

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.67/JODH/2021
(ASSESSMENT YEAR- 2021- 2022)**

M/s. P R Jangid Education Society, J-16, M/s. MGB & Co., LLP, Lal Kothi Yojana, Sahakar Marg, Jaipur	Vs	PCIT/CIT, Jodhpur
(Appellant)		(Respondent)
PAN No. AABAP0800H		

Assessee By	Shri Sandeep Jhanwar, CA
Revenue By	Shri O.P.Meena,CIT DR
Date of hearing	21/03/2023
Date of Pronouncement	22/03/2023

ORDER

PER KUL BHARAT, J.M.:

The present appeal filed by the assessee for the assessment year 2021-22 is directed against the order of Ld. DS DIT(CPC) dated 09.07.2021. The assessee has raised following grounds of appeal:-

1. *“Under the fact and circumstances of the case, the Ld. PCIT/CIT has erred in passing provisional order under (iv) of 1st proviso to clause (23C) of section 10 with effect from Ay 2021-22 instead of AY 2020-21.*

2. *The assessee craves right to add, alter or amend any of the grounds of appeal.”*

2. The only grievance in this appeal is against the order of provisional approval of registration u/s 10(23C) of the Income Tax Act, 1961 (“the Act”) from Assessment years (“AYs”) 2020-21 to 2023-24. It is contended that the approval should have been granted with effect from AY 2020-21 instead of 2021-22. It was also contended that the decision is in clear contravention of the CBDT Circular which has clarified the application of the amended provisions.

3. On the other hand, Ld.CIT DR opposed these submissions and supported the orders of authorities below.

4. We have heard Ld. authorized representatives of the parties and perused the material available on record. The Income Tax Department has notified the following changes in law:-

“Amendment of section 10.

4. (H) in section 10,—

(a) in clause (4D), with effect from the 1st day of April, 2021,—

(i) for the words "convertible foreign exchange, to the extent such income accrued or arisen to, or is received in

respect of units held by a non-resident", the words and brackets 'convertible foreign exchange or as a result of transfer of securities (other than shares in a company resident in India) or any income from securities issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India or any income from a securitisation trust which is chargeable under the head "profits and gains of business or profession", to the extent such income accrued or arisen to, or is received, is attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) computed in the prescribed manner' shall be substituted;

(ii) in the Explanation, after clause (b), the following clauses shall be inserted, namely:—

'(ba) "permanent establishment" shall have the same meaning assigned to it in clause (iia) of section 92F;

(bb) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and shall also include such other securities or instruments as may be notified by the Central Government in the Official Gazette in this behalf;

(bc) "securitisation trust" shall have the same meaning assigned to it in clause (d) of the Explanation to section 115TCA;';

(b) in clause (23C),—

(i) in sub-clause (i), after the word "Fund", the words and brackets "or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2020;

(ii) for the first and second provisos,—

(A) with effect from the 1st day of June, 2020, the following provisos shall be substituted and shall be deemed to have been substituted, namely:—

"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:";

(B) with effect from the 1st day of April, 2021, the following provisos shall be substituted, namely:—

"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) where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso [as it stood immediately before its

amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain provisions) Act, 2020], within three months from the 1st day of April, 2021;

- (ii) where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;*
- (iii) where such fund or trust or institution or university or other educational institution or hospital or other medical institution has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier;*
- (iii) 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:*

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

(i) where the application is made under clause (i) of the said proviso, pass an order in writing granting approval to it for a period of five years;

(ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about

(A) the genuineness of activities of such fund or trust or institution or university or other educational institution or hospital or other medical institution; and

(B) the compliance of such requirements of any other law for the time being in force by it as are material for the purpose of achieving its objects; and

(b) after satisfying himself about the objects and the genuineness of its activities under item' (A), and compliance of the requirements under item (B), of sub-clause (a),—

(A) pass an order in writing granting approval to it for a period of five years;

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard;

(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 a copy of such order to the fund or trust or institution or university or other educational institution or hospital or other medical institution:";

(iii) for the eighth and ninth provisos,—

(A) with effect from the 1st day of June, 2020, the following provisos shall be substituted and shall be deemed to have been substituted, namely:—

"Provided also that any notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:

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 (iv) or sub-clause (v) or 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:";

(B) with effect from the 1st day of April, 2021, the following provisos shall be substituted, namely:—

"Provided also that any approval granted under the second proviso shall apply in relation to the income of the fund or trust or institution or university or other educational institution or hospital or other medical institution,—

(i) where the application is made under clause (i) of the first proviso, from the assessment year from which approval was earlier granted to it;

(ii) where the application is made under clause (iii) of the first proviso, from the first of the assessment years for which it was provisionally approved;

(iii) in any other case, from the assessment year immediately following the financial year in which such application is made:

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:";

(iv) in the twelfth proviso, for the word, figures and letters "section 12AA", the words, figures and letters "section 12AA or section 12AB" shall be substituted with effect from the 1st day of April, 2021;

(v) *after fifteenth proviso, with effect from the 1st day of June, 2020, the following proviso shall be inserted and shall be deemed to have been inserted, namely:—*

"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:";

(vi) *with effect from the 1st day of April, 2021, the sixteenth proviso as so inserted, shall be omitted;*

(vii) *for the eighteenth proviso,—*

(A) *with effect from the 1st day of June, 2020, the following proviso shall be substituted and shall be deemed to have been substituted, namely:—*

"Provided also that all pending applications, on which no notification has been issued under sub-clause (iv) or sub-clause (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day:";

(B) *with effect from the 1st day of April, 2021, the following proviso shall be substituted, namely:—*

"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:";

(c) after clause (23FBB), the following clause shall be inserted, with effect from the 1st day of April, 2021, namely:—

"(23FBC) any income accruing or arising to, or received by, a unit holder from a specified fund or on transfer of units in a specified fund.

Explanation.—For the purposes of this clause, the expressions—

(a) "specified fund" shall have the same meaning as assigned to it in clause (c) of the Explanation to clause (4D);

(b) "unit" means beneficial interest of an investor in the fund and shall include shares or partnership interests.";

(d) in clause (23FE), in the Explanation, with effect from the 1st day of April, 2021,—

(i) in clause (a), in sub-clause (ii), for the words "United Arab Emirates", the words "Abu Dhabi" shall be substituted";

(ii) in clause (b), in sub-clause (vi), after the words "for this purpose", the words "and fulfils conditions specified in such notification" shall be inserted;

(iii) in clause (c), in sub-clause (iv), for the words "for this purpose", the words "for this purpose and fulfils conditions specified in such notification" shall be substituted."

In view of the above, we direct the authorities below to grant approval w.e.f. AY 2020-21 instead of 2021-22. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 22/03/2023.

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar
Jodhpur Bench