

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'G': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.8815/DEL/2019

Saffron Educational Trust, 104-Chiranjiv Tower, 43, Nehru Place, New Delhi-110019	Vs	Commissioner of Income Tax (Exemption), Pratyaksh Kar Bhawan, Civic Centre, New Delhi-110002
PAN-AAETS2830G		
Assessee		Revenue

Assessee by	Sh. K. Sampath, Adv. & Sh. V. Rajkumar, Adv.
Revenue by	Sh. H. K. Choudhary, CIT-DR

Date of Hearing	01.08.2023
Date of Pronouncement	11.08.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(Exemption), New Delhi, dated 27.09.2019.

2. The grounds of appeal reads as under:-

“On the facts and in the circumstances of the case and in law the order of the learned Commissioner of Income Tax (Exemption) Delhi, rejecting the application for approval of exemption under section 10(23C) (vi) & (vii) of the Income Tax Act, 1961 is arbitrary, misconceived, fallacious and illegal and this must be quashed with further directions to grant the registration as sought.”

3. In this case, the assessee society filed an application in Form 56D seeking approval of exemption u/s 10(23C)(vi) & (vii) of the Income Tax Act, 1961. The Ld. CIT(E) referring extensively to AO's order in Assessment Year 2015-16 rejected the said application. In the assessment for the AY 2015-16 as per order passed on 18.12.2017, the Income-tax

Officer (Exemptions), Ward 2(1), New Delhi noted that the Appellant Trust had violated the provisions of Section 13(1)(c) and Section 13(1)(d) of the Act on the ground that the trustees of the Appellant were the directors of Greater Delhi Planners Pvt. Ltd. and that the School was being run to facilitate and advance the business interest of the said company. The AO also opined that unreasonable benefit was being passed on by the Trust to the specified persons and that in the event of the Trust having to vacate the land the building would automatically get transferred to the specified persons since the building could not be separated from the land. The investments made by the Trust in the construction and development of the School building and its infrastructure would in that manner get transferred to the lessor company. At the time of sale of land the entire building constructed by the Trust would pass to the specified persons for no consideration. In that sense the specified persons would get enriched at the cost of the Trust. In that view of the matter the AO after invoking the cited Section, brought the surplus for the year in a sum of Rs. 4.62 crores to tax.

4. As noted earlier, on the basis of findings of this order, reproduced by the Ld. CIT(E) in his order, the Ld. CIT(E) rejected the application of exemption u/s.10(23C) (vi) & (vii) of the Act.

5. Against this order, the assessee is in appeal before us.

6. We have heard both the parties and perused the records. The Ld. Counsel for the assessee submitted that the assessment order for AY 2015-16, which is the basis for order of the Ld. CIT(E) has been

considered by NFAC. The NFAC while passing the order dated 23.02.2023 has quashed the order of the AO by holding that the action of the AO was unjustified. Referring to this aspect, the assessee has pleaded that the assessee should be granted exemption u/s 10(23C)(vi) & (vii) of the Act.

7. Per Contra, the Ld. DR has submitted that the said order of NFAC is in appeal by the Revenue before the Tribunal, hence, he stated that by taking cognizance of the deletion of the addition by the NFAC would affect the appeal of the Revenue by ITAT adversely. Hence, ld. DR has requested to keep the appeal pending and clubbed with Departmental appeal which is scheduled to be fixed on hearing on 04.10.2023.

8. Upon careful consideration, we find that the Ld. CIT(E) has denied exemption on the basis of finding of the assessment order for AY 2015-16. This assessment order as said above has been set-aside by the NFAC. Against this the Revenue has filed appeal before the Tribunal, which is pending for adjudication. In these circumstances, we deem it appropriate to remit this issue to the file of the Ld. CIT(A) for fresh adjudication in due course by taking the contemporaneous facts and after giving opportunity to the assessee of being heard.

9. In the result, this appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 11th August, 2023.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER
Delhi; 11.08.2023.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Shekhar,

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi