

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA**

[Before Shri Sonjoy Sarma, Judicial Member &  
Shri Rakesh Mishra, Accountant Member]

**I.T.A. No. 466/Kol/2024**  
**Assessment Year : 2015-16**

Modella Care Taker Centre PAN: AABTM 0003 G Appellant	vs	ACIT(OSD), Ward-2(1), Siliguri Respondent
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Date of Hearing	30.05.2024
Date of Pronouncement	05.06.2024
For the Assessee	Rip Das, CA
For the Revenue	Monalisha Pal Mukherjee, JCIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 13.11.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'Id. CIT(A)'].

2. At the outset, we find that there is a delay of 55 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. Brief facts of the case are that assessee filed its return of income for A.Y. 2015-16 declaring total income as Nil. The case of the assessee was selected for scrutiny through CASS for verification of large deduction claimed from income from other sources. Accordingly, notice u/s 143(2) of the Act was issued upon the assessee. Subsequently, the Id. AO after obtaining the necessary approval from Id. Pr. CIT had converted the case of assessee from limited scrutiny to

complete scrutiny and issued notice u/s 143(1) of the Act. The ld. AO while framing the assessment noticed that assessee is a society registered under WB Registration of Societies Act, 1961 and running an educational institution named as Modella Care Taker Centre & School. The society had applied for exemption u/s 10(23C)(vi) of the I.T. Act before Commissioner of Income Tax (Exemption), Kolkata which was subsequently rejected vide order dated 04.02.2016. In the return filed by the assessee for the assessment year in question assessee had claimed exemption u/s 10(23C)(iiiad) of the Act by declaring aggregate annual receipt of Rs. 1,10,02,760/-. On this issue, ld. AR of the assessee asked to explain the claim of exemption u/s 10(23C)(iiiad) of the Act. The ld. AR of the assessee stated that in this regard grant of approval u/s 10(23C)(vi) was pending before the ld. CIT(E) at the time of filing of return. Therefore, the claim was made u/s 10(23C)(iiiad) of the Act, although the gross receipt had exceeded Rs. 1 crore. However, the ld. AO after considering the facts of the case find that the application for such approval u/s 10(23C)(vi) was subsequently rejected by ld. CIT(E). Therefore, the claim of assessee exemption u/s 10(23C)(iiiad) of the Act was not found acceptable. Accordingly, the ld. AO made various additions under the following manner:

<i>"i. Donation</i>	<i>Rs. 23,04,750/-</i>
<i>ii. Income over expenditure as per unit main a/c</i>	<i>Rs. 5,70,171/-</i>
<i>iii. Income over expenditure as per school a/c</i>	<i>Rs. 9,68,383/-</i>
<i>iv. Disallowance u/s 40A(2)(a)</i>	<i>Rs. 70,761/-</i>
<i>Total Income</i>	<i>Rs. 39,14,070/-"</i>

4. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed by observing in following manner:

*“Ground no. 1 & 2 are relating to taxing the amounts of donation of Rs. 23,04,760/- and income of Rs. 15,38,559/- and disallowance u/s 40A(2)(e) of the Act of Rs. 70,761/-. The AO has taxed the amounts of donation and income or expenditure as income of the appellant as the registration u/s 10(23C) of the Act was rejected by CIT(Exemption). During the appellate proceedings, as seen from the statement of facts, the appellant had appealed before ITAT against the decision of CIT(Exemption). However, no details about the order of CIT(Exemption) subsequent to the decision of ITAT has been filed during the appellate proceedings. In absence of any details that the appellant’s application u/s 10(23C) of the Act is approved, the appellant cannot seek any relief from the additions made by the AO. Accordingly, the addition of Rs. 39,14,070/- made by the AO is sustained. Ground no. 1 & 2 are treated to have been dismissed.”*

5. Dissatisfied with the above order, assessee is in appeal before this Tribunal. At the time of hearing, ld. AR stated that against the rejection order passed by ld. CIT(E), Siliguri, assessee had preferred an appeal before ITAT, Kolkata Bench and Tribunal had passed an order in appeal Case No ITA No. 1002/Kol/2016 dated 16.10.2018 where the appeal was allowed for statistical purpose giving direction to review the matter by ld. CIT(E) and the matter is still sub-judice before the ld. CIT(E) for grant of certificate to the assessee u/s 10(23C)(vi) of the Act for A.Y. 2010-11 to 2015-16. Therefore, he prayed before the bench that appeal may be set aside to the file of ld. CIT(A) for fresh adjudication since the matter is still pending for grant of exemption certificate to the assessee u/s 10(23C)(vi) of the Act for the assessment year in question.

6. On the other hand, ld. DR supported the decision rendered by the authorities below.

7. We after hearing the rival submissions of the parties and perusing the material available on record find that the issue relation to

grant of exemption certificate u/s 10(23C)(vi) is still pending before ld. CIT(E). Therefore, the instant issues are set aside to the file of ld. CIT(A) for fresh adjudication in terms of any consequential order passed by ld. CIT(E) in relation with pending of grant of exemption certificate to the assessee u/s 10(23C)(vi) of the Act. Thus, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05.06.2024.

Sd/-

Sd/-

(Rakesh Mishra)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 05.06.2024  
*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- Modella Care Taker Centre, 27, Church Road, Siliguri-734001.
2. Respondent – ACIT (OSD), Ward-2(1), Siliguri.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata