

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, “ **B-Bench**” JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 895/JPR/2024
निर्धारण वर्ष / Assessment Year : 2016-17

Bhartiya Shiksha Prachar Samiti Mahadev Kunk, Yas Ke Balaji, Tonk.	बनाम Vs.	Circle (Exemption, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAAAB7653D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri P.C. Parwal, C.A.
राजस्व की ओरसे / Revenue by : Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 10/09/2024
उदघोषणा की तारीख / Date of Pronouncement : 11/09/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

Appellant-assessee is a society. It is engaged in running educational schools in District-Tonk, Rajasthan.

The matter pertains to the assessment year 2016-17.

The appellant is feeling aggrieved by order dated 16.05.2024. Said order has been passed by Learned CIT(A), NFAC, Delhi, whereby the appeal filed by the assessee has been dismissed.

2. The assessee was in appeal before Learned CIT(A), feeling dissatisfied with the assessment order dated 06.12.2018. Assessment was framed by the Assessing Officer.

By way of assessment order, the Assessing Officer (Exemption Circle), Jaipur computed the total income of the assessee as under:-

“7. Subject to above, the total income in this case is computed as under:-

Gross receipts as per Income and Expenditure A/c	Rs. 8,20,85,351/-
Less:	
Revenue expenditure as per Income & Expenditure Account	Rs. 6,28,43,345/- Rs. 1,92,42,006/-
Total income	Rs. 1,92,42,006/-
Rounded off	Rs. 1,92,42,010/-“

Assessee had furnished its return of income for the assessment year 2016-17.

As per said return, assessee had declared its total income as *Nil*. Its case was selected for complete security through CASS.

Thereupon, e-notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) was issued by the Income Tax Officer, Ward, Tonk.

Ultimately, assessment order was passed on 06.12.2019, taking into account the status of the assessee as that of an AOP.

What weighed with the Assessing Officer in framing the assessment was that that the assessee was not registered u/s 12A of the Act and also because the assessee did not have any notification issued/certificate granted u/s 10(23C)(vi)/12AA of the Act so as to claim exemption of income under any provisions of the said Act.

In para 6.1 of the assessment order, the Assessing Officer held that exemption claimed by the assessee in its return of income, u/s 11 and 12 of the Act, was invalid. And, accordingly, he denied the exemption claimed.

Furthermore, the Assessing Officer also observed that the assessee could not be allowed to claim addition in fixed assets as its application.

The Assessing Officer also did not allow exemption of surplus income to the assessee, as shown in the computation as well as Income and Expenditure Account.

3. Feeling dis-satisfied, the assessee challenged the impugned assessment by way of appeal before Learned CIT(A).

For the reasons, which weighed with the Assessing Officer, Learned CIT(A), NFAC, dismissed the appeal.

That is how, the assessee is before this Appellate Tribunal.

4. Arguments heard. File perused.
5. Assessee claims itself to be a society. Its sole activity is to impart education. Said object is being achieved, as claimed, by imparting primary, middle, secondary and senior secondary school through 44 institutions located at various places in district-Tonk, Rajasthan.

Admittedly, list of the 44 institutions, referred to above, was submitted by the assessee to the lower authorities.

6. As per computation of total income, for the financial year 2015-16, the assessee claimed to be eligible for exemption to the tune of Rs. 1,92,42,005/-, u/s 10(23C)(iiiad) and other provisions of Section 10.

Said computation is available at page 81 of the paper book submitted by the assessee on 30th July, 2024.

7. As noticed above, the Assessing Officer observed in the assessment order that the assessee had no certificate of registration u/s 12A of the Act.

He also observed that the appeal filed by the assessee against order of rejection on the application u/s 12A of the Act, was reportedly pending before the Appellate Tribunal, but, the assessee did not produce any evidence on the issue of its registration u/s 12A of the Act.

8. In the course of arguments, Ld. AR for the assessee has referred to page 9 of the paper book whereby Commissioner of Income Tax (E) is stated to have allowed registration of the assessee u/s 12AA of the Act.

Said order is dated 20.12.2019. The impugned assessment was framed on 06.12.2018. The impugned order passed by Learned CIT(A) is dated 16.05.2024.

Ld. AR for the assessee-appellant has submitted that the factum that prayer of registration of the assessee u/s 12AA having been allowed by CIT(E) as per order dated 23.12.2019, was brought to the notice of the Learned CIT(A), but, CIT(A) upheld the decision of the Assessing Officer and declined exemption claimed by the assessee u/s 11 and 12 of the Act on the ground that as on 06.12.2018 i.e. framing of the assessment by the Assessing Officer, the assessee was not registered u/s 12AA of the Act.

As is available from para 4 of the order dated 20.12.2019, passed by Learned CIT(E), the assessee society was granted registration as "charitable education GPUH", while also specifying that provisions of Section 11 and 12 of the Act shall apply w.e.f. 01.04.2017 i.e. when the application in Form No. 10A of the Act, seeking registration 12A is stated to have been furnished.

While referring to the said decision by CIT(E), Ld. AR for the assessee has contended that the assessee, even if registered u/s 12AA of the Act, vide order dated 20.12.2019, became entitled to the provisions of Section 11 and 12 of the Act with retrospective effect i.e. 01.04.2017.

Learned AR has placed reliance on decisions by the Co-ordinate Bench in **Shri Parnami Panchayat v. Income Tax Officer**, ITA No.14/JP/2023, decided on 18.8.2023; **Prem Prakash Mandal Sewa Trust v. ITO(Exemption)**, ITA Nos.262 and 263/RPR/2016, decided by Raipur Tribunal; **Akhil Bhartiya Shree Khandal Vipra Mahasabha Pushkar, Ajmer v. ITO(Exemption)**, ITA No.345/JP/2018, decided by the Co-ordinate Bench on 7.1.2019; and CBDT circular No.1 of 2015, dated 21.1.2015 which came to be issued having regard to the genuine hardship to charitable organisations due to non-application of registration for the period prior to the year of registration.

Applicability of section 12 & Section 10(23C)(vi)

9. Registration under section 12 AB applies to a trust or an assessee as a whole. As noticed above, an approval under sub-clause (vi) of section 10(23C) is required for an institution. This is the difference between the two provisions.

If a trust runs two institutions, one of which is a not-for-profit, exemption under section 10(23C) may be granted to the institution which is not-for-profit even in the absence of registration under section 12 AA.

Where an assessee, like the present appellant, runs many educational institutions, limit of one crore would apply to each educational institution, and not the assessee as a whole, the reason being that the exemption is for the income which a person earns "on behalf of" an institution. See decision in **CIT v. Children's Education Society**, 358 ITR 373.

Can an institution, not registered under sec. 12 AA, be denied exemption under section 10(23) ?

10. Answer is "No". Exemption prescribed under section 10(23C) of the Act cannot be denied on the ground that the institution is not registered under section 12 AA of the Act.

The reason is that the two provisions are independent of each other. In this regard, reliance may be placed on decision in **CIT v. Society of Advanced Management Studies**, 352 ITR 269; and **CIT(E) v. Shanti Devi Educational Trust**, 409 ITR 522.

Overlapping used to be there earlier between institutions covered under sections 11 and 10(23C) of the Act

11. It may be mentioned here that section 10(23C) and section 11 of the Act deal with charitable organisations. Prior to Finance Act, 2020, there was significant overlap between the institutions covered by these two provisions dealing with charitable organisations. Now, efforts have been made to do away with this overlap by adding two provisos to section 11(7) of the Act, which state that once a trust or an institution has a registration under section 10(23C) or section 10(46), then it would not be entitled to a registration under section 12 AB.

In **CIT(E) v. Indian Institution of Banking and Finance**, 408 ITR 558, it was observed that merely because an assessee has been denied exemption under sections 10(22), (23) or (23C), it will not mean that he must be denied exemption under section 11 of the Act as well.

12. Picking up the thread, here, the assessee while furnishing ITR for the year under consideration chose to have exemption under section 10(23C) of the Act and not to have benefit of exemption under section 11 of the Act. We are of the considered view that once, the assessee opted to avail of exemption under section 10(23C), it could not have resort to the exemption

under section 11 simply because subsequently its prayer for registration under section 12 AA was allowed.

As per para 6.1 of the assessment order, as per ITR, the assessee had claimed exemption, u/s 10(23C)(iii ad) of the Act.

Ld. DR for the Department has, therefore, rightly contended that this case does not pertain to any claim by the assessee, of any exemption u/s 11 and 12 of the Act, and rather, as per claim of the assessee itself, it claimed exemption u/s 10(23C)(iii ad) of the Act, and as such the registration of the assessee with retrospective effect does not come to the aid of the assessee.

In view of the above discussion on the legal proposition, the decisions cited on behalf of the assessee-appellant, which are distinguishable on facts, also do not come to the aid of the assessee.

13. Records reveals that Learned CIT(A) did not proceed to consider and record satisfaction that objects and activities of the assessee remained the same for the preceding Assessment Year, for the purposes of grant of any benefit under the provisions of section 10(23C)(iii ad) of the Act. So, in the given situation, the matter needs consideration on this aspect by the Assessing Authority, and for that the matter is required to be remitted to the Assessing Authority.

Conclusion

14. In view of the above discussion, and having regard to the well-settled legal proposition discussed above, the matter needs to be re-considered by Assessing Officer, for decision afresh.

The Assessing Officer also to verify if gross receipts of each educational institution were less than, or exceeded, the threshold limit of Rs. 1 crore.

Section 10(23C)(iiiad) & (vi) of the Act

15. While referring to the said provisions, Ld. AR for the assessee has contended that as per law in force in the relevant year, the exemption was permissible to be claimed and allowed, in respect of any income received by any person behalf of any university or other educational institution existing solely for educational purposes, and in calculation of the total income aggregate annual receipt of such university or education institution should not have been exceeded Rs. 1 Crore.

Further, it has been submitted that as per list provided by the assessee depicting receipts of each educational institution being run by the assessee, did not exceed said limit of Rs. 1 Crore, and that is why, said receipts by each educational institution being run by the assessee was sought to be exempted while calculating the total income.

While referring to Section 10(23C)(vi), Ld. AR for the assessee has contended that same would come into application in case of an educational institution existing solely for such educational purposes, other than the educational institution covered by clause (iiiad) referred to above, and which might have been approved by the Learned Principal Commissioner or Commissioner.

On the same point, Ld. AR for the assessee has placed reliance on the following decisions:-

- **CIT & Anr. Children's Education Society**, (2013) ,92 DTR 158 (Kar. (HC).
- **Manse Sewa Samiti vs. Addl. CIT**, (2021) 208 DTR 41.
- **Param Hans Swami Uma Bharti Mission vs. ACIT**, (2013), 140 ITD 429 (Deo.) (Trib.)
- **PKD Trust Vs. ITO**, (2017), 163 ITD 502(Chennai)(Trib.)

16. On the other hand, Id. DR for the Revenue –Department has contended that case of the assessee is covered by sub-clause (vi) of Section 10(23C) of the Act, and not by clause (iiiad) of said section, and that in absence of any approval by the Learned Principal Commissioner or Commissioner, the assessee was not entitled to any exemption, as rightly observed by the Assessing Officer in the assessment order.

17. At this stage, section 10(23C)(iiiad) & (vi) of the Act need to be referred to the extent it is relevant for the purpose of adjudication of the issue involved herein.

Section 10(23C)(iiiad) of the Act reads as under:-

“10 in commutating the total income of a previous year of any persons, any income falling within any of the following clauses shall not be included-

X x x x x x

(23C) any income received by any person on behalf of –

X x x x x x

(iiiad) any inuniversity or other education institution existing solely for education purposes and not for the purposes of profit if the aggregate annunal receipts of such university or education institution do not exceed the amount of annual receipts as may be prescribed, or-

X x x x x x

(vi) any university or other educational institution existing solely for educational purpose and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority, or-“

18. **In Manse Sewa Samiti vs. Addl. CIT**, (2021) 208 DTR 41, Hon’ble High Court of Allahabad observed that this is the receipts of each individual university or other educational institution that would be looked at to determine whether the receipts would qualify for the benefit conferred u/s 10(23C)(iiiad) r/w rule 2BC of the IT Rules, and further that there could be

no clubbing of the receipts of the institution with the other income of the society for the purpose of considering grant of concession u/s 10(23C)(iii)(ad).

19. In PKD Trust case (supra), where the Assessing Officer found that no approval had been obtained from the competent authority despite receipts from the educational institution exceeding Rs. 1 Crore limit, it was held that only in case of one educational institution receipt had exceeded Rs. 1 Crore limit, whereas annual receipts of all other institutions were less than threshold amount, and that each educational institution was required to be considered separately for applying threshold limit of annual receipts of Rs. 1 Crore, matter required a fresh look by the Assessing Officer.

Other decisions are also on the same point and to the same effect.

20. Herein, in view of the details of receipts of each of 44 institutions being run by the assessee "available at page 22 of the paper book", it has been projected on behalf of the assessee that gross receipts of none of the educational institution being run by the assessee exceeded Rs. 1 Crore limit.

Assessing Officer erred in observing that the assessee did not have any notification issued u/s 10(23C)(vi) of the Act. Learned CIT(A) upheld the assessment order without effective adjudication of the ground raised by

the assessee-appellant that prior to the amendment made in Section 10(23C)(iii)(ad), by FA 2021 effective from 01.04.2022, the annual receipts of each educational institution was to be considered.

We find that the Assessing Officer fell in error in applying provisions of section 10(23C)(vi) of the Act and in disallowing exemption simply on the ground that the assessee was having no notification issued in its favour u/s 10(23C)(vi) of the Act.

21. In view of the legal proposition discussed above, each educational institution was required to be considered separately for applying threshold limit of annual receipts of Rs. 1 Crore, matter requires a fresh look by the Assessing Officer and that too after verification of the relevant facts projected by the assessee in this regard, but no such step was taken by the authorities below.

Conclusion

22. In view of above discussion, the impugned assessment order passed by the Assessing Officer and the impugned order passed by Learned CIT(A) declining exemption as framed u/s 10(23C)(iiiad) to the assessee, without verification of the relevant facts projected by the assessee , deserves to be set aside.

Result

23. As a result, this appeal is disposed of for statistical purposes, and matter is remanded to the Assessing Officer for decision afresh on the point of framing of assessment, in view of the above findings recorded, and conclusions arrived at, by us.

Assessing Officer shall afford reasonable opportunity to the assessee to produce documents or evidence, and of being heard. Assessing Officer shall also be at liberty to call upon the assessee for production of any relevant material or evidence during enquiry.

Order pronounced in the open court on 11/09/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/09/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Bhartiya Shiksha Prachar Samiti, Tonk.
2. प्रत्यर्थी / The Respondent- Circle(Exemption), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 895/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar