

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
MS. PADMAVATHI. S, ACCOUNTANT MEMBER**

ITA Nos.1543 to 1545/Bang/2024
Assessment Years : 2017-18 to 2019-20

DCIT, Central Circle – 1, Mangalore.	Vs.	Shri. A. Shama Rao Foundation, 13-2-116, Hotel Srinivas Building, G. H. S. Road, Mangalore – 575 001. PAN : AAATA 1629 B
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. R. N. Siddappaji, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.10.2024
Date of Pronouncement	:	18.10.2024

ORDER

Per George George K, Vice President:

These appeals at the instance of the Revenue are directed against three Orders of CIT(A) all dated 30.10.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Years are 2017-18 to 2019-20.

2. There is a delay of 218 days in filing the appeals before the Tribunal. Revenue has filed application for condonation of delay stating therein the reasons for the belated filing of these appeals. On perusal of the reasons stated for late filing of the appeals, we are of the view that no laches can be attributed to the assessee as there is sufficient cause for belated filing of these appeals. Hence, we condone the delay and proceed to dispose off the matter on merits.

3. Common issues are raised in these appeals; hence, these appeals were heard together and are disposed off by this consolidated Order.

4. Identical grounds are raised in all these appeals. The grounds raised in these appeals are as follows:

1. *On the facts and in the circumstances of the case, the Ld.CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that there was misuse of funds by the assessee trust as the assessee had made payment to persons covered u/s 13(3) of the Act violating thereby provisions of Section 13(1)(c) of the act.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the appeal of the assessee by not adjudicating the matter on merits without appreciating the fact that the assessee has not applied its income wholly and exclusively for the objects for which it was established as prescribed under clause (a) of unnumbered 3rd proviso of Section 10(23C).*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in nullifying the assessment order by relying on the Hon'ble ITAT's judgment restoring the assessee trust's registration without considering the fact that the Department is still in contention against the restoration of registration for exemption u/s10(23C) in the Hon'ble HC of Karnataka.*
4. *For the above grounds and any additional grounds that may be urged during the course of hearing it is prayed that the order of the Ld. CIT(A)-2, Panaji may be quashed and that of the AO restored.*

5. Brief facts of the case are as follows:

Assessee is a Trust constituted by a Trust Deed dated 30.04.1988. The charitable object of the Trust is to promote education and advancement of educational activities. Assessee was granted registration under section 12A of the

Act on 14.06.1988. Since assessee Trust was running several educational institutions, it made an application for recognition under section 10[23C][vi] of the Act. The CCIT, Panaji, granted approval and it has been renewed vide the latest Order dated 15.04.2010. The aforesaid approval granted to the assessee Trust vide Order dated 15.04.2010 continued to remain in force until it was withdrawn vide Order dated 04.05.2020 passed by the CCIT, Panaji. The approval was withdrawn by the CCIT, Panaji, based on the references made by the AO during the course of assessment proceedings for the years under appeal. Consequent to the withdrawal of approval by the CCIT, Panaji, assessments were completed determining the total income of the assessee Trust at Rs.20,35,50,546/-, Rs.16,28,14,168/- and Rs.40,60,11,106/- for Assessment Years 2017-18 to 2019-20 respectively.

6. Aggrieved by the assessment completed, assessee filed appeals before the First Appellate Authority (FAA). The CIT(A) noticed that withdrawal of approval under section 10[23C][vi] of the Act by the CCIT, Panaji, was overturned by the Order of the Bangalore Bench of the Tribunal in ITA No.628/Bang/2020 (Order dated 23.07.2021) wherein the Tribunal held that withdrawal of approval under section 10[23C][vi] of the Act was not warranted. The CIT(A), after noting the provisions of the Act, held that denial of approval under section 10[23C][vi] of the Act, is a condition precedent for making an Assessment Order without giving effect to the provisions of section 10 of the Act. Accordingly, the CIT(A) allowed the appeal of the assessee.

7. Aggrieved by the Order of the FAA, the Revenue has filed the present appeals before the Tribunal.

8. The learned DR relied on the grounds raised. It was submitted by the learned DR that the Tribunal Order restoring the approval under section

10[23C][vi] of the Act, has been challenged before the Hon'ble High Court and same is pending adjudication.

9. The learned AR supported the Orders of the CIT(A).

10. We have heard the rival submissions and perused the material on record. The approval granted by the CCIT, Panaji, vide Order dated 15.04.2010 was in force until it was withdrawn vide Order dated 04.05.2020 passed by the CCIT, Panaji. The proceedings for withdrawal of the approval were taken by the CCIT, Panaji, based on the references made by the AO in the course of scrutiny proceedings for the relevant Assessment Years. Being aggrieved by the Order dated 04.05.2020 passed by the CCIT, Panaji, withdrawing approval granted under section 10[23C][vi] of the Act, assessee Trust filed an appeal before the Tribunal in ITA No.628/Bang/2020. The Bangalore Bench of the Tribunal, vide its Order dated 23.07.2021, held that withdrawal of approval under section 10[23C][vi] of the Act was not warranted. After the aforesaid Order of the Tribunal, the PCIT, Central Bangalore, passed an Order dated 22.03.2022 giving effect to the Tribunal Order wherein the approval under section 10[23C][vi] of the Act, was restored. The relevant para of the Order giving effect to ITAT Order is reproduced hereunder:

"6. Accordingly, considering decision of the Hon'ble ITAT, the approval u/s 10[23C][vi] granted earlier vide F. No. CCIT/PNJ/136(10)/2010-22 dated 15.4.2010 is restored."

11. To decide the issue, it is relevant to refer to the provisions of section 143(3) of the Act and the first proviso to the said section as it stood for the relevant Assessment Year before the amendment by Finance Act, 2022, w.e.f. 01.04.2022. The relevant provision is reproduced below for ready reference:

"(3) [On the day specified in the notice issued under] sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:

Provided that in the case of a—

- (a) research association referred to in clause (21) of section 10;
- (b) news agency referred to in clause (228) of section 10;
- (c) association or institution referred to in clause (23A) of section 10;
- (d) institution referred to in clause (238) of section 10;
- (e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause 123C) of section 10.

which is required to furnish the return of income under sub-section (4C) of section 139, **no order making an assessment of the total income or loss of such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless-**

(i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (228) or clause (23A) or clause (236) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, by such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

(ii) the approval granted to such research association or other association or fund or trust or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification

issued in respect of such news agency or fund or trust or institution has been rescinded"

12. From a plain reading of the first proviso to Section 143[3] it is clear that the AO is barred from making an Assessment Order without giving effect to the provisions of Section 10 unless the approval granted has been cancelled. This is because the income exempt under section 10 of the Act does not form part of the total income and the same is exempt from taxation. In case of approved institutions under section 10[23C][vi] of the Act, where the AO has to pass an order denying exemption claimed, the approval granted by the prescribed authority has to be withdrawn. Although, in the instant case, the AO has passed the impugned Assessment Orders after the approval was withdrawn, the position that now emerges is that the assessee Trust continues to enjoy the approval under section 10[23C][vi] of the Act as a result of the Order passed by the Tribunal (supra) and the consequential order passed by the PCIT, Central, Bangalore. In fact, the restoration of the approval would show that the said approval was always in force and hence, the Assessment Order passed denying the exemption under section 10[23C][vi] of the Act has to be vacated as the approval has been restored. Consequently, the income as reported by the assessee Trust has to be accepted by allowing the exemption under section 10[23C][vi] of the Act. Therefore, we see no reason to interfere with the Orders passed by CIT(A) and we confirm the same. It is ordered accordingly.

13. In the result, appeals filed by the Revenue are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(PADMAVATHY S)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 18.10.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.