

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH "B" MUMBAI
BEFORE SHRI D.T.GARASIA, JM AND SHRI RAJESH KUMAR, AM

I.T.A. No.1115/Mum/2013
(निर्धारण वर्ष / Assessment Year : 2008-09)

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| M/s Multipurpose Education Society Radio Electric Institute, Lamington Chambers, Lamington Road, Mumbai-400004 | बनाम/ Vs. | Dy. Director of Income Tax -(E)-I (1), Piramal Chambers, Room No.504, Parel, Mumbai-400012 |
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स्थायी लेखा सं./ PAN :AABTM0489J

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| अपीलार्थी ओर से / Assessee by | Shri Deepak Tralshawala |
| प्रत्यर्थी की ओर से/Revenue by | Shri Suman Kumar |

सुनवाई की तारीख / **Date of Hearing** : **14.2.2017**
घोषणा की तारीख / **Date of Pronouncement** : **27.2.2017**

आदेश / ORDER

PER RAJESH KUMAR, Accountant Member:

The assessee has filed this appeal challenging the order dated 29.12.2012 passed by the Id.CIT(A)-1, Mumbai for the assessment year 2008-09 wherein it has raised following grounds of appeal:

"On the facts and the circumstances of the case, the Id. CIT(A)-1 erred in:

- 1. Denying the exemption u/s 10(23C) (iiid) of the Income Tax Act, 1961 on the ground that the activity undertaken by the appellant was in the nature of commercial activity and not in furtherance of education;*

2. *Not considering the ratio of various judgments relied upon by the appellant which clearly clinched the issue in favour of the appellant;*
3. *Passing the order in a most perfunctory manner and without discussing any of the judgments relied upon by the appellant”*

2. The issue raised in grounds of appeal no.1 is qua denying the exemption u/s 10(23C) (iiiad) of the Income Tax Act, 1961 on the ground that the activity undertaken by the appellant was in the nature of commercial activity and not in furtherance of education.

3. Brief facts of the case are that during the course of assessment proceedings, upon inquiry from the AO, the assessee vide letter dated 20.10.2010 submitted that the income of the assessee was exempt under section 10(23C) (iiiad) of the Act. The AO after perusal of the details submitted by the assessee observed that the assessee has conducted 7 courses out of which only two courses were recognized and fees were determined by the Government. Further the AO noticed that the registration certificate under section 12A was issued to the assessee in the name of Multipurpose Education Society and not in the name of the assessee and same was position with regard to registration with the Charity Commissioner. The AO further observed that in respect of five courses which were not recognized by the Government, the assessee was charging fees on the commercial basis and earned surplus from the said courses and accordingly issued show cause notice to the assessee dated 9.12.2010 calling upon the assessee to show cause as to why the exemption u/s 10(23C)

(iiiad) should not be denied, which was replied by the assessee vide letter dated 14.12.2010. The AO was not satisfied with the explanation so rendered by the assessee and came to the conclusion that the assessee charged fees on commercial basis in respect of five course and also that the assessee was running the courses in the name of CMC whose fees were prescribed by CMC Ltd., which itself was a commercial organization and the assessee was acting as a franchisee of that company. The AO observed that the assessee made a profit of Rs.2,93,527/-. It was stated by the Id. AR that it was factually incorrect as this was total course fees received by the assessee and not the profit and finally denied exemption as claimed by the assessee by holding that the activities of the assessee were in the nature of commercial within the meaning of section 2(13) of the Act and determined the total income of the assessee at Rs.10,81,259/- vide order dated 30.12.2010 passed under section 143(3) of the Act. Aggrieved by the order of the AO, the assessee preferred an appeal before the FAA, who dismissed the appeal of the assessee by considering all the details and submissions as made before him which have been incorporated in para 3.2 to 3.9 and dismissed the appeal of the assessee observing and holding as under :

"3.10 I have carefully considered the submission of the appellant, assessment order and facts of the case. I find that A.O. has correctly pointed out that the certificate u/s.12A is in the name of Multipurpose Education Society (MES) instead of Multipurpose Education Society Radio Electric Institute who is the appellant before me. In appeal before me, the appellant submitted that PAN No. etc. was obtained in the name of MES Radio Electric Institute since the Society had decided to start with Radio Electric Institute. I find that although the name does not materially alter

the object or activities of the society, the appellant has not produced any documentary evidence to show that they have carried out any change of name. As regards the claim of exemption u/s.10(23C)(iiiad), it is observed that the same is not tenable. The appellant is running the courses which are in the nature of activities undertaken by any commercial organization. The main ingredient of claim, viz. 'furtherance of education' is not fulfilled in the case of the appellant. Therefore, the explanations offered by the appellant as well as the case laws relied upon by them are clearly distinguishable.

3.11 The details furnished by the appellant clearly show that the appellant institute does not exist solely for educational purposes and charges fees in line with the norms of commercial institutes. To be eligible u/s.10(23C)(iiiad), the decisive test of 'sole purpose of education' has not been fulfilled by the appellant. The A.O. has rightly relied on the judgment in the case of Bihar Institute of Mining & Mining Surveying vs. CIT 208 ITR 608 (Patna) wherein it was held that "arranging private tuitions would not also entitle the institution to be treated as an educational institution". I find that the appellant is charging commercial rates in respect of 5 out of 7 courses undertaken by it. The appellant is running the private course "CMC Ltd." where the fees are as prescribed by CMC Ltd. itself. Therefore, where the appellant is acting as a franchise of CMC Ltd. itself. Therefore, where the appellant is acting as a franchise of CMC Ltd, I am of the opinion that the appellant has not fully filled the requisite criteria required for section 10(23C)(iiiad). The various case laws cited by the appellant are not applicable to this case since in those cases the decisive "test of the sole purpose of education was established. Having failed to do so, the appellant was rightly denied the benefit of section 10(23C)(iiiad) by the AO. Hence, the ground of appeal filed by the appellant is dismissed."

4. The Id. AR vehemently submitted that the assessee was carrying the activities of education right from 1970 and was claiming exemption under section 10(23C)(iiiad) of the Act. The Id. AR submitted that the assessee in the preceding and in the succeeding years claimed the said exemption and the revenue has allowed it by taking us through the copies of income tax returns

for the assessment years 1998-99 to 2013-14, wherein the exemption under section 10(23C)(iiiad) of the Act was allowed and also referred the assessment order for the assessment year 1993-93 passed under section 143(3), wherein the revenue has accepted the claim of the assessee under section 10(23C)(iiiad) of the Act. It was also argued before us that under the provisions of section 10(23C) (iiiad) of the Act if any university or other educational institution existing solely for educational purposes and not for purposes of profit then the income of the said institution would be exempt if the aggregate annual proceeds of such university or educational institution do not exceed Rs.1 crores by referring to the copy of the balance sheet as filed at pages 3 to 10 of the paper book and pointing out that the course receipts of the assessee from seven courses were Rs.72,14,822/- and therefore the observations as made by the AO were wrong on facts and on law. Finally the Id. AR relied on the couple of decision in defence of his arguments in the case of Deputy Director of Income Tax V/s Shanti Devi Progressive Education Society reported in (2012) 340 ITR 320 (Del) and the decision in the case of Vanita Vishram Trust V/s CIT reported in (2010) 327 ITR 121 (Bom).

5. The Id. DR argued that the conclusion drawn by the Id. CIT(A) that the assessee's activity was of commercial nature especially in view of the facts that the assessee carried on seven courses out of which two courses were approved by the Government. The Id. DR also relied on the order of the Id. CIT(A).

6. We have carefully considered the rival submissions and perused the material placed before us including the orders of authorities below and case laws relied upon by the assessee. We find from the annual accounts of the assessee which are placed at pages 3 to 10 of the paper book that the gross annual receipt of the assessee was Rs.72,14,822/- from all the activities comprising of 7 courses out of which two approved by the government. The assessee received 85.37% of the total fees from the recognized courses whereas only 14.63% was received from unrecognized courses which are also wholly for the purpose of educational activities meaning thereby that the assessee received total annual fee from the educational activities carried on by it imparting various courses. It is the case of the revenue that the surplus from these activities were not applied for the purposes of objects of the assessee trust. We also find merit in the submissions of the Id.AR that the assessee cannot advance or expand and improve its activities if does not earn any surplus from the education activities. The perusal of the income tax returns from the assessment years 1998-99 to assessment years 2013-14 and also the intimation under section 143(1) dated 17.5.2005 for the assessment year 2004-05, the assessment order passed under section 143(3) for the assessment year 1993-94 forming part of the paper book at pages 29 to 48, reveals that in all these years the assessee has been claiming exemption u/s 10(23C (iiiad) which has been accepted by the revenue

and only for the year under consideration it has been denied. In the case of Deputy Director of Income Tax V/s Shanti Devi Progressive Education Society (supra), the Hon'ble Delhi High Court held that the assessee is entitled for exemption under section 10(23C) (iiiad) of the Act where there is no diversion of the funds to the members of the assessee. Similarly, in the case of Vanita Vishram Trust , the Hon'ble Court has held that where the assessee was carrying out activities for a period of 8 years of educational nature , the Chief Commissioner has to grant approval to the assessee for the assessment year 2005-06 to 2007-08 and from assessment year 2008-09 to 2011 to 2012 as the activity of the assessee trust was charitable in nature. The surplus which was arising from the activities of the trust after meeting the expenses incurred for conducting the educational activities would not disentitle the trust from the benefit of provision of section 10(23C)(iiiad) of the Act. Considering the above facts of the assessee in the light of ratio laid down in the case law cited supra, we find that the activities of the trust are very much falls within the ambit of education activities. If surplus made by the assessee trust was utilized and consumed for the purposes of furtherance of its object of education , it would also be considered that the trust is existing for the purpose of educational purposes only and not otherwise. We are not in agreement with conclusion drawn by the Id CIT(A) which is not correct. Accordingly, we set aside the order of the Id. CIT(A) and direct the AO to allow the benefit u/s 10(23C)(iiiad) of the

Act as the gross annual received is less than Rs.1 crores as the activities of the trust are for the educational purposes.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27.2.2017.

Sd
(D.T.GARASIA)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated :27.2.2017

Sr.PS:SRL:

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai