**आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL,**
**RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**
**AND**
**SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No. 01/RPR/2021**

**निर्धारण वर्ष / Assessment Year : 2018-19**

Manav Rachana Education Society,
A-1, Pushpak Apartments,
Opp. Government School,
Chhotapara, Raipur (C.G.)-492 001
PAN: AAAAC6228R

. .....अपीलार्थी / Appellant

**बनाम / V/s.**

The Commissioner of Income Tax (Exemptions),
Bhopal (M.P).

.....प्रत्यर्थी / Respondent

| | | |
|---|---|---|
| Assessee by | : | Shri Nikhilesh Begani, CA |
| Revenue by | : | Shri Debashish Lahiri, CIT-DR |

सुनवाई की तारीख / Date of Hearing : 23.11.2022

घोषणा की तारीख / Date of Pronouncement : 19.01.2023

# आदेश / ORDER

**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Exemption), Bhopal, dated 30.09.2020. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "**GROUND NO. I**
>
> That the Order passed by the Learned Commissioner of Income Tax (Exemptions), Bhopal ("the Ld. CIT") rejecting the application filed by the appellant society in Form No.56D thereby consequentially denying the approval under the provisions of section 10(23)(vi) of the Income Tax Act, 1961 ("the Act"), solely for the reason that the application seeking approval was filed beyond the time limit prescribed under the sixteenth proviso to section 10(23C) of the Act, is highly unjustified, bad in law, unwarranted, unsustainable, not proper on the facts of the case and not in accordance with the provisions of law in this regard.
>
> That the Ld. CIT by issuing the detailed questionnaire so as to examine the merits of the case must be deemed to have condoned the delay in filing the application for approval under the provisions of section 10(23C)(vi) of the Act hence, the Ld. CIT has grossly erred in rejecting the application merely on account of delay in filing of the application.
>
> Without prejudice to the above, the Order denying approval u/s.10(23C)(vi) of the Act was passed by the Ld. CIT on 30th September, 2020 i.e. much beyond the time limit contemplated for filing application seeking approval in respect of the Assessment Year 2019-20 hence, though the application was valid in all respects, the Ld. CIT ought to have granted the approval from the Assessment Year 2019-20 onwards.
>
> Hence, it is prayed that the Order passed by the Ld. CIT under the provisions of section 10(23C)(vi) of the Act denying approval to the appellant society may please be annulled and set aside and it is earnestly requested that the approval under section 10(23C)(vi) of the Act may please be granted.

**GROUND NO. II**

2. That the Appellant craves leave to add, amend, alter or delete all or any of the grounds of Appeal at the time of hearing of the appeal."

2. Succinctly stated, the assessee society which is stated to have been established with the primary object of imparting education had filed an application in Form No. 56D on 25.04.2019 with the Commissioner of Income-Tax (Exemption), Bhopal for grant of approval under Sec. 10(23C)(vi) of the Act for A.Y. 2018-19.

3. Observing, that though the assessee society as per the sixteenth proviso to Sec. 10(23C) as amended by the Finance (No.2) Act, 2009 w.e.f. 01.04.2009 was obligated to have filed the aforesaid application for approval for claiming exemption for F.Y. 2018-19 on or before 30.09.2018, had however filed the same only as on 25.04.2019, i.e., beyond the prescribed period as enshrined in the Act, the Commissioner of Income-Tax (Exemption), Bhopal was of the view that the application so filed by the assessee was liable to be rejected on the said ground itself. Accordingly, the Commissioner of Income-Tax (Exemption), Bhopal after drawing support from certain judicial pronouncements concluded that as the assessee had failed to apply for the approval under Sec. 10(23C)(vi) within the stipulated time period, therefore, the application so filed before him was not maintainable.

4. The assessee being aggrieved with the order of the Commissioner of Income-Tax (Exemption), Bhopal has carried the matter in appeal before us.

5. We have heard the ld. authorized representatives for both the parties, and perused the order passed by the Commissioner of Income-Tax (Exemption), Bhopal declining the assesse's application for approval under Sec.10(23C)(vi) of the Act. As observed by us hereinabove, the Commissioner of Income-Tax (Exemption), Bhopal was of the view that as the application filed by the assessee seeking approval under Sec. 10(23C)(vi) was filed beyond the prescribed time period, therefore, the same was not maintainable. The relevant observations of the Commissioner of Income-Tax (Exemption), Bhopal are culled out as under:

> "Manav Rachna Education society had filed an application for approval u/s.10(23C)(vi) of the Income Tax Act, 1961 in Form No.56D on 25/04/2010. The society main objections claimed are educational running school and B Ed. College.
>
> 2. With reference to the above, so as to ascertain the genuineness of the objects and activities of the society, a detailed questionnaire calling forth details and necessary documents was issued vide this office notice dated 09.09.2019 fixing the case for compliance on 20.09.2019.
>
> 3. In response to the above notice, part submission was received online on 15.09.2019 whereby the applicant has not submitted the complete details in accordance with the questionnaire and provisions of section 10(23C). On perusal of the documents, it is seen that the society has applied for exemption u/s 10(23C)(vi) on 24.04.2019 for A.Yr.2018-19 and subsequent assessment years. As per sixteenth proviso to Section 10(23C), the application in Form No. 56D is required to be submitted on or before 30th September of the relevant Assessment Year i.e. by 30.09.2018, whereas

> the assessee has applied for A.Y. 2018-19 after 30th September 2018 hence the said application is belated.
>
> In View of the above discussion, it is obvious that the application for approval u/s 10(23C) is belated and, therefore, the applicant is not eligible for approval u/s 10(23C)(vi). Therefore, the application in Form No.56D dated 25.04.2019 seeking approval under U/s. 10(23C)(vi) is hereby, refused."

6. Controversy involved in the present appeal hinges around the sustainability of the order of the Commissioner of Income-Tax (Exemption), Bhopal, rejecting the application filed by the assessee, as not maintainable, for the reason that the same was filed beyond the prescribed time period. Also, it is the claim of the assessee that as the Commissioner of Income-Tax (Exemption), Bhopal had rejected its application on 30.09.2020, therefore, it was divested of its statutory right of filing an application for the next assessment year i.e. A.Y. 2019-20 and onwards, within the stipulated time period, i.e., latest by 30.09.2019. In sum and substance, the assessee by raising the second limb of its contention had tried to attribute the laches in non-filing of the application seeking approval under Sec. 10(23C)(vi) for A.Y. 2019-20 and onwards, to the department which had delayed disposing off its application for the year in question i.e. A.Y. 2018-19.

7. Before proceeding any further we deem it fit to cull out the provisions of Sec. 10(23C)(vi) of the Act, which reads as under :

> "Incomes not included in total income

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 –

(i) to (v) .....

(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"

Although the "provisos" appended to Sec. 10(23C)(vi) had undergone an amendment w.e.f. 01.06.2020, however, as the case before us pertains to a period prior to the aforesaid date, therefore, we herein cull out the provisions as were applicable during the year under consideration, as under :

"First and second provisos substituted by the Finance Act, 2020, w.e.f. 1.6.2020. Prior to their substitution, first and second provisos, as amended by the Finance (No. 2) Act, 1998, w.e.f. 1.4.1999, Finance Act, 1999, w.e.f. 1.4.1999, Finance Act, 2007, w.e.f. 1.6.2007 and Finance (No.2) Act, 2019, w.e.f. 1.9.2019, read as under:-

Provided 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) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via);

Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may

> be, and the compliance of such requirements under any other law for the time being in force by such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as are material for the purpose of achieving its objects and the prescribed authority, may also make such inquiries as it deems necessary in this behalf."

8. Ostensibly, it is the primary contention of the assessee before us that there is an error on the part of the Commissioner of Income-Tax (Exemption), Bhopal in rejecting its application seeking approval under Sec. 10(23C)(vi) on the technical ground of delay involved in filing of the same within the stipulated time period. On a perusal of the grounds of appeal filed before us, it transpires that the assessee had came forth with a double facet claim, viz. (i) that the delay in filing of the application for A.Y. 2018-19 be condoned; or (ii) that the application in hand be considered as an application for the next year i.e A.Y. 2019-20 and onwards.

9. Adverting to the request of the assessee that the delay involved in filing the application for approval under Sec. 10(23C)(vi) be condoned, we are afraid that the same not being as per the mandate of law cannot be accepted. Admittedly, the application which was filed by the assessee society on 25.04.2019 for approval under Sec. 10(23C)(vi) for A.Y. 2018-19, as per the "sixteenth proviso" (as was at the relevant point of time available on the statute) was required to be filed latest by 30.09.2018. Apropos the delay involved in filing of the aforesaid application is concerned, the Commissioner of Income-Tax (Exemption), Bhopal was vested with no

power under the Act to condone the same. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Madras in the case of All Angels Educational Society Vs. Chief CIT, Chennai-III, 72 taxmann.com 251. In its aforesaid order the Hon'ble High Court had after considering the judgments of the Hon'ble Supreme Court in the case of State of UP Vs. Harish Chandra AIR 1996 SC 2173 as well as Union of India Vs. Kirloskar Pneumatic Co. Limited AIR 1996 SC 3285 had held that where there is no provision to empower the statutory authority to condone the delay, than the authority concerned cannot condone the same. The observations of the Hon'ble Court in Paragraphs No. 15 & 16 worth to note, read as under :-

> "15. However, considering the legal position that there is no power to condone the delay in filing an application under Section 10(23C) of the Act, this Court is not inclined to exercise its extraordinary jurisdiction to condone the delay. However, this Court is inclined to give appropriate direction to the respondent to consider the petitioner's application as an application for the subsequent assessment year, namely, 2013-2014 in accordance with law. Such direction is issued considering the peculiar facts and circumstances of the case and that the petitioner could not have made an application for the subsequent assessment year 2013-2014, since their application for assessment year 2012-2013 was still pending consideration and the impugned order came to be passed only on 13.11.2013. The respondent is at liberty to consider the amended objectives of the petitioner Trust.
>
> 16. Accordingly, the writ petition is partly allowed and the finding rendered by the respondent that the petitioner's application cannot be considered as the same is time barred is affirmed and the finding with regard to objectives of the Society by respondent holding that the Society cannot be said to be solely for education purpose is set aside. Consequently, the matter is remanded back to the respondent for fresh consideration and the petitioner's application is directed to be considered for the assessment year 2013-2014 in accordance with law and while doing so, may consider

> the amendments made to the objectives of the petitioner Trust. No Costs. M.P. No. 1 of 2014 is closed".

Also, a similar view had been taken by the Hon'ble High Court of Andhra Pradesh in the case of Aurora Educational Society Vs. Chief CIT, 20 taxmann.com 46. The Hon'ble High Court of Orissa had also similarly held in the case of Roland Educational & Charitable Trust Vs. Chief CIT, 309 ITR 50 (Ori). In its aforesaid order the Hon'ble High Court had observed as under :

> "Be that as it may, we are here concerned whether in the absence of any statutory provision to condone the delay in presenting the application under section 10(23C)(vi), the Chief Commissioner of Income Tax can exercise any such power".

On the basis of the aforesaid position of law, we are of the considered view that as the Commissioner of Income-Tax (Exemption), Bhopal was not vested with any power to condone the delay involved in filing of the application by the assessee society under Sec. 10(23C)(vi), therefore, the same had rightly been rejected by him. We, thus, finding no infirmity in the view taken by the Commissioner of Income-Tax (Exemption), Bhopal who had rightly rejected the assessee's application for approval under Sec. 10(23C)(vi), uphold the same.

10. We shall now take up the grievance of the assessee that as the assessee's application for approval under Sec. 10(23C)(vi) was disposed off by the Commissioner of Income-tax (Exemption), Bhopal vide his order

dated 30.09.2020, therefore, for the said reason the assessee was precluded from reapplying for the aforesaid approval for the immediately succeeding year i.e. A.Y. 2019-20 and onwards. Having given a thoughtful consideration to the aforesaid claim of the assessee we find substance in the same. Admittedly, it is a matter of fact borne from record that as the assessee's application for approval under Sec. 10(23C)(vi) for A.Y. 2018-19 was pending disposal on 30.09.2019, and the order came to be passed only on 30.09.2020, therefore, the assessee could not have made an application for the subsequent assessment year i.e A.Y. 2019-20. Considering similar facts which had came up before the Hon'ble high Court of Madras in the case of All Angels Educational Society (supra), the High Court had though rejected the assessee's request for condonation of delay involved in filing of its application for approval under Sec. 10(23C)(vi) for A.Y. 2012-13, but accepting its alternative contention that as its application for the said year i.e. A.Y. 2012-13 was pending consideration and the impugned order came to passed only on 13.11.2013, therefore, it could not have filed an application for the subsequent assessment year i.e. A.Y. 2013-14, had remanded the matter to the file of the CIT, Exemption with a direction to consider the same as the assessee's application for the succeeding year i.e. A.Y. 2013-14. Also, a similar view had been taken by the Hon'ble High Court of Bombay in the case of Sanjay Ghodawat University Vs. Commissioner of Income Tax (Exemptions) and others

(2021) 431 ITR 559 (Bom.). It was observed by the Hon'ble High Court that though the CIT(Exemption) was correct in rejecting the application filed by the assessee u/s.10(23C)(vi) for the A.Y. 2019-20 as being time barred, but he certainly fell in error in not considering the said application for subsequent assessment year, i.e., for the A.Y.2020-21 and onwards, because though the said application filed on October 31, 2019 was belated for A.Y.2019-20, it was before the prescribed date for the subsequent assessment year 2020-21 and had been filed much before the cut off date for the said year, i.e., September 30, 2021. Also, a similar view had been taken by the Co-ordinate Bench of the Tribunal in the case of Durg Education & Charitable Society Vs. Commissioner of Income Tax (Exemption), ITA No.35/RPR/2016 dated 09.09.2022.

11. As the facts and the issue involved in the case of the present assessee before us are in parity with those as were there in the aforesaid cases before the Hon'ble High Court, therefore, we respectfully follow the same and remand the matter to the file of the Commissioner of Income-Tax (Exemption), Bhopal with a direction to consider the present application filed by the assessee for approval under Sec. 10(23C)(vi) as that filed for the immediate succeeding year i.e. A.Y. 2019-20 and onwards.

12. We, thus, in terms of our aforesaid deliberations though decline the assessee's request for condonation of the delay involved in filing of its

application for approval under Sec. 10(23C)(vi) for A.Y. 2018-19, but at the same time remand the matter to the file of the Commissioner of Income-Tax (Exemption), Bhopal with a direction to consider the aforesaid application of the assessee as that filed for the immediately succeeding year i.e. A.Y. 2019-20.

13. Resultantly, the appeal filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

| Sd/- | Sd/- |
|---|---|
| **G D PADMAHSHALI** | **RAVISH SOOD** |
| **(ACCOUNTANT MEMBER)** | **(JUDICIAL MEMBER)** |

रायपुर/ RAIPUR ; दिनांक / Dated : 19th January, 2023
#####SB

**<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Exemptions), Bhopal (M.P).
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.