

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM

(HYBRID HEARING)

श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.505/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2022-23)

SRI ARAVINDA EDUCATIONAL SOCIETY 3-270, Green Fields, Kunchanapalli Tadepalli Mandalam Guntur - 512301, Andhra Pradesh [PAN: AAAAS9805N]	v.	ADDL/ JCIT(A) Guntur Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri P. Srinivasa Prasad, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	28.01.2025
घोषणा की तारीख/Date of Pronouncement	:	14.02.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)/ADDL/JCIT(A), Bhubaneswar [hereinafter in short "Ld.CIT(A)"] vide DIN & Order

No.ITBA/APL/S/250/2024-25/1070076973(1)dated 04.11.2024 for the A.Y.2022-23 arising out of the intimation passed under section143(1) of Income Tax Act, 1961 (in short 'Act') dated 04.04.2023.

2. Brief facts of the case are that, assessee being an educational society filed its return of income admitting NIL income on 05.11.2022. The return was summarily processed under section 143(1) of the Act and the income was determined at Rs.3,60,53,149/-. The assessee was granted approval under section 10(23C)(vi) of the Act w.e.f. 22.06.2003. While filing the return of income for the impugned assessment year, the assessee disclosed gross receipts of Rs.3,60,53,149/- which includes income from main object for Rs.3,56,71,028/- and assessee claimed to have spent towards his objects an amount of Rs.3,07,47,649/- resulting in a surplus of Rs.53,05,500/- which was set apart for future use. While filing the return of income assessee provided information that the assessee was accorded approval under section 10(23C)(vi) of the Act with dated 27.06.2003. In compliance with the Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020, assessee has applied in prescribed form and manner to the Principal Commissioner of Commissioner of Income Tax by 30.06.2021 for fresh approval. Assessee stated that it has been granted approval under section 10(23C)(vi) of the Act by the Principal Commissioner of Income tax dated 22.09.2023 where the approval was effective from A.Y. 2022-23. However, the approval letter dated

22.09.2023 states that assessee has been granted approval under subclause (via) of section 10(23C) of the Act which relates to running of hospital and incidental objects. Since the assessee claimed exemption under section 10(23C)(vi) whereas it was granted exemption under section 10(23C)(via) of the Act, it was observed by the Ld.CIT(A) that the assessee claimed exemption with respect to the activity for which purpose it was approved or established. Further it was also observed that assessee has failed to upload the audit report within the due date specified claiming that there was a technical glitch on the e-filing portal and hence the delay.

3. Aggrieved by the order of the intimation under section 143(1) of the Act assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A), assessee made submissions regarding the approval granted and reasons attributable for the delayed filing of the audit report. Ld. CIT(A) having not convinced with the veracity of the reasons in the absence of cogent evidences dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising the following revised grounds of appeal.

“1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals) erred in dismissing ground No. 1 without a word being said about that the CPC had not given an opportunity to rectify the defective return.

2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals) erred in dismissing

ground No.2 without a word being said about the fact that the audit report in form 10B (instated of form 10BB) was duly uploaded with in the due date along with audited

3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals) erred in not considering judicial pronouncements in favor of the Assessee in similar situations as held in Indore contract bridge association Vs CPC Bangalore, by the Honorable ITAT Indore bench vide ITA no. 403/Ind/2022.

4. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in concluding that the approval for registration was granted by the Principle Commissioner of Income Tax after verifying the genuineness of the objects against the fact that the CPC was granting approval automatically on application.

5. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) ignored the fact that applying u/s 10(23C) (via) instead of u/s 10(23C)(vi) is clerical mistake which will not alter the objects of the association.

6. Without prejudice to the above the appellant prays to restore the file back to the assessing officer by setting aside the order passed by the learned Commissioner of Income-tax (Appeals) to verify the facts afresh.

7. For these and other grounds that may be urged at the time of hearing the appellant prays that the addition made by the CPC and sustained by the Commissioner of Income Tax (Appeals) of Rs.3,60,53,149/- may be deleted.”

5. The issue emanating from the grounds raised by the assessee is as follows:

- a. Delay in filing the Audit Report in Form 10B.
- b. Granting of approval under section 10(23C)(via)of the Act instead of under section 10(23C)(vi) of the Act.

6. On the issue of delay in filing of Form 10B, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the CA has filed Form 10B within the due date 30.08.2022 whereas it could not be approved by the assessee

due to technical glitches in the portal. Further, he submitted that the Form can be approved by the assessee was enabled on 28.09.2022 hence he pleaded that delay is not attributable to the assessee and prayed that deduction shall be allowed.

7. With respect to second issue of granting of approval under section 10(23C)(via) of the Act, Ld.AR draw out attention to Form 10A available in the paper book wherein he has selected wrong section code but submitted that in Sl.No.5 the object of the applicant, he selected as “education”. Since the approval is automatic, he pleaded that this clerical error was overlooked. He further pleaded that this issue may be remitted back to the file of the Principal Commissioner of Income Tax for fresh issuance of Registration under section 10(23C)(vi) of the Act.

8. Per contra, Ld. DR fully relied on the orders of the Revenue Authorities.

9. We have heard both the sides and perused the material available on record. It is an admitted fact that the assessee has uploaded Form 10B on 30.08.2022. Further the Form 10B was also approved belatedly approved by the assessee on 28.09.2022. The Co-ordinate Bench of the Indore in the case of Indore Contract Bridge Association v. ITO in ITA No. 403/IND/2022 dated 18.04.2023 following the order of the Hon’ble Mumbai High Court in CIT v.

Mumbai Metropolitan Regional Iron & Steel Market Committee [378 ITR 103],

held as follows: -

“12. We have heard rival contentions of both sides and examined the present controversy in the light of judicial decisions. At first, we are convinced that the controversy is directly settled in favour of assessee by decision in Savitri Foundation (supra) where the Hon’ble Mumbai ITAT, following the decision of Hon’ble Mumbai High Court in CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee 378 ITR 103 has observed and held thus:

“4....

5. In my considered view non-filing of Audit Report in Form 10B along with Return of Income is merely a procedural defect which is rectifiable. If the Audit Report was available with the assessee at the time of filing of Return of Income and was not filed due to bonafide reasons the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible to claim the same.

6. The Hon'ble Bombay High Court in the case of CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee (supra) has held that late filing of required documents would not disentitle the assessee from availing benefit of section 11 of the Act. Thus, in the facts of the case and in the light of decision of Hon'ble Bombay High Court, I deem it appropriate to restore the file back to Assessing Officer for de novo assessment after considering the audit report filed by the assessee, in accordance with law.”

10. Respectfully following the decision of the Coordinate Bench the delay in filing the Form 10B is merely a procedural defect which can be rectified. Further, we also note that Form 10B has been approved by the assessee before the intimation under section 143(1) of the Act. We therefore direct the Ld.AO / CPC to allow the deduction claimed by the assessee. Thus, the ground raised by the assessee on this issue are allowed.

11. Further, on the second issue we find that while filing Form 10 for availing of Registration under section 10(23C) of the Act, assessee has wrongly selected the code of Clause (via) whereas in Sl.No. 5 stated Education as objective of the applicant. It appears to us that there was an inadvertently clerical error made by the assessee while filing the application. The applicant is running an educational institution and was granted approval from 2003 onwards. This clerical error could not be rectified by the applicant in spite of the efforts taken by the assessee before the concerned authorities. We are therefore inclined to direct the Principal Commissioner of Income Tax to grant one more opportunity to the assessee to rectify the clerical error while applying for renewal of Registration under section 10(23C) of the Act. Thus, the grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 14th February, 2025.

Sd/-

(के.नरसिम्हा चारी)

(K.NARASIMHA CHARY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 14.02.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : **SRI ARAVINDA EDUCATIONAL SOCIETY**
3-270, Green Fields, Kunchanapalli
Tadepalli Mandalam
Guntur - 512301, Andhra Pradesh
2. राजस्व/ The Revenue : **ADDL/ JCIT(A)**
Guntur
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam