



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

**BEFORE SHRI G. D. PADAMAHSHALI, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.146/LKW/2024
Assessment Year: 2016-17

Lekheshwar Educational Trust Lekheshwar Complex Naka By Pass Faizabad (Ayodhya)	v.	Income Tax Officer Exemption Ward Lucknow
PAN:AAATL9836B		
(Appellant)		(Respondent)

Appellant by:	Shri Shailendra Mishra, Advocate		
Respondent by:	Shri Sanjev Krishna Sharma, D.R.		
Date of hearing:	10	07	2024
Date of pronouncement:	19	09	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 25.01.2024 for the assessment year 2016-17, raising the following grounds of appeal:

- 1. That the learned Commissioner of Income-tax (Appeals), NFAC has erred in law and on facts in failing to consider that the exemption u/s 10(23C) (vi) of the I.T. Act, 1961 for A.Y.2016-17 was admissible and the treatment of Income over expenditure amounting to Rs.23,89,867/- as taxable income of the assessee-trust in the order u/s 154 r.w.s 143(3) of the I.T. Act, 1961 is not justifiable and illegal as such.*
- 2. That the learned Commissioner of Income-tax (Appeals), NFAC has erred in law and on facts in confirming the disallowance of TDS penalty Rs.16,970/- which was claimed*

as revenue expense in Income and Expenditure account in the order u/s 154 r.w.s 143(3) of the I.T. Act, 1961.

3. That the learned Commissioner of Income-tax (Appeals), NFAC has erred in law and on facts in failing to consider that the order u/s 154 r.w.s 143(3) of the I.T. Act, 1961, which has been passed by the ITO without issuing and serving the mandatory notice as per provisions of sub-section 3 of section 154 of the I.T. Act, 1961, is not justifiable and illegal as such.

4. That the learned Commissioner of Income-tax (Appeals), NFAC has erred in law and on facts in upholding the treatment Rs.24,06,840/- as taxable income and confirming thereby the illegal finding in the order u/s 143(3) of the I.T. Act, 1961 which was passed by arbitrarily expanding the scope of limited scrutiny in violation of the CBDT instruction dated 14th of July, 2016, circulated vide F.No. 225/269/2015-ITA.II. Consequently the order u/s 154 r.w.s 143(3) of the I.T. Act, is liable to be quashed.

2. The brief facts of the case are that the assessee-trust, running an educational institution in the name and style "Sunbeam School", e-filed its return of income for assessment year 2016-17 on 29.03.2017, declaring Nil income by claiming exemption under section 10 (23C) (vi) of the I.T. Act, 1961. The case of the assessee-trust was selected through CASS for limited scrutiny. During the course of assessment proceedings, the Assessing Officer noticed from the Income and Expenditure Account of the assessee for the year under consideration that the assessee has gross receipt at Rs.2,27,53,611/-, application of income at Rs.2,03,63,744/- and excess of income over expenditure at Rs.23,89,867/-. The Assessing Officer held that since the aggregate annual receipt of the trust is above one crore rupees and neither the assessee-trust is registered under section 12A of the Act nor got approval under section 10(23C) of the Act,

the surplus income of Rs.23,89,867/- is taxable. The assessee has also shown an expense under the head "TDS Penalty" of Rs.16,970/- and claimed it as Revenue Expenditure, which was also disallowed by the Assessing Officer. Accordingly, the Assessing Officer assessed the total income of the assessee at Rs.24,06,840/- and issued computation sheet and demand notice at zero tax.

3. Thereafter, vide order dated 26.7.2019, the ITO (Exemption Ward) passed a rectification order under section 154 read with section 143(3) of the Act, wherein he observed that there appears to be a mistake apparent from record in the demand created by the ITBA; that subsequently an opportunity of being heard was provided to the assessee vide notice dated 11.11.2018 fixing the date of hearing on 14.11.2018; and that in response to which no compliance was made by the assessee. Accordingly, the total income of the assessee-trust was assessed at an income of Rs.24,06,840/- and created a demand of Rs.10,26,320/- vide demand notice dated 26.7.2019 under section 156 of the Act.

4. Aggrieved, the assessee preferred an appeal before the ld. CIT(A), challenging disallowance of exemption under section 10(23C)(vi) of the Act and also rectification order passed under section 154 r.w.s. 143(3) of the Act. The ld. CIT(A) vide impugned order passed under section 250 of the Act dismissed the appeal of the assessee.

5. Aggrieved further, the assessee is in appeal before this Tribunal.

6. Before us, at the outset, the ld. counsel for the assessee has contended that the assessee-trust has applied for grant of approval under section 10(23C)(vi) of the Act on 30.12.2015 and

the CIT (Exemption), Lucknow vide order dated 19.08.2016 passed under section 10(23C)(vi) of the Act granted exemption to the assessee-trust effective from 01.04.2016 (copy placed at page 18 of the paper book). He further submitted that the return for the year under consideration was filed on 29.3.2017 and the order for approval under section 10(23C)(vi) of the Act passed by the CIT(Exemption) prior to filing of the return i.e. on 19.08.2016. Since the order for exemption under section 10(23C)(vi) of the Act was passed by the CIT (Exemption) on 19.08.2016, the exemption would be applicable to the return filed on a later date for assessment year 2016-17. However, the Assessing Officer misinterpreted the aforesaid order of the CIT(Exemption), Lucknow and held that the exemption has been granted to the assessee-trust only from assessment year 2017-18 and disallowed the exemption claimed by the assessee-trust under section 10(23C)(vi) of the Act for assessment year 2016-17. He submitted that the approval granted under section 10(23C)(vi) is a onetime approval and is not for any assessment year specific, therefore, the same is applicable for the year under consideration.

7. On the other hand, the ld. D.R., supporting the orders of the authorities below, submitted that the approval under section 10(23C)(vi) of the Act was granted to the assessee for assessment year 2017-18 and therefore the exemption claimed by the assessee for the year under consideration, i.e., assessment year 2016-17 has rightly been rejected by the Assessing Officer.

8. We have heard both the parties and perused the material on record. It is an undisputed fact that the assessee-trust was running an educational institution in the name and style "Sunbeam School". The assessee-trust applied for grant of

approval under section 10(23C)(vi) of the Act on 30.12.2015 and the CIT (Exemption), Lucknow, vide order dated 19.08.2016 passed under section 10(23C)(vi) of the Act granted approval to the assessee-trust. The copy of the order passed by the CIT(Exemption) is placed at page 18 of the paper book. It is also an undisputed fact that after granting of approval under section 10(23C)(vi) of the Act by the CIT (Exemption), the assessee-trust filed its return of income for assessment year 2016-17, i.e. on 29.03.2017 and the assessment order under section 143(3) of the Act was also passed by the Assessing Officer post grant of approval to the assessee under section 10(23C)(vi) of the Act. The observation of the Assessing Officer that the approval granted to the assessee-trust under section 10(23C)(vi) of the Act vide order dated 19.08.2016 is applicable for assessment year 2017-18 and not 2016-17 is wholly unwarranted. The approval under Section 10 (23C)(vi) of the Act is a onetime approval. The approval is not required to be obtained every year though prior to amendment of sub-Rule (3) of Rule 2CA of the Income Tax Rules, the approval granted had the effect for a period not exceeding three assessment years. But after its amendment w.e.f. 24.11.2006, the approval is onetime event. Therefore, the approval under Section 10(23C)(vi) is not for any assessment year specific. The approval is required to examine the objective of establishing an educational institute or University and the fact that it intends to achieve such objectives. The ld. D.R. could not dispute the object and the intention of the assessee-trust in setting up an educational institution. Therefore, we are of the considered view that the denial of exemption claimed by the assessee under section 10(23C)(vi) of the Act is not justified. We accordingly annul the order passed by the Assessing Officer dated 10.11.2018 rejecting the claim of the assessee-trust for

exemption under section 10(23C)(vi) and direct the Assessing Officer to grant exemption to the assessee-trust under section 10(23C)(vi) of the Act for assessment year 2016-17.

9. Since we have adjudicated the issue relating to exemption under section 10(23C)(iv) of the Act and annulled the order dated 10.11.2018 passed by the Assessing Officer, the order dated 26.07.2019 passed by the Assessing Officer under section 154 read with section 143(3) of the Act has no leg to stand on and therefore, the grounds raised by the assessee against the order passed under section 154 r.w.s 143(3) of have become infructuous and the same are accordingly rejected.

10. In the result, the appeal of the assessee stands allowed as indicated above.

Order pronounced in the open Court on 19/09/2024.

Sd/-
[G. D. PADAMAHALI]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED:19/09/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order
Assistant Registrar