



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.68/LKW/2021
Assessment Year: N.A.

Smt. Satyawati Memorial Educational and Charitable Trust Satyawati Sadan, 4/4/326 Khaswaspura, Ayodhya Road Faizabad	v.	The CIT (Exemption) Lucknow
TAN/PAN:AAJTS7143K		
(Appellant)		(Respondent)

Appellant by:	Shri Shailendra Mishra, Advocate		
Respondent by:	Smt. Sheela Chopra, CIT (DR)		
Date of hearing:	25	07	2022
Date of pronouncement:	22	08	2022

ORDER

PER A.D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT (Exemption), Lucknow dated 31.3.2021, passed under section 10(23C)(vi) of the Income Tax Act, 1961, raising the following Grounds of Appeal:

- 1. That the learned CIT Exemption has erred in law and on facts in failing to appreciate that the activities of the trust have been solely confined to running of educational institutions and no other activity mentioned in the objects of the trust had been pursued by the appellant-trust. The arbitrarily refusal to grant registration vide impugned order under section 10(23C)(vi) of the I.T. Act, 1961 is illegal as such and the requisite approval may very kindly be allowed to appellant-trust.*

2. That the learned CIT Exemption has erred in law and on facts in rejecting the application of the trust and passing the order under section 10(23C)(vi) of the Income-tax Act, 1961, without allowing the appellant-trust a reasonable opportunity of being heard .

2. The Registry has informed there is a delay of 81 days in filing of the appeal. As per the petition for condonation of delay, dated 24.8.2021, the applicant received the order dated 31.3.2021, passed by the Id. CIT (E) under section 10(23C)(vi) of the I.T. Act through email on 5.4.2021; that the limitation for filing of the appeal was expiring on 4.6.2021, but filing of the appeal has been postponed by the Tribunal, vide its order dated 30.3.2020, w.e.f. 15.3.2020 till further orders; that the Hon'ble Supreme Court, vide order dated 27.4.2021 has restored their order dated 23.3.202, directing that the period (s) of limitation, as prescribed under any general or other laws in respect of judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders; that it has further been clarified that the period from 14.3.2021, till further orders, shall also stand excluded in computing the period (s) of limitation for instituting the proceedings; and that therefore, there was sufficient cause for delay in filing of the appeal, which delay be condoned.

3. It is seen that the order under appeal is dated 31.3.2021. It is stated to have been received by the assessee on 5.4.2021. The due date for filing the appeal was 4.6.2021. However, the appeal was filed on 10.9.2021, thereby incurring a delay of 81 days. The Hon'ble Supreme Court, vide order dated 27.4.2021 (copy placed on record), has restored their order dated 23.3.202, directing that the period (s) of limitation, as prescribed

under any general or other laws in respect of judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. It has further been clarified that the period from 14.3.2021, till further orders shall also stand excluded in computing the period (s) of limitation for instituting the proceedings, outer limits (within which the Court or Tribunal can condone the delay) and termination of proceedings.

4. From the above facts, it is evident that there was sufficient cause, which prevented the filing of the appeal within the prescribed time limit. The delay of 81 days in filing of the appeal is, hence, condoned.

5. The ld. Counsel for the assessee has submitted that the ld. CIT (E) has erred in law and on facts in not appreciating the fact that the activities of the Applicant Trust are solely confined to running of educational institutions and no other activity mentioned in the objects of the Trust had been pursued by the Applicant Trust; that the arbitrary refusal to grant approval by the ld. CIT (E), vide impugned order under section 10(23C)(vi) of the I.T. Act, 1961, is illegal; that the ld. CIT (E) rejected the application for grant of approval under section 10(23C)(vi) for the sole reason that the assessee is not existing solely for educational purposes, but for profit; that whereas the fact is that the Trust came into existence with the objects which are solely related to Education and the ld. CIT (E) has wrongly presumed that the assessee was engaged in other charitable purposes and was earning profit; and that since the ld. CIT (E) Exemption has erred in law and on facts in rejecting the application of the Trust for grant of approval under section 10(23C)(vi), therefore, the ld. CIT (E) be directed to grant the requisite approval to the Applicant Trust.

6. The Id. D.R., on the other hand, has placed strong reliance on the order of the Id. CIT (E).

7. Apropos the appeal per se, by virtue of the impugned order, the Id. CIT (Exemptions) rejected the assessee's request for grant of approval for exemption under section 10(23C)(vi) of the Income Tax Act, holding that the Assessee-Society/Trust, in its bylaws, contains various objects including education, whereas it was being maintained that the other objects, which are non-educational or ancillary, are not being pursued; that as such, the test to be applied is as to whether the non-educational objects are the main objects of the Institution, or they are ancillary to the dominant object of education; that the test is the genuineness of the purpose tested by the obligation created to spend money exclusively for education; that if that obligation is there, the income becomes entitled to exemption; and that as per Clause 7(b) of the assessee's Deed of Declaration dated 19.2.2008, for the furtherance of the objects of the Trust, the Trustees shall have the following powers:

“.....For the furtherance of the Trust, the Trustees to apply the whole or any part of the income of the trust, or the trust fund or accumulations thereto, any one or more of the objects of the trust, as the trustees may, in their discretion, deem fit from time to time; that this signifies that the Trust is not solely for educational purposes, as its funds/income are being utilized for other objects also, which objects are not for educational purposes, or incidental to educational purposes; that the Society has failed to establish that it is a part of Institution which is engaged solely for educational purposes and not for the purpose of profit; that the Society has also failed to establish that the income in respect of which exemption is claimed, is a part of income of the Institution; that the Society earned income of Rs.97,48,804/-, against which, expenditure of Rs.76,48,420/- has been incurred, due

to which, excess of income over expenditure comes to Rs.21,00,384/-; that it is not possible to carry on educational activity in such manner that the expenditure exactly balances with the income and there is no profit; that the profit/surplus, if any, can neither be diverted for any other use or purpose, or for any other objects under the Third proviso to section 10(23C)(vi) of the I.T. Act; that it is to be seen whether the income has been applied solely and exclusively to the objects for which the Institution has been established, i.e., for the purpose of education only; that the applicant has not only to impart education, but must also apply its income exclusively for the purposes of education; that the words “not for the purpose of profit” accompany the words “existing solely for educational purposes” have to be read and interpreted keeping in view the Third proviso to section 10(23C)(vi), which prescribes the methodology for utilization and accumulation of income at the hands of the educational institution; that for granting approval under section 10(23C)(vi), the objects in the Memorandum of Association of the Society/Trust are to be the conclusive proof of such Society/Trust existing solely as an educational Institution entitled for the benefits and being eligible for approval under section 10(23C)(vi); that the objects of the applicant-Society included various other objects falling in the category “to organize social services and to do the needful for the poor children on social ground, etc.” and various other objects which are not solely educational in nature; that these objects are also not either ancillary to or integrally connected with the sole object of providing education; and that as such the applicant-Society is not existing solely for educational purposes.

8. To begin with, section 10(23C)(vi) read with the Third Proviso thereto is reproduced as follows:

“In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(23C) any income received by any person on behalf of—

(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

.....
.....

Provided also that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via)—

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and

(b) does not invest or deposit its funds, other than—

(i) any assets held by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of the fund, trust or institution or any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1973;

(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) and sub-clause (ia), by way of bonus shares allotted to the fund, trust or institution or any university or other educational institution or any hospital or other medical institution ;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11.”

9. Thus, as per section 10(23C)(vi) of the I.T. Act, where the University/Educational Institution exists solely for educational purposes and not for the purposes of profit (other than those prescribed in section), its income shall not be included in its total income, provided it applies its income wholly and exclusively for the objects for which it is established.

10. Section 10(23C)(vi) provides that in computing the total income of a previous year of any University or other Educational Institution existing solely for educational purposes and not for the purposes of profit, any income of such University or other Educational Institution, shall not be included.

11. The Third Proviso to section 10(23C)(vi) is applicable to the case. As per this proviso, in order to be eligible to the exclusion offered by the provisions of the section, the University or other Educational Institution needs must apply its income, or accumulate it for application, wholly and exclusively to the objects for which it is established, subject to limitations provided for in Clause (a) of the proviso and it does not invest or deposit its funds other than as provided for under clause (b) to the

proviso, for any period during the previous year otherwise than in any one or more of the forms or modes specified in section 11(5).

12. The expression “existing solely for educational purposes and not for the purposes of profit”, as contained in the main section 10(23C)(vi) of the I.T. Act, is the operative expression. In other words, in order to be able to avail the exclusion provided for under the section, the University or other Educational Institutions concerned must be existing solely for educational purposes, and not for purposes of profit. The necessary concomitant is compliance of the Third Proviso, as above, by way of application of income, or accumulation thereof, as per the mandate of the proviso, besides investment or deposit of the funds.

13. In the present case, the Id. CIT (E) rejected the assessee’s request for grant of approval for exemption under section 10(23C)(vi) of the I.T. Act , holding that (1) the objects of the applicant included non-educational objects also, which objects are not ancillary or incidental to the dominant object, i.e., education; (2) that Clause (vii)(b) of the Deed of Declaration executed on 19.2.2008 states that for the furtherance of the objects of the Trust, the Trustees shall have the powers enumerated therein, to apply the whole or any part of the income of the Trust or the Trust fund or accumulation thereto, to any one or more of the objects of the Trust, as the Trustees may, in their discretion, deem fit from time to time, showing that the funds/income of the Trust are being utilized for other objects too and not solely for educational purposes; (3) that the applicant Trust has not been able to establish that it is engaged solely for educational purposes and not for the purposes of profits; (4) that for the year, there was excess of income over the expenditure,

amounting to Rs.21,00,384/-, the applicant having earned income of Rs.97,48,804/-, against which, expenditure of Rs.76,48,420/- had been incurred, excluding the depreciation shown at Rs.15,67,099/-; and (5) that under the Third Proviso to Section 10(23C)(vi) of the I.T. Act, surplus, if any, cannot either be diverted for any other use or purpose, or be diverted to be used for any other object, which requirement has not been made in the case of the assessee.

14. As per the Id. CIT (E), the following objects of the Applicant Trust are not solely educational in nature and they are also not either ancillary to, or integrally connected with, the sole object of providing education:

- a) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and / or aid or help in the setting of and / or maintaining and / or running hospitals, charitable dispensaries, child welfare centers, research centers, diagnostic centers, bank service centers, immunization centers, health centers and to apply or provide utility articles and services to patients, attendants and others and to provide medical relief and/ or aid to the suffering humanities.
- c) To give, provide and/or render food, medicine and other help and/or assistance in any shape or form to the poor deserving and needy persons.
- d) To give, provide and/or render monetary and/or other help and assistance for the relief of persons and animals affected by natural and other calamities such as flood, fire, famine, cyclone, earthquake, storm, accident, drought, epidemic, to give donations, subscriptions or contributions

to institutions, establishments doing relief work on such occasions.

i) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running by monetary gifts or otherwise, centers, stadium, play grounds and parks for public use, sports and games" and other social welfare works and/or activities.

j) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running institutions, centers, auditoriums and the like for the running of welfare and other services to the public and to provide meeting room for socially useful activities and functions.

k) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up establishment, maintenance and/or running Dharamsalas.

l) To promote, organize, administer, support, maintain, and/or grant aid to any person, institution, or society or organization what so ever having for its objects of charitable purposes and to incur expenditure in connection therewith.

n) To help in the preservation of useful animals.

15. In its written submissions filed before us, the Applicant Trust has stated that the activities of the Trust has been solely confined to the running of Educational Institutions and that no other activity mentioned in the objects of the Trust have been

pursued by the Trust. It has been stressed that it is only the following objects, which are educational objects, that are being pursued by the Applicant Trust and no other objects. i.e., :

b) To establish, set-up, maintain finance support and/or help in the setting up and running schools and other educational institutions, orphanages, widow homes, lunatic asylums, or other establishments for relief and / or poor, old and/ or destitute.

e) To promote advance and encourage and/or aid in helping, promoting, advancing and encouraging primary, secondary including technical and medical education also physical training, training of handicrafts, fine art and other useful arts, crafts among the public including the establishment and maintenance of Kala Kendras and other welfare centers for them.

f) To open, found, establish, promote, set-up, run, maintain, assist, finance, and/or help in the setting up and/or maintaining and/or running schools, colleges and other establishments or institutions for advancement of education and of knowledge in literature, teachers training humanities and all other useful subjects.

g) To encourage education and training in handicrafts, fine arts among people in general and establish and found institutions imparting such education and to establish, maintain, support or help by monetary gifts or otherwise, centers and institutions for women and children and to provide social welfare works for women and children.

h) To grant, pay or give scholarship, stipends, prizes, rewards, allowance and other financial assistance or help in cash or kind to students with a view to help them in prosecuting their studies in schools, colleges, educational institutions, technical institutions, art schools, institutions teaching commercial and other arts.

j) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running institutions,

centers, auditoriums and the like for the running of welfare and other services to the public and to provide meeting room for socially useful activities and functions.

16. It has been contended that the Id. CIT (E) has erred in rejecting the applicant's request for grant of approval for exemption under section 10(23C)(vi) on the specious basis that there exist, in the applicant's Deed of Declaration, objects which are not educational in nature and which are not ancillary to the educational objects of the applicant.

17. The Id. CIT (E), it is seen, has not contrverted the existence of the object principles (b), (e) to (h) and (j), as reproduced hereinabove, in para 13, as being the objects pertaining to education. The only objection of the Id. CIT (E) is that for the existence of the non-educational objects of the Applicant Trust, the applicant Trust cannot be said to be existing solely for educational purposes, within the meaning of section 10(23C)(vi). The Id. CIT (E), however, has not pointed out any particular activity being carried out by the Applicant Trust in pursuance of its non-educational objects.

18. Now, the question is as to whether the mere existence of non-educational objects in the Deed of Declaration, despite the undisputed factum of no activity having been carried out in pursuance of such non-educational objects, would render the applicant ineligible for grant of approval for exemption under section 10(23C)(vi).

19. In 'CIT vs. Geetha Bhawan Trust', 213 ITR 296 (Ker.), it has been held that 'exist' means 'to be in presence, force, activity or effect at a given time. The Id. CIT (E) has not shown as to how the Applicant Trust was, at the relevant time, in force, activity or effect qua the non-educational objects of the Trust. Per contra,

the applicant has given the details of Schools/Institutions run by it. The copies thereof are appended at pages 28 – 39 of the assessee's paper book filed before us. These details, undisputedly were filed before the Id. CIT (E). Such details clearly evince that these are the Institutions pertaining to education only and regarding no other objects, non-educational in nature. Even the initial submissions filed before the Id. CIT (E) by the Applicant, placed at page 26 of the APB, support the argument of the assessee that the assessee did not carry out any activity other than education, which is apparent from the fact that in the Income & Expenditure Account placed at page 26 of the APB, the only source of income is fee and other receipts from the students, along with interest from bank account and there is no other source of income, which proves the nature of the activity.

20. In 'CIT vs. Geetha Bhawan Trust' (supra), it has also been held that the erstwhile section 10 (22), which now forms part of section 10(23C)(vi), speaks of a University or other Educational Institution existing solely for educational purposes, and not for the purposes of profit; and that what is relevant under this section, is the source of the income derived from an Educational Institution existing solely for educational purposes.

21. Hence, this objection of the Id. CIT (E) has no legs to stand on and the same is hereby disagreed with. Although the Id. CIT (E) has said so, it nowhere stands proved that the funds/income of the Applicant are being utilised for other objects too, i.e., the objects, which are not educational objects in nature, or that the Applicant is part of an Institution which is engaged for the purpose of profit. Likewise, there is nothing on record to show that the surplus of the Applicant has been diverted for any use or purpose other than educational purposes. This being so,

no violation of the Third Proviso to section 10(23C)(vi) stands proved.

22. In view of the above, finding the grievance of the Applicant-Appellant, by way of the Grounds of Appeal, the same is accepted. The order under appeal is reversed. Accordingly, the Id. CIT (E) is directed to forthwith grant approval to the Applicant for exemption under section 10(23C)(vi). Ordered accordingly.

23. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open Court on 22/08/2022.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:22/08/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar