

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

[Before Shri Rajesh Kumar, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 75/Kol/2024**  
**Assessment Year : 2010-11**

Modella Care Taker Centre PAN: AABTM 0003 G Appellant	vs	ACIT(OSD), Ward-2(1), Siliguri Respondent
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Date of Hearing	06.06.2024
Date of Pronouncement	02.08.2024
For the Assessee	Shri Rip Das, CA
For the Revenue	Shri Supriya Pal, Addl. CIT, DR

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2010-11 is directed against the order dated 17.11.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)'].

2. Brief facts of the case are that assessee is a society registered under WB Registration of Societies Act, 1961. The society is running an educational institution namely Modella Caretaker Centre & School. In the case of assessee notice u/s 148 was issued for A.Y. 2010-11 after recording the reasons for doing so and after obtaining sanction of notice u/s 151 of the Act. In response to the notice u/s 148 of the I.T. Act assessee filed its return of income in ITR 5 for A.Y. 2010-11 declaring total income as Nil. The Id. AO observed that assessee had not filed any return of income voluntarily before issuance of notice u/s 148 of the I.T. Act. The Id. AO further observed that total income declared in the return filed u/s 148 was Nil but in Schedule of the ITR, the assessee had claimed Rs. 7,23,159/- as exempt income. Thereafter, the Id. AO issued statutory notice u/s 143(2) and 142(1) of

the Act and in response to the notices, AR of the assessee appeared from time to time before the AO and the ld. AO discussed the matter with ld.AR of the assessee. However, the ld. AO was not convinced with the submission made by assessee and following additions were made in the hands of assessee by assessing the total income of Rs. 9,22,405/-:

“i. Donation and admission fee	Rs. 1,06,020/-
ii. Income over expenditure as per unit main a/c	Rs. (-) 33,969/-
iii. Income over expenditure as per school a/c	Rs. 7,57,127/-
iv. Disallowance u/s 40A(2)(a)	Rs. 93,93,227/-
Total Income	Rs. 9,22,405/-”

3. 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:

*“6.1 Ground no.1 to 3 are regarding challenging of re-opening of the assessment u/s.147 of the Act. The grievance of the appellant is that the AO cannot reopen the assessment if approval u/s. 10(23C) of the Act is rejected by CIT(Exemption). The claim of the appellant is incorrect. When the application made u/s. 10(23C) of the Act is rejected by the CIT(Exemption), the appellant's income needs to be brought to tax as normal income of AOP and the appellant could not be eligible for any exemption u/s.10(23C) of the Act. The appellant had positive income which had escaped assessment by virtue of rejection of appellant's application u/s. 10(23C) of the Act. Hence, the reopening of the assessment in the case of the appellant after recording the reasons for reopening which is found to be on correct footing and accordingly it is sustained. Ground no.1 to 3 are dismissed.*

*7. Ground no. 4 to 7 are relating to taxing the amounts of donation of Rs.1,06,020/- and income of Rs.(-) 33,969/- and income of Rs.757,127/- disallowance u/s.40A(2)(a) of the Act of Rs.93,227/-. 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.9,22,405/- made by the AO is sustained. Ground no. 4 to 7 are treated to have been dismissed.*

4. 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 said 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.

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

6. 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.

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

Order pronounced in the open court on 02.08.2024.

Sd/-

(Rajesh Kumar)  
Accountant Member

Sd/-

(Sonjoy Sarma)  
Judicial Member

Dated: 02.08.2024  
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