IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
(through web-based video conferencing platform)

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 08/JAB/2022
(Asst. Year: 2020-21)

Rama Devi Shikshan Awam Sewa Samiti, Bazar Chowk, Main Road, Dindori (MP) [PAN : AAAAR 7690 C]	vs.	CIT (Exemption), Bhopal.
(Appellant)		(Respondent)

Appellant by	:	Shri Anadi Varma, AR & Shri Anurag Nema, FCA
Respondent by	:	Smt. Neeraja Pradhan, CIT-DR
Date of hearing	:	13/06/2022
Date of pronouncement	:	26/08/2022

O R D E R

Per Sanjay Arora, AM

This is an Appeal by the Assessee, a society registered under the M.P. Societies Registration Act, 1973 on 23/09/2005 (PB pg.1), agitating the order under section 10(23C)(via), dated 27/05/2021 in it's case allowing provisional approval thereto for Assessment Years (AY) 2021-22 to 2023-24.

2. The instant appeal stands filed at a delay of 190 days, which though stands condoned, and the appeal admitted, in view of the decision by the Apex Court in Suo Motu Writ Petition (C) No. 3 of 2020 dated 10/1/2022.

3. The assessee's grievance is that the same ought to have been granted with effect from, as applied for, AY 2020-21. As a consequence, it has been assessed

for AY 2020-21 at Rs. 125.25 lacs, i.e., on its gross receipt, raising a huge demand of Rs. 54.77 lacs vide Intimation dated 24/12/2021.

4. We have heard the parties, and perused the material on record.

4.1 The brief facts of the case are that the assessee-society, engaged in providing education in the rural hinterland in the State of Madhya Pradesh, applied for approval u/s. 10(23C)(vi) in the prescribed form (Form 56) to the competent authority, being the Commissioner of Income Tax (Exemption), Bhopal ('CIT(E)', for short) on 18/08/2020, w.e.f. A.Y. 2020-21. This was as, as stated, it's turnover crossed the threshold limit of Rs.100 lacs, so as to be not covered under the automatic approval route provided u/s. 10(23C)(iiiad), for the first time for the year ending 31/03/2020. The relevant provisions are reproduced for better comprehension:-

> '**Incomes not included in total income.**
>
> **10.** 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—
> (i) - (iiiac) ……
>
> (iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed.
>
> (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.
>
> *Proviso 16*
> **Provided also** that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made on or before the 30th day of September of the relevant assessment year from which the exemption is sought:

Proviso 9

Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:'

This application was to be per *proviso* 16 to s. 10(23C)(vi) made within six months from the end of the relevant previous year and, thus, in time. The order of approval or, as the case may be, rejecting approval, could, in terms of *proviso* 9, be made within twelve months from the end of the month in which the application stands made, i.e., 31/08/2021, in the instant case. Certain queries were raised by the ld. CIT(E) on 17/11/2020, which were replied to and, as it appears, satisfactorily inasmuch as no further queries were raised, and the approval sought granted on 27/05/2021, albeit AY 2021-22 onwards, and which has led to the instant appeal. The basis of the approval w.e.f. the following year; there being no whisper thereof in the impugned order, as informed during hearing, and as was the common ground before us, is the amendment by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('the Amending Act' hereinafter), amending several provisions, including sec. 10(23C), w.r.e.f. 01/06/2020, so that henceforth, i.e., 01/06/2020 onwards, an application u/s. 10(23C)(vi) would be deemed to have been made under clause (iv) of first *proviso* thereto, which reads as under:

'**Incomes not included in total income.**
10(23C)(vi)…….

Proviso 1

Provided that the exemption to the fund or trust or institution or university or other educational institution or hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), under the respective sub-clauses, shall not be available to it unless such fund or trust or institution or university or other educational institution or hospital or other medical institution makes an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,-

(i) …..;

(ii)…..;

(iii) …..;

(iv) *in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought,* and the said fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso*:*' (emphasis, supplied)

That is, *proviso* 16 supra stands omitted, and the time limit under the amended law, now included under *proviso* 1, is one month prior to the commencement of the relevant previous year for which the approval is being sought. The time limit for applying for approval for AY 2020-21 (fy 2019-20) now stands shifted to 28/02/2019. This, it is said, explains the grant of approval w.e.f. AY 2021-22. The assessee, relying on *CIT v. Vatika Township P. Ltd*. [2014] 367 ITR 466 (SC), and referring to para 31 of the said decision, reading as under, contends that this retrospective operation of the *proviso* prejudices it insofar as it impacts past transactions, and is thus not valid:

'31. Of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips vs. Eyre*, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.'

In fact, in view of Covid pandemic, the operation of the Amending Act, 2020, notified on 29/09/2020, was kept in abeyance and made effective from 01/4/2021. Accordingly, all the applications pending approval as on that date (as at the close of 31/3/2021) would stand transferred to be proceeded with electronically as per

the amended provisions of the Amending Act through the Central Processing Centre (CPC), which in the instant case is CPC, Bangalore.

4.2 The first question before us, therefore, is if the change in the year of approval justiciable, which could thus be appealed against before the Tribunal. In our opinion, inasmuch as the same could cause prejudice in a given case, and is an integral and essential part of the approval, it is an appealable issue u/s. 253(1)(f) of the Act, which provides for an appeal to the Tribunal against the order u/s. 10(23C) (sub-clauses (iv), (v), (vi) & (via)).

4.3 The second issue before us is if the law provides for any decision making on the part of the prescribed authority *qua* the year from which the approval, where so, is to be allowed, i.e., as per the law as it stood prior to the Amending Act, or thereafter. The procedure, upon filing the application for approval in the prescribed form, duly verified, is enshrined in *proviso* 2 to sec. 10(23C)(vi) under both the un-amended and amended provisions. The said provision/s, read out during hearing, does not in terms provide for either the assessee being heard in the matter or, consequentially, any adjudication in that regard by the prescribed authority. That is, the only adjudication is *qua* the eligibility or otherwise for the approval. Inasmuch as, however, it has a potential to cause prejudice, as contended in the instant case, we, as afore-stated, consider the same as appealable, forming an integral part of an approval, which is appealable before the Tribunal. We may, however, add here that the prejudice caused, giving rise to a justiciable right, is for being not allowed the approval from the year sought, i.e., *per se*, and not the consequence of being assessed at a sum higher than what the assessee considers as lawfully assessable. That is a matter subsequent and, accordingly, the subject matter of a separate, appealable right to the assessee, since exercised by it and, in fact, along with the instant appeal; the same getting into motion only on the assessee being served the notice of demand, signifying a cause of action.

4.4 Coming back to our discussion, the procedure prescribed under the Act does not contemplate the assessee being heard on and/or adjudication by the prescribed authority *qua* the year from which the approval is to be allowed. That being the case, the question of set aside, which could only be where there is scope for hearing and adjudication by the prescribed authority in the matter – of course subject to a finding of it being a fit case for set aside – does not arise. The second issue is: *How, then, is the same to be under law decided, toward which we, as afore-noted, observe essentially no variance between the pre-amended and amended law*? The procedure prescribed clearly provides for the time limit for making an application with reference to the assessment year for (and from) which it is being applied for. As such, where the same is within the said time limit, an approval, where granted, takes effect from that year, else from the year on and from which it is, as per the extant law, applicable, i.e., in terms of pre-defined and unalterable time limit. The issue, thus, reduces to whether the assessee's application u/s. 10(23C)(via) dated 18/08/2020 is validly made for AY 2020-21 and, further, is that right in any manner abrogated or diminished by the amendment in law.

4.5 In this regard, we have already found the assessee's application for approval to be in time with reference to the pre-amended law. The amendment changed the time limit w.e.f. 01/06/2020. This, in our view, could only be applicable for an application made on or after the said date, which however stands extended up to 01/04/2021. The same, thus, gets deferred up to 01/04/2021, by which date the assessee filed the application. Applications prior to the said date would therefore be governed by the pre-amended law, i.e., unimpacted by the new provisions, unless of course provided for under the amended provisions, which accordingly functions as a validating Act. As explained by the ld. CIT-DR, all the pending applications as on 01/04/2021 stand migrated to the new system, and which, as it appears to us, explains the controversy in the instant case, which is otherwise a

plain and simple, cut and dry, matter, which should normally not witness any conflict of opinion.

4.6 Toward this, we set out the relevant provisions, i.e., as they stand after the amendment. However, even before begin to have a closer look at the relevant provisions, and consider as to how the applications pending as on 01/04/2021 have been impacted by the amended law, we may clarify the clear position of law in the matter, as reiterated time and again by the Apex Court, viz. *J.P. Jani v. Induprasad Devshanker Bhatt* [1969] 72 ITR 595 (SC), wherein the Apex Court, relying on it's decision in *S.S. Gadgil v. Lal & Co.* [1964] 53 ITR 231 (SC), held that unless the terms of a statute expressly so provide, or unless there is a necessary implication, retrospective operation should not be given to a statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time. This is exactly what Shri Varma, the ld. counsel for the assessee, sought to bring home with reference to the decision in *Vatika Township Pvt. Ltd*. (supra). We state so at the outset inasmuch the same would guide our decision in the matter. The relevant provisions are being reproduced as under for ready reference:

> *'Proviso 17*
>
> **Provided also** that all applications made under the first proviso as it stood before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 pending before the Principal Commissioner or Commissioner, on which no order has been passed before the 1st day of April, 2021, *shall be deemed to be applications made under clause (iv) of the first proviso on that date*:
>
> *Proviso 9*
>
> **Provided also** that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the second proviso shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, *calculated from the end of the month in which the application was received*:

Proviso 2

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall, --
(i)….

(ii)…

(iii) where the application is made under clause (iv) of the said proviso, *pass an order in writing granting approval to it provisionally for a period of three years from the assessment year from which the registration is sought*, and send the copy of such order to the fund or trust or institution or university or other educational institution or hospital or other medical institution:' (emphasis, ours)

4.7 In our considered view, there is no ambiguity in the amended law, which clearly protects all continuing causes of action. The assessee's application dated 18/08/2020, in time for AY 2020-21 at the time it was made, would, by virtue of *proviso* 17 (of the amended law) be regarded as a valid application before the ld. Pr. CIT, the prescribed authority w.e.f. 01/04/2021, under clause (iv) of the first *proviso*, and on 01/04/2021. No separate application would be required to be filed or made by the assessee-applicant even if the amended law provides for a form different from that applicable earlier inasmuch as the law deems the application made earlier, where undisposed as at the close of 31/3/2021, be deemed to be an application under the amended law. Further, the same, in terms of the revised time limit under *proviso* 9 is to be disposed of before the expiry of one month of the end of the month in which it is received, or deemed to be received, i.e., by 31/05/2021. Two, it is to under clause (iii) of the second *proviso* to grant provisional approval for three years beginning with the assessment year for which the approval is sought. The order granting approval on 27/05/2021 in the instant case is an order under clause (iii) of the second *proviso* and, accordingly, the same, granting provisional approval, is to be from AY 2020-21 to AY 2022-23. The grant of approval, though for three years, being w.e.f. AY 2021-22, is not in terms of the extant law. There is no manner of any doubt in the matter, and it is to our mind a clear case of misreading of the clear provision/s of law. As it appears, the same has been so as the application has been regarded, perhaps on account of it being

processed through software, as an application under clause (iv) of first *proviso*, which is incorrect; the same being deemed to be so under *proviso* 17 thereto. Rather, where so considered, the assessee's application dated 18/08/2020 remains undisposed. This is however clearly not the case as the impugned order is only pursuant to the said application, which survives no longer. It is perhaps this, i.e., regarding the assessee's application, outstanding since 18/8/2020, as an application furnished u/c. (iv) of the first *proviso*, which is applicable w.e.f. 01/4/2021, that perhaps led to the approval being granted not from AY 2020-21, as sought, but from AY 2021-22. It may also be clarified that the impugned order is not an order under *proviso* 9 of the pre-amended law, as the ld. CIT-DR would have us believe during hearing, but, as afore-noted, cl. (iii) of second *proviso* of the amended law.

4.8 Though arguments during hearing by Shri Varma would extend to areas of non-retrospectivity; non-remission; deemed grant of approval, etc., we do not think that the same are required to be referred to, much less dilated upon, being inconsequential and unwarranted in the light of the amended provisions which, as clarified, and at the beginning of our deliberation, consider and indeed protect all outstanding causes of action, i.e., the applications pending disposal as at the end of 31/03/2021, or immediately prior to the commencement of the amended law.

5. The assessee, in view of the foregoing, is entitled to the benefit of the provisional approval w.e.f. AY 2020-21. The impugned order granting approval w.e.f. AY 2021-22 is, thus, not in terms of the clear provisions of law. We accordingly direct the ld. Pr. CIT to modify the provisional approval granted for a period of three years w.e.f. AY 2020-21, i.e., from which year it was sought, instead of AY 2021-22. We decide accordingly.

5. In the result, the assessee's appeal is allowed.

Order pronounced in open Court on August 26, 2022

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Dated: 26/08/2022
vr/-

Copy to:

1. The Appellant: Rama Devi Shikshan Awam Sewa Samiti, Bazar Chowk, Main Road, Dindori (MP)
2. The Respondent: CIT (Exemptions), Bhopal.
3. The CIT-DR, ITAT, Jabalpur.
4. Guard File

By Order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur