

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2221/DEL/2018 [U/s 12AA]
AND
ITA No. 2222/DEL/2018 [U/s 80G]**

DVM Public School Managing Committee, Shiv Colony, Sohna Road, Distt. Gurgaon (Haryana)	<u>Vs</u>	Commissioner of Income-tax (Exemptions), Chandigarh.
PAN-AAATD5319H		
APPELLANT		RESPONDENT
Assessee represented by		Sh. Shubham Jain Adv. & Sh. Rhishabh Jetley, Adv.
Department represented by		Shri T James Singson, CIT(DR)
Date of hearing		20.07.2023
Date of pronouncement		26.07.2023

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the respective orders dated 31.01.2018 passed by the Commissioner of Income Tax (Exemptions),

Chandigarh u/s 12AA & 80G(5)(vii) of the Income-tax Act, 1961(hereinafter referred as the “Act”). Both the appeals were heard together and are being disposed of by a common order for the sake of convenience.

2. Heard and perused the record.

3. After hearing the learned representatives of both sides it comes up that Learned CIT(Exemptions) has primarily examined the claim of assessee on the basis of Memorandum of Association (MOA) and Bye-laws of the Society dated 29.04.1994 which was limited in scope as Society was authorised by MOA to manage and run DVM Public School. Learned CIT(Exemptions) observed that assessee Society was running DVM College of Education.

4. Learned AR has pointed out that there was amendment in the Memorandum of Association and a copy of which is on record at page nos. 58 to 66 of the Paper Book. It appears that earlier registration was under the Societies Registration Act, 1860 and subsequently the assessee had sought registration under the Haryana Registration And Regulation of Societies Act, 2012 and therein aims and objectives were re-defined including;

“i. to establish, finance, manage and run educational institutions from lowest level to highest level like Preparatory schools, Middle schools, Sr.

Sec. Schools, Degree Colleges, College of Education, Professional Course Institutes like Engg. Degree College, Polytechnics with different diploma courses, Medical College, Physical Education Institute, D-Pharmacy College etc.”

Learned CIT(Exemptions), however, has erroneously considered the scope of activities as per the Memorandum of Association dated 29.04.1994.

5. At the same time Learned CIT(Exemptions) has fallen in error to examine the issues of grant of registration u/s u/s 12AA & 80G(5)(vii) of the Act, on basis that assessee is accounting the receipts which admittedly were consistently above Rs. One crore. The claim of exemption u/s 10(23C)(iiiad) of the Act by assessee could not have been ground for examination by the Learned CIT(Exemptions), as Learned CIT(Exemptions) was required to examine the entitlement of the assessee within the domain of Section 12AA only, whereby Learned CIT(Exemptions) was required to satisfy about genuineness of the activities of the Society.

6. Learned AR has relied on the judgment of Coordinate Bench in ITA nos. 892 & 893/Del/2016 order dated 19.02.2018 where also Learned CIT(Exemptions) had rejected the claim of assessee u/s 80G(5)(vi) of the Act on the ground, inter alia, that gross receipts in all the five years are far in excess of Rs. One crore and

the assessee Society has wrongly claimed exemption u/s 10(23C)(iiiad) of the Act.

The Coordinate Bench observed in para nos. 7,8,9 & 10 as under:

“7. On 19.01.2018, Sh. Mohan Prakash, Secretary of the society attended this office and filed response of above noted queries. During the course of hearing, the applicant was asked to furnish the detailed reply to point 2(vi), (xiv) and (xx) of the letter dated 01.12.2017 by 23.01.2017. On the fixed date, the applicant furnished the reply in response to queries raised during the last hearing. On perusal of submissions, it is revealed that the applicant society is running two educational institutions named “DVM High School” and “DVM College of Education”. It is pertinent to mention at this point that the applicant society is the managing committee for the school. The applicant has claimed exemptions u/s 10(23C)(iiiad) in past preceding years. The applicant society has taken itself to be an institution running solely for education purpose in past preceding years and has claimed exemption u/s 10(23C)(iiiad) of the Act by depicting its aggregate receipts under Rs. 1 Crore in past years. In that context the applicant had all the reasons to apply for exemption under the provision of section u/s 10(23C)(vi) rather than 12AA. This following the statutory provisions, would have necessitated an application u/s u/s 10(23C)(vi) as per the scheme of the I.T. Act,1961. Although the judicial precedents have allowed alternative claims either for 12AA or u/s 10(23C) but at the same time haven't allowed shifting from one provision to the other when the applicant has consistently availed benefits for a number of year under section 10(23C)(iiiad). Natural progression entails and entitles the educational societies to go for u/s 10(23C)(vi) in such cases.

8. Perusal of receipts & payments accounts reveals that the society had receipts above Rs. 1 Crore in past years. Despite the receipts being above Rs. 1 Crore, the applicant has claimed exemption u/s 10(23C)(iiiad) in past preceding years. The aggregate receipts of the society for the last three years are tabulated as under:-

F.Y.	Aggregate Receipts (Rs.)
2014-15	1,12,21,350/-
2015-16	1,60,50,648/-
2016-17	1,17,05,232/-

To that extent, the contention of the applicant of claiming exemption u/s 10(23C)(iiiad) is seemingly wrong as the aggregate receipts of the applicant were consistently above Rs. 1 Crore, an aspect that shall be examined by the jurisdictional AO separately.

9. *Further perusal of documents reveals that the applicant society is running a school named “DVM Public School” and a college named “DVM College of Education”. In the old MOA and Bye-Laws of the society dated 29.4.1994, it is clearly stated in objects that the society was created to manage and run DVM Public School. In fact the name clearly is the managing committee for the school. The same memorandum has now been utilized to also run a college named ‘DVM College of Education’. Running of a college is a clear cut infraction of the bye-laws etc of the society intended to run a school. Also, none of the financial statements clarify the amounts attributable to the ‘DVM College of Education’. Such practices make the examination of genuineness of activities difficult. Seemingly the applicant society has been claiming income earned from the college as exemption continuously u/s 10(23C)(iiiad) without the college being part of the bye-laws/objects of the society. It clearly leads to conclusion that the applicant is not pursuing activities as per objects stated in MoA.*

10. *Moreover, perusal of bank statements and receipts-payments accounts reveals that the society has not deposited whole receipts in bank. The summary of receipts deposited in banks has been given below:-*

<i>F.Y</i>	<i>Aggregate Receipts (Rs.)</i>	<i>Receipts Deposited in Banks (Rs.)</i>	<i>% of Deposited Receipts</i>
<i>2015-16</i>	<i>1,60,50,648/-</i>	<i>42,28,264/-</i>	<i>26.3%</i>
<i>2016-17</i>	<i>1,17,05,232/-</i>	<i>40,45,874/-</i>	<i>34.5%</i>

This clearly shows that the society is indulging predominantly in activities on cash basis and has kept substantial amounts of its so-called receipts out of the regulated banking channels. Society’s indulgence in cash transactions makes the activities not amenable to proper verifications. It doesn’t make the functioning of the entity, based on public funding and sitting over public

money, transparent and amenable to scrutiny by the beneficiaries from amongst the general public as also the regulating agencies.”

7. In the light of aforesaid discussion the issue is restored to the file of Learned CIT(Exemptions) to examine the amended and active Memorandum of Association and bye-laws of the Society for the purpose of satisfaction about the genuineness of the activities of Society and pass order afresh in the light of aforesaid observations. **Appeals are allowed for statistical purposes.**

Order pronounced in open court on 26.07.2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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