

अपीलीय अधीकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **879/CHNY/2020**
निर्धारण वर्ष /Assessment Year: 2019-20

M/s. Pristine Academy,
371/2, Podanur Main Road,
Coimbatore – 641 023.

The CIT(Exemption),
v. Chennai – 34.

PAN: AADTP 2753J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Vijayaraghavan, Advocate
: Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 26.04.2023
घोषणा की तारीख/Date of Pronouncement : 26.04.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeals filed by the assessee are directed against the order of learned Commissioner of Income Tax (Exemption), Chennai in File No.CIT(E) No.3(15)/2019-20, dated 30.09.2020.

2. The only issue in this appeal of assessee is against the order of CIT(Exemption) rejecting the registration application filed by assessee in Form No.56D for claiming exemption u/s.10(23C)(vi) of

the Income Tax Act, 1961 (hereinafter the 'Act') for assessment year 2019-20. For this assessee has raised following four grounds:-

- 1) The order of the learned CIT(E) is bad and erroneous in law and against the principles of natural justice.
- 2) The learned CIT(E) erred in rejecting the registration application filed in Form 56D, claiming exemption u/s 10(23C) (vi) for the AY 2019-20 without considering the replies and details filed in proper perspective
- 3) The learned CIT(E) erred in rejecting the application for registration on the ground that the appellant trust had included in its bye-laws/trust deed a clause " to donate or gift either in cash or in kind for rendering financial assistance to the needy/poor " on the reasoning that the same is in contravention of the Income Tax Act, 1961, when in fact there is no bar under the Income Tax Act in this regard.
- 4) Also, the learned CIT(E) grossly erred in denying the exemption claimed u/s 10(23C) (vi) in the return, stating that exemption cannot be claimed when the application is pending which is clearly incorrect, in view of the 16th proviso of the section 10(23C)(vi).

3. Brief facts are that the assessee filed its return of income on 25.09.2019 for the relevant assessment year 2019-20 claiming exemption u/s.10(23C)(vi) of the Act as per the first proviso to section 23C of the Act by applying for registration with CIT(Exemption) in prescribed form No.56D on 25.09.2019. The assessee claimed that the trust's sole objective is "Education" as its public charitable activity and runs an open school from LKG to VI standard as approved by National Institute of Open Schooling. The school is run by the trust since financial year 2016-17 relevant to

assessment year 2017-18. The assessee claimed that National Institute of Open Schooling which is the present governing body of the school follows its own or CBSE approved fees structure. The assessee trust also applied for registration u/s.12AA of the Act on 18.03.2019, which was rejected by CIT(Exemption), Chennai as they could not follow the application or could not reply, in case any queries raised. Now, the assessee has challenged the rejection order passed by CIT(Exemption) on application filed u/s.10(23C)(vi) of the Act. The CIT(Exemption) directed the assessee to tabulate all the objects of the trust and corresponding activities carried out by it vide letter dated 19.05.2002, which was not furnished with specific details, which are required for processing the application in Form No.56D filed u/s.10(23C)(vi) of the Act. The CIT(Exemption) noted this fact vide para 7 to 11, as given below and rejected the application:-

7. By this office letter dt. 19.05.2002, it was requested to tabulate all the objects of the trust and corresponding activities carried out. For this, the assessee has not furnished specific details, which are required for processing the application in Form 56D seeking approval u/s.10(23C)(vi) of the Act. 7.

8. While processing the application for registration u/s.12AA of the Act, the following query was raised vide this office letter dt. 20.07.2020. "For the year ended 31.3.2019, the gross receipts recorded in the Income & Expenditure account is Rs.3.29 cores. The Trust computed tax on its total Income and paid tax for the A.Y.2019-20. Your application for 12AA was fled after 31.3.2019 (i.e. on 12.09.2019 only). While computing the income,

the Trust has claimed capital expenditure as deduction. When the Trust is not registered u/s. 12AA, please justify your claim of capital expenditure."

9. In response to the above, the assessee vide letter dt. 28.07.2020 has claimed that it filed the return of income for the A.Y. 2019-20 claiming exemption u/s.10(23C)(vi) of the Act and not u/s. 12AA of the Act. When the assessee's application in Form 56D dt. 25.09.2019 is under consideration, the assessee could not have claimed exemption u/s.10 (23C) of the Act, in the return of income filed for the A.Y. 2019-20.

10. From the above discussion, I have come to the following inference:

- (a) The assessee has not established genuineness of the activities carried on by it by filing relevant details;
- (b) The assessee's object mentioned in its bye-law to accept and contribute donation in cash is in contravention of the Income Tax Act, 1961; and
- (c) The assessee has introduced into its accounts huge funds for which it is unable to produce satisfactory explanation for its accounted source.

11. In view of the above discussion, I am convinced that the assessee has not satisfactorily explained that it has genuine intention to establish educational institution solely for educational purpose and not for purposes of profit so as to be eligible for exemption u/s.10(23C)(vi) of the Act. Therefore, Form 56D filed by the assessee on 25.09.2019 for grant of exemption u/s.10(23C)(vi) of the Act, for the year 2019-20 is hereby rejected.

From the order of CIT(Exemption), it is noticed that while perusing the application filed by assessee in Form No.56D, he noted from the trust deed dated 06.02.2017 apart from education, there are other charitable activities envisaged i.e., donation or gifts i.e., either in cash or in kind and others as noted by CIT(Exemption) in para 2(i)(a) to (p) and in para 2(ii) (a) to (q). According to CIT(Exemption), the assessee is not solely engaged in carrying on

education, which should have been the main object of the assessee and from the very Form No.56D also the trust running a school apart from that embark on other charitable activities. This is noted in Form No.56D point No.3 and the same reads as under:-

“The trust is presently engaged in providing education by way of running a school at Coimbatore in a rented premises. The trust will embark on other charitable activities in near future.”

4. Now before us the Id.counsel for the assessee Shri Vijayaraghavan stated that he argued that for granting exemption u/s.10(23C)(vi) of the Act, the sole object of trust should have been education and this is decided in recent decision of Hon'ble Supreme Court in the case of New Noble Education Society vs. CIT in Civil Appeal No.3795 of 2014 dt.19.10.2022, wherein certain conditions are given. He agreed that there are certain other objections and he want to amend the trust deed.

5. We noted that the recent decision of Hon'ble Supreme Court in M/s. New Noble Education Society, *supra*, had laid down certain conditions for registration or approval u/s.10(23C) of the Act, which needs to be considered by CIT(Exemption) and if assessee's case falls within the parameter fixed by Hon'ble Supreme Court, the registration should have been granted otherwise he could deny the

registration. Hence considering the facts in entirety, we restore this matter back to the file of the CIT(Exemption). CIT(Exemption) will consider the decision of Hon'ble Supreme Court in the case of New Noble Education Society, *supra* and then decide the application afresh.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26th April, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 26th April, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |