

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.144/Kol/2023
Assessment Year: 2021-22

Vivekananda Resham Khadi Gramodyog Sangha.....Appellant
Purapara, Sanmatinagar,
Jangipur, Murshidabad-742213.
[PAN: AAATV7514J]

vs.

ACIT, CPC, Bengaluru..... Respondent

Appearances by:

Shri Sanjib Kr. Das Sarma, Adv., appeared on behalf of the appellant.

Shri P. P Barman, Addl. CIT-DR appeared on 20.06.2023 & Shri Ajay Robin Singh, JCIT appeared on 16.10.2023 on behalf of the Respondent.

Date of hearing : June 20, 2023 & October 16, 2023

Date of pronouncing the order : October 16, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 29.12.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole issue raised by the assessee in this appeal is relating to the denial of deduction under section 10(23B) of the Income Tax Act.

3. The provisions of section 10(23B) of the act, for the sake of ready reference, are produced as under:

“(23B) any income of an institution constituted as a public charitable trust or registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India, and existing solely for the development of khadi or village industries or

both, and not for purposes of profit, to the extent such income is attributable to the business of production, sale, or marketing, of khadi or products of village industries:

Provided that-

(i) the institution applies its income, or accumulates it for application, solely for the development of khadi or village industries or both; and

(ii) the institution is, for the time being, approved for the purpose of this clause by the Khadi and Village Industries Commission:

Provided further that the Commission shall not, at any one time, grant such approval for more than three assessment years beginning with the assessment year next following the financial year in which it is granted.

Provided also that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that –

(i) the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) The activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved,

It may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.

Explanation.- For the purposes of this clause,-

(i) " Khadi and Village Industries Commission" means the Khadi and Village Industries Commission established under the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

(ii) " Khadi" and" village industries" have the meanings respectively assigned to them in that Act;]"

4. The assessee admittedly, is a society registered under the societies, registration act and is also registered with the Khadi and

Village Industries Commission and is engaged in the promotion and development of khadi and has also been granted approval for the purpose of claiming deduction under section 10 (23B) of the Act.

5. The CPC while processing the return of income of the assessee denied the exemption claimed by the assessee of Rs.3315998/-. Being aggrieved, the assessee filed appeal before the CIT (A), the learned CIT (A), however, observed that the assessee had not filed the return of income in the prescribed form u/s 139(4C) of the Act, whereas the assessee had filed the return of income in the form prescribed u/s 139(4A) of the Act. However, without prejudice to the above, the Ld. CIT(A), further observed that as per the second proviso to section 10(23B), the Khadi Commission, was not supposed to grant approval at any one point of time for more than three consecutive assessment years. He, in this respect observed that in the case of the assessee, the approval/ renewal of approval was granted for 5 consecutive years. He, therefore, held that the case of the assessee was hit by violation of second proviso to section 10 (23B) of the Act.

6. Before us, the Ld. Counsel for the assessee has submitted that it was not within the control of the assessee to get the approval or renewal for three years only. That it was the prerogative of the Commission to grant approval/renewal for the period as per the policy of the Commission. That the assessee is registered with the Khadi and Village Industries Commission since the year 1974 and it has been granted approval and thereafter renewal of the approval from time to time and the renewal is granted for consecutive five years at one point of time and there is nothing in the control of the assessee to get the renewal of approval for three years only. It has been further submitted that the assessee has been granted deduction from time to time. That even for

subsequent period also, the approval was granted for 5 years i.e. 01/04/2021 to 31/03/2026. That for the assessment year 2020–21 and in earlier years, the exemption was not denied. The learned counsel, therefore, has submitted that the Ld. CIT(A) was not justified in denying the exemption to the assessee. The learned counsel in this respect has relied upon the decision of the Delhi Bench of the Tribunal in the case of Barapur gram, Udyog Vikas Samiti vs. ITO(E) Ward Bareilly, vide order dated 27.05.2022 in ITA No. 1505/Del/2021.

7. We find that the issue is squarely covered by the decision of the Tribunal in the case of “Barapur Gram Udyog Samiti” (supra), wherein, the coordinate Bench of the Tribunal, under similar facts and circumstances has observed that the time period for which the certificate has to be granted is not within the control of the assessee. That, in any case, it was only a technical violation for which the assessee could not be penalized by denying the exemption, which otherwise is allowable to the assessee, the relevant part of the order of the Tribunal, for the sake of ready reference, is reproduced as under:

“7. Therefore, the certificate issued by Khadi & Village Industries Commission clearly show that it relates to the period from 11.06.2012 to 31.03.2016 and followed by the letter issued by the Commission to the ITO, Bijnore, Uttar Pradesh clearly shows that the assessee is entitled to claim exemption u/s 10(23B) of the Act. The reason for denying the exemption by the AQ is that the Commission has given certificate to the assessee for more than three years. It is pertinent to note that the time period for which the certificate has to be granted is not within the control of the assessee. In any case it is only a technical violation for which the assessee could not be penalized by denying the exemption otherwise allowable to the assessee. Thus, I hold that the assessee is entitled for exemption u/s 10(23B) of the Act. Accordingly, the Assessing Officer is directed to allow the claim for exemption u/s 10(23B) as claimed by the assessee.

8. In the result, the appeal of the assessee is allowed.”

8. The issue before us is squarely covered by the above decision of the coordinate Bench of the Tribunal, respectfully following the above decision, it is held that the assessee is entitled to the exemption under section 10 (23B) of the act.

9. In the result, the appeal of the assessee stands allowed.

Kolkata, the 16th October, 2023.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 16.10.2023.

RS

Copy of the order forwarded to:

1. Vivekananda Resham Khadi Gramodyog Sangha
2. ACIT, CPC, Bengaluru
3. CIT
(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches