

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 16 & 17/RPR/2021
निर्धारण वर्ष / Assessment Years : 2019-20 & 2020-21

Chhattisgarh Rajya Open School
Madhyamik Siksha Mandal, Pension Road,
Raipur-492 001 (C.G.)
PAN : AAAGC0179F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax (Exemption)
Bhopal.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate
Revenue by : Shri S.K Meena, CIT-DR

सुनवाई की तारीख / Date of Hearing : 12.06.2023
घोषणा की तारीख / Date of Pronouncement : 15.06.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee society are directed against the order passed by the Commissioner of Income-Tax (Exemption), Bhopal, dated 30.12.2019 & 03.03.2021. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall first take up the appeal marked as ITA No.16/RPR/2021 for assessment year 2019-20, wherein the impugned order has been assailed on the following grounds of appeal before us:

“1. In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Exemption) has erred in rejecting application filed u/s. 10(23)(vi) of the Income-tax Act, 1961 on the ground that Form 56D filed is belated with reference to A.Y.2013-14.

2. In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Exemption) has erred in not treating the application as filed with effect from A.Y.2019-20 in alternate.

3 In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Exemption) has erred in rejecting the application holding that the society is only engaged in conducting exams for drop out students and not an educational institution not existing for profit.

4. In the facts and circumstances of the case, the Id. Commissioner of Income-tax (Exemption) has erred in not considering the fact that National Open School, nationwide nodal institution, engaged in identical activities has been granted exemption u/s.10(23C)(vi) of the Income-tax Act, 1961 and erred in not extending similar exemption to appellant institution.

5. The order of Id. Commissioner of Income-tax (Appeals) is bad in law and facts.”

3. Succinctly stated, the assessee society which is stated to have been established with the primary object of imparting education by conducting examination for children who could not attend school as a regular students, had filed an application in Form No. 56D on 17.12.2018 with the Commissioner of Income-Tax (Exemption), Bhopal for grant of approval under Sec. 10(23C)(vi) of the Act for A.Y. 2013-14.

4. The Commissioner of Income-tax (Exemption), Bhopal observed that the assessee society as per the "sixteenth proviso" to Section 10(23C)(vi) of the Act was obligated to have filed its aforesaid application for approval for A.Y.2013-14 on or before 30.09.2013. The CIT(Exemption) considering the fact that the assessee society had filed its aforesaid application seeking approval for exemption on 25.04.2019, i.e. beyond the prescribed time period contemplated under the Act, thus, was, of the view that the the application so filed by the assessee was liable to be rejected on the said count itself. Accordingly, the Commissioner of Income-Tax (Exemption), Bhopal concluded that as the assessee had failed to apply for approval under Sec.10(23C)(vi) within the stipulated time period, therefore, the application so filed before him was not maintainable. Also, the CIT(Exemption) was of the view that the alternate claim of the assessee society that its application may be considered for the succeeding year, i.e. A.Y.2019-20 did not merit acceptance. Elaborating on his aforesaid

conviction, the CIT(Exemption) had two fold reasons, viz. (i) that as the accounts of the assessee society were not prepared and audited as on the date of filing of application in Form 56D i.e. on 17.12.2018, therefore, its request that the said application be considered for A.Y.2019-20 could not be accepted ; and (ii) that while filling Form 56D the assessee society was required to fill the relevant figures of the relevant assessment years, i.e. Column No.7, 9 and 10 to 19, which in absence of accounts for A.Y.2019-20 having been prepared could not be done, thus, rendered the application as defective on the said count.

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

6. 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 assessee'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 society 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:

"5. The submission of the assessee is not accepted owing to the following reasons:

That the assessee applied for approval u/s.10(23C)(vi) in form No.56D for A.Yr.2013-14 on 17.12.2018 which is a belated application and hence liable to be rejected. as per 16th proviso to this Section which states as under:

" 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 purpose 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"

There is no provision of any condonation of delay in filing of form No.56D in the Income Tax Act, 1961.

6. The submission of the assessee that its above application may be accepted for the succeeding assessment year i.e. 2019-20 also does not merits consideration owing to the fact that the financial data furnished in Form No.56D by the assessee pertains to A.Yr.2013-14 and not for A.Yr.2019-20 for which the request has been made for consideration. Secondly, the date of application of Form No.56D is 17.12.2018 i.e. financial year 2018-19 which means that the applicant is now requesting for consideration of his application for A.Yr.2019-20 for which its accounts were not prepared and audited at the time of his making application i.e. 17.12.2018. Naturally, the question arises as to how can one make an application in form No.56D for A.Yr.2019-20 before the close of the Financial Year when its accounts for that relevant Assessment Year has not been prepared or audited because while filling form No.56D, one has to fill its Column Nos. 7, 9 and 10 to 19 required to be filled up with relevant figures of relevant Assessment Year. If that be the case, the application automatically becomes defective and liable to be rejected. Moreover, in the instant case, the belated application was intended to be for the A.Yr.2013-14. Therefore, this claim is also an afterthought and not tenable in law.

7. In view of the above discussion, it is obvious that the application for approval u/s 10(23C) made by the applicant is belated one and its request for alternate consideration of its application for A.Yr.2019-20 being an afterthought and not tenable in law, the applicant is not eligible for approval u/s 10(23C)(vi). Therefore, the application in Form No.56D dated 17.12.2018 seeking approval under U/s. 10(23C)(vi) for the A.Yr.2013-14 and onwards is hereby rejected/refused."

Apart from that, the CIT(Exemption) had also declined the assessee's request that its application may be accepted for the succeeding year, i.e. A.Y.2019-20 for two fold reasons, viz. (i) that the financial data filed by the assessee pertained to assessment year 2013-14 and not A.Y.2019-20 ; and (ii) that the accounts of the assessee for A.Y.2019-20 were not prepared and audited at the time of making of its application i.e. on 17.12.2018.

7. One of the facet of the controversy involved in the present appeal lies in a narrow compass, i.e. 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. Alternatively, it is the claim of the assessee society that as the Commissioner of Income-Tax (Exemption), Bhopal had rejected its application on 30.12.2019, therefore, it was divested of its statutory right of filing an application for 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. 2013-14.

8. 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.”

9. Ostensibly, it is the primary contention of the assessee society 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 primarily come forth with a double facet claim, viz. (i) that the delay in filing of the application for A.Y. 2013-14 be condoned; or (ii) that the application in hand be considered as an application for the succeeding year i.e A.Y. 2019-20 and onwards.

10. 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 permissible as per the mandate of law cannot be accepted. Admittedly, the application which was filed by the assessee society on 17.12.2018 for approval under Sec. 10(23C)(vi) for A.Y.

2013-14, as per the “sixteenth proviso” (as was at the relevant point of time available on the statute) was required to be filed on or before 30.09.2013. 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, then the authority concerned cannot condone the same. The observations of the Hon’ble Court in Paragraphs No. 15 & 16, 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) of the Act, 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.

11. We shall now take up the grievance of the assessee society that as its application for approval under Sec. 10(23C)(vi) was disposed off by the Commissioner of Income-tax (Exemption), Bhopal vide his order dated 30.12.2019, therefore, for the said reason the assessee was precluded from reapplying for the aforesaid approval for 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. 2013-14 was pending disposal on 30.09.2019, and the order came to be passed only on 30.12.2019, 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 come 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 be 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 however 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.

12. 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 succeeding year i.e. A.Y. 2019-20 and onwards. Also, the CIT(Exemption) shall in the course of set-aside proceedings afford the assessee an opportunity to meet out the defects, if any, in the application filed in Form 56D for approval u/s.10(23C)(vi) for A.Y.2019-20 and onwards.

13. We, thus, in terms of our aforesaid deliberations 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 assessment year 2019-20.

14. Resultantly, the appeal filed by the assessee in ITA No. 16/RPR/2021 for A.Y.2019-20 is partly allowed for statistical purposes in terms of our aforesaid observations.

ITA No.17/RPR/2021
A.Y.2020-21

15. We shall now take up the appeal filed by the assessee in ITA No.17/RPR/2021 for A.Y.2020-21, wherein the impugned order has been

assailed by the assessee society on the following grounds of appeal before us:

“1. In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Exemption) has erred in rejecting application filed u/s. 10(23)(vi) of the Income-tax Act, 1961 on the ground that earlier application filed has already been rejected vide Order dated 29/04/2019.

2. In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals) has erred in treating the appellant as regulatory body and not participating in imparting education.

3. In the facts and circumstances of the case, the Id. Commissioner of Income-tax (Exemption) has erred in not considering the fact that National Open School, nationwide nodal institution, engaged in identical activities has been granted exemption u/s.10(23C)(vi) of the Income-tax Act, 1961 and erred in not extending similar exemption to appellant institution.

4. The order of Id. Commissioner of Income-tax (Appeals) is bad in law and facts.”

16. On a perusal of the order passed by the CIT(Exemption), Bhopal u/s.10(23C)(vi) of the Act dated 03.03.2021, it transpires that the assessee's application seeking registration was rejected by him for two fold reasons, viz. (i) that the application filed by the assessee seeking registration u/s.10(23C)(vi) of the Act had already been considered and disposed off wherein grant of registration was declined vide order dated 29.04.2019 ; and (ii) that as the assessee society was only a regulatory body, which *per-se* did not participate in imparting education, therefore, it was not considered to be engaged in charitable activities.

17. Aggrieved, the assessee has assailed the order passed by the CIT(Exemption), Bhopal u/s.10(23C)(vi) of the Act dated 03.03.2021 in appeal before us.

18. During the course of hearing of the appeal, as the Ld. Authorized Representative (for short 'AR') for the assessee society had not raised any contention as to on what basis maintainability of the impugned order was being assailed before us, therefore, we are constrained to uphold the same and dismiss the appeal filed by the assessee.

19. In the result, the appeal filed by the assessee in ITA No.17/RPR/2021 for A.Y.2020-21 is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 15th day of June, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 15th June, 2023
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Exemption), Raipur (C.G.)
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.