all these facts, the assessments have been completed after noting the fact of the assessee being an educational institution and having its activity only of running a school, Ld. Counsel emphasised that the assessee exists only for the purpose of education as enunciated in Section 10(23C)(vi) of the Act.

8. He then submitted that since it is an undisputed fact about the assessee running an educational institution only and that merely because there are objectives of the assessee which are incidental and ancillary to the attainment of the main objectives cannot lead to draw an adverse conclusion that the educational institution is not existing solely for the purpose of education. He further emphasised that if the primary or dominant purpose

of institution is educational, another object which are merely ancillary/ incidental to the primary or dominant purpose would not dis-entitle the institution to the benefits provided under the law. He thus submitted that test which has to be applied is whether the object, which is said to be non-educational, is the main or primary object of the institution or it is ancillary and incidental to the dominant primary objective which is educational. He, thus submitted that in the assessee's case, the primary or dominant purpose of the assessee is educational purpose and, therefore it meets the requirements of the test as provided u/s 10(23C)(vi) of the Act.

9. In respect of the issue relating to collection of excess fees as against fixed by the Fee Fixation Committee, Id. Counsel strongly submitted that the allegation made by the Id. CIT(E) at para six of the impugned order that the assessee has collected capitation fees is grossly incorrect, baseless and devoid of any merit.

10. He submitted that collecting the price for supply of textbooks and notebooks, cost of ID cards and subscription of parent-teachers association, have been wrongly considered by the Id. CIT(E) as capitation fees. To demonstrate this, he referred to one of the sample receipts issued by the assessee to a student, issued against collection of fees wherein no such capitation fees has been collected. A copy of the said receipt is placed at page number 65 of the paperbook.

11. Id. Counsel further submitted that Id. CIT(E) has compared the fee collection for the impugned year with the fixation of fees by the committee for the year 2015-16 and hence comparison itself is not justified. Accordingly, Id. Counsel stated that the Id. CIT(E) has erred in rejecting the

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application for exemption by holding that the assessee is collecting capitation fees which is devoid of any merit.

12. In respect of the issue raised by the ld. CIT(E), for the violation of provisions u/s 13(1)(b) of the Act, where the aim of the assessee is to promote a special and particular interest for the development of education for Muslim minority section, ld. Counsel submitted that assessee is running its school where students are admitted and imparted education irrespective of their religion, caste or creed. It stated that it is a heterogeneous population of students, representing the Indian community as a whole.

13. Per contra, ld. Sr. D/R, placed strong reliance on the order of the ld. CIT(E) and submitted that the application has been rightfully rejected as stated by the ld. CIT(E) in its order.

14. We have heard rival submissions, perused the material available on record as well as the case-laws cited. After giving a thoughtful consideration, we hold as follows:-

15. First issue relates to the limitation of application filed by the assessee claiming exemption. We take note from the documents placed on record which the ld. Counsel for the assessee has referred. From these documents, it is evidently demonstrated that the registration application for claiming exemption u/s 10(23C)(vi) of the Act was submitted by the assessee before the Income Tax Officer (Exemptions Ward) - Trichy, which was duly acknowledged by him on 25/09/2017. We also take note of the fact that the ld. CIT(E) has taken into cognizance, the date of receipt of the impugned application which is 16/10/2017, which was in respect of the said application, sent by the Income Tax Officer (Exemptions Ward) - Trichy to

his office. Admittedly, the fact on record is that the said application was submitted on 25/09/2017 and is within the time limit prescribed by the law.

15.1 On the submission made by the Id. Counsel in respect of the impugned order of the Id. CIT(E) being barred by limitation i.e., it ought to have been passed on or before 30/09/2018 as against the date on which it is passed i.e. 31/10/2018, we take note from the perusal of the 9th proviso to Section 10(23C)(vi) of the Act that it merely prescribes a period of 12 months within which an order granting or rejecting the grant of approval shall be passed by the prescribed authority. This proviso to Section 10(23C)(vi) of the Act does not stipulate that registration will be automatic if the application is not disposed within the period prescribed. Concept of deemed registration or recognition is absent in this section. It merely prescribes the period within which an application for registration/recognition/approval is to be considered and disposed of.

15.2. Therefore, we are not inclined to ascribe our views on the submission made by the Id. Counsel for the assessee for holding the impugned order passed by the Id. CIT(E), as bad in law.

16. On the moot point, as to whether the assessee exists solely for the purpose of education or not, we find force in the submissions made by the Id. Counsel for the assessee who has evidently demonstrated from the material placed on record that the primary or dominant object for which the assessee exists is for the purpose of education. Admittedly, it is a fact on record that the assessee is deriving its income/receipts only from running of school and all of its application of income of the receipts are in attainment of the sole objective of carrying out educational purposes. From the assessment orders in the assessee's own case for the assessment year 2015-

16 and 2016-17, the department itself has factually noted that the assessee is an educational institution and its only activity is that of running a matriculation school at Rajagiri under the name and style of “Ubaidull Matriculation Higher Secondary School”. From these documentary evidences, which are verifiable on facts, we note that there cannot be any dispute that the assessee has been conducting and running the matriculation school. However, there is no material on record which the Id. Sr. D/R could point out to demonstrate that the assessee is carrying on any other activity, other than running the school. We note that even though the incidental and ancillary objects listed in the memorandum of association of the assessee do include objects which are other than educational activity but it is not the case of the revenue nor is there any material to show that the assessee was running any activities other than educational activity. Merely because there exists objects which are not related to educational activities, it is not sufficient to deny the exemption/benefit of Section 10(23C)(vi) of the Act.

17. There are adequate safeguards that if the activities other than educational activities are undertaken by the assessee, exemption granted can be withdrawn. Based on the factual matrix in the present case, we are inclined to hold that in the absence of any evidence or material against the assessee showing that it is involved in any other activity other than educational activity, it cannot be denied the exemption claimed u/s 10(23C)(vi) of the Act. For holding so, we find force from the decision of the honourable jurisdictional High Court of Madras in the case of *Bosco Educational Academy Private Limited versus CCIT [2021] 127 taxmann.com 776 (Mad.)*, wherein by placing reliance on the decision of the Hon’ble Apex Court in the case of *Queens Educational Society vs. CIT [2015] 55 taxmann.com 255 (SC)*, it held that the provision as it reads and the law as declared by the

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Hon'ble Supreme Court indicate that approval has to be granted for an educational institution which satisfies the fundamental requirement of existence for education purposes and does not exist solely for the purpose of profit. It further held that once the approval is granted, it has to be in force for a period of three years. At the same time, it is open for the prescribed authority to stipulate the conditions for ensuring there is no misuse by such educational institution of the approval.

17.1. We also find force from the decision of the Honourable High Court of Karnataka in the case of *Gitanjali Education Society vs. ADIT 45 taxmann.com 206 (Kar.)*, wherein it was held that unless it was shown that society was running any activity other than educational activity, for mere existence of object not related to core activity exemption could not be denied. Similar findings were given by the Hon'ble Bombay High Court in the case of *Vanita Vishram Trust vs. CCIT 327 ITR 121 (Bom.)*. Hon'ble Bombay High Court while holding so, also took note of the fact that the trust existed solely for educational purpose which was evident from the assessment orders for the Assessment Years 2001-02 to 2006-07. It noted that both these assessment orders which had been made u/s 143(3) contained a statement of fact to the effect that the assessee was running schools with Gujarati and English as media of instructions at the primary and secondary stage and that the assessee also conducted a college for girls with the sole intent of imparting education.

17.2. We find that similar is the factual position in the present case before us wherein the ITO (Exemptions Ward)- Trichy, has taken note of the fact that the assessee's only activity is that of running a matriculation School at Rajagiri under the name and style of "Ubaidulla Matriculation Higher Secondary School".

18. Further on the issue raised by the Id. CIT(E), relating to excess fees charged by the assessee in the form of capitation fees, we find that the assessee has been collecting the price for text books and notebooks, ID cards and subscription to parent-teacher Association, as recorded under the income and expenditure statement placed on record for the past seven years i.e., F.Y. 2014-15 to 2020-21. A sample receipt issued to a student against payment of school fees, wherein no capitation fees has been collected is also placed on record. We find that Id. CIT(E) has wrongly considered this collection by the assessee as capitation fees and, therefore, it cannot be a basis for rejecting the application made by the assessee.

19. In respect of the observation by the Id. CIT(E) with reference to the report from JCIT (Exemptions), wherein it has been observed that the aim of the assessee is to promote educational interest of the Indian community as a whole with special and particular interest for the development of education for the Muslim minority section, we note that the assessee has obtained approval for running its school from the Director of Matriculation Schools, Chennai, which is an authority under the State of Tamil Nadu which substantiate the claim of the assessee that the beneficiaries of running the school by the assessee is general public at large without restricting admissions to a particular community or caste.

20. Thus, we conclude that the assessee is entitled to registration for claiming exemption u/s 10(23C)(vi) of the Act and the revenue is accordingly directed to issue the approval certificate to the assessee effective from Assessment Year 2017-18. The prescribed authority while issuing the approval certificate is at liberty to stipulate such conditions in the approval as are necessary for an educational institution to operate so that, the legitimate benefit of exemption under the provisions of Section 10(23C)(vi)

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of the Act is not abused by the assessee keeping in mind, views expressed by the Hon'ble Supreme Court at para 44 and para 55 in the case of *American Hotel and Lodging Association Educational Institute vs. CBDT (2008) 301 ITR 86 (SC)*.

21. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 19<sup>th</sup> August, 2022 at Chennai.**

**Sd/-  
(MAHAVIR SINGH)  
VICE-PRESIDENT**

**Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

Kolkata, Dated 19/08/2022  
*SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , चेन्नई /DR,ITAT, Chennai
6. गार्ड फाईल /Guard file.