

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.852/Ind/2018

M/s Sun Swan Education Society, 134 Saket Nagar, Indore (Appellant)	Vs.	CIT(Exemption), Bhopal (Respondent)
PAN AALAS3347J		

Revenue by	Shri S.B. Prasad, CIT
Assessee by	Shri Avinash Gaur, Adv
Date of Hearing	11.03.2020
Date of Pronouncement	18.03.2020

ORDER

PER MANISH BORAD, AM

The above captioned appeal filed at the instance of the assessee is directed against the orders of Ld. Commissioner of Income Tax (Exemption) (in short 'Ld.CIT(A)'], Bhopal dated 29.8.2018.

2. Assessee has raised following grounds of appeals;

1.The learned Commissioner of Income Tax (Exemption) erred in rejecting the application made for approval under section 10(23C)(vi) of the Income Tax Act.

2.The learned Commissioner of Income Tax (Exemption) rejected the application for approval under section 10(23C)(vi) just on the basis that registration under section 12AA of the Income Tax Act has already granted to the assessee.

3.The learned Commissioner of Income Tax (Exemption) without pinpointing any defect in the objects of the assessee, proceeded to the rejection the application filed for approval under section 10(23C)(vi) of the Income Tax Act.

4. The rejection of application is unlawful and needs to be deleted.

5.The appellant craves leave to add, alter and for delete any of the grounds of appeal.

3. At the outset Ld. Counsel for the assessee submitted that the issues raised in this appeal are squarely covered by the decision of the Co-ordinate Bench, Indore in the case of *Reva (Sunil) Educational Society*, ITA No.866/Ind/2018 order dated 21.11.2019.

4. Per contra Ld. Departmental Representative could not controvert the submission made by the counsel for the assessee and raised no objection if the decision of the Tribunal in the case of

Reva (Sunil) Educational Society is applied and the matter is restored to Ld. CIT (Exemption), Bhopal for fresh adjudication.

5. We have heard rival contentions perused the records and carefully gone through the decision of the Co-ordinate Bench. We observe that the assessee society got registered with Registrar of Firms & Societies on 17.7.2014. The assessee society is also registered u/s 12AA of the I.T. Act vide order dated 9.5.2016 for the purpose of carrying charitable activities. The main objects of the assessee society are;

- (i) To promote and develop educational services.
- (ii) To provide modern Technical education.
- (iii) To make the students capable of facing challenges in life efficiently and enable them to carve their own future.
- (iv) To impart sports, social, health, cultural, moral science education etc.
- (v) To work in the field of Environment.

6. The assessee society applied for approval u/s 10(23C)(vi) in Form No.56D on 02.08.2017. Ld. CIT (Exemption) observed that mainly the society is engaged in the education activities and running school in the name of Sun Swan Educational Society but apart from main objects other objects are also mentioned in bye-

laws and Memorandum of Societies. Subsequent to the filing of application for approval u/s 10(23C)(vi) of the Act certain information were called for and also society was asked to amend the objects. Assessee society stated that for amendment of memorandum and bye-laws application has been moved on 8.3.2018. Ld. CIT(Exemption) asked the assessee to furnish the justification that since the assessee is already granted registration u/s 12AA of the Act then what is the need for approval u/s 10(23C)(vi) of the Act.

7. We observe that similar issue came up before us in the case of in the case of *Reva (Sunil) Educational Society(supra)* wherein also the society was duly registered u/s 12AA of the Act and for this reason the Ld. CIT(Exemption) rejected the application for approval u/s 10(23C)(vi) of the Act. This issue was decided by the Tribunal observing as follows:-

10. We have heard rival contention and perused the records placed before us. The assessee society was registered on 29.09.2015 with the following objects;

- (i) To provide the facilities of first class public school*
- (ii) To work for promotion of science, education, literature or fine art*
- (iii) To work for foundation or maintenance of libraries*

- (iv) To work in the field of water conservation, rain harvesting, creating new water bodies, development of rural urban water supply system, rehabilitation of water bodies, village upliftment and development of a model village.
- (v) To work in the field of education and training
- (vi) To work in the field of environment
- (vii) in the field of Mahila and Bal Vikas and Panchayat and Samajkalian and ancillary work to other social welfare activities.
- (viii) To do all or any of the above things either alone or in conjunction with others and to do all other such things as the society may consider necessary, incidental or conducive to the attainment of the above objects.

11. We have also observed that the assessee society enjoys the registration u/s 12AA of the Act granted on 30.1.2017 which establishes that it is running for charitable activities. As regards application u/s 10(23C)(vi) of the Act during the course of hearing assessee society made following submission before Ld. CIT (Exemption):-

Reg: Reva (Sunil) Education Society, Indore PAN "AACAR4988D"

Sub.:Your notice no.ITBA/EXMF/EXM17/2018-191/1010275227(1)

Sir,

With reference to the above, we hereby submit the following information and Particulars as required in seriatim as under: _

1.That Books of accounts with supporting vouchers are Produced herewith.

2. That regarding sources of funds, it is submitted that the assessee did not received any corpus fund and /or other fund during the financial year 2016- 2017. With regard to creditors and

liabilities, it is submitted that it consist of advance fees received of Rs.10200/-, which is fees received from the students of the school runned by the assessee in advance for the next session of which copy of ledger account are enclosed herewith, sundry creditors of Rs.8542981/-, sundry creditors for expenses of Rs. 1000874/- , Caution Money of Rs. 2252000/-, Tds Payable of Rs.534239/-, of which copy of Ledger account are enclosed herewith and other current liabilities and provision of Rs.1820865/- . of which copies ledger account and copies of challans in respect of payment of statutory Provision are enclosed herewith. With regard to fixed assets Copy of ledger account of fixed assets and some sample bills copies are enclosed. With regard to deposit, it is submitted that it is Term deposit for CBSE, MP Board and copy of ledger account is enclosed herewith. With **regard to** loans and advances, it is submitted that it consists of Sundry Debtors 13063844/- which is fees due from the students of which copy of ledger account is enclosed herewith, Advance to Suppliers of Rs. 190510/- and TDS receivable of Rs.41201/- of which details are enclosed herewith.

3.Copy of deed of the assessee society is enclosed herewith and original is produced for verification.

4. That the assessee is running school in the name Saket International School h has got permission from CBSE and M.P. Board to run classes from nursery to 9th Class. However, the assessee is running classes from nursery to Eight class as of now. And the assessee conducts sports and other related activities. The date of commencement is 01.06.2016.

5.That year wise details of deposits/loan! advances given during the year 2015-16 to 2016-17 is enclosed herewith. That no loan has

been given by the assessee and also no interest has been charged by the assessee. Details and copies of ledger account are enclosed herewith.

6. That consolidated chart of profitability in the format as required and details are enclosed herewith.

7. That there is fixed deposit held with the bank by the assessee and Details chart are enclosed herewith.

8.(a) and (b). That the assessee has not entered for the F.Y. 2015-16 to 2016-17 with members/office bearers/founder members and persons related to them.

9. That the details of the business concern where the founder members or office bearers are either proprietor or partner or director or having substantial interest is enclosed herewith. And the assessee has not entered any transactions with such concerns.

10. That the assessee has not received any donations during the period 2015-16 to 2016-17 and therefore not applicable. That the fees structure of the school operated by the assessee is enclosed herewith.

11. That the details of the student giving name of the student, father's name, address with summary giving number of student's class wise is enclosed herewith, And there was no student under RTE at that time.

12. That in respect of Lease rent paid of Rs. 480000/- per month of the property situated at Revenue Area, Anjad dist. Barwani taken on lease rent, it is submitted that the school is situated in Anjad Dist. Barwani which is one of the posh areas of the Barwani District and lease rent paid is in accordance as per the market rate of the area. The size of the property taken on rent is 3.50 Acres. The payment of

the lease rent is made through the banking channel and tds is made by the assessee on lease rent paid. The lease rent income is shown by the owners of the property in their income tax return. Copy of the lease rent agreement is already submitted with earlier submission.

13. That in respect of amendment of bye laws, it is submitted that assessee case applied for the amendment of bye laws in the office of registrar of firms and society and as soon as the amended copy of bye laws is received, the same would be submitted. Copy of the application filed before the registrar of firms and society office is enclosed herewith.

14. That in respect of justification of fixed assets, it is submitted that the assessee has taken land on lease rent and Constructed Building for the purpose of running school and for it the assessee made School Building} Other Building the rooms for the classes and these were capitalized and shown under fixed assets under Building construction. Copies of the bills of the addition is enclosing herewith.

15. That photographs of the both the building premises where school is operated by the assessee are enclosed herewith.

We trust above would suffice.

12. After receiving the above submission Ld. CIT(Exemption) in its para-3 of the order dated 29.08.2018 gave a finding that since the assessee is already granted registration u/s 12AA of the Act what is the justification for seeking the approval u/s 10(23C)(vi) of the Act. This finding of Ld. CIT (Exemption) shows that in his view there was no need to submit application u/s 10(23C)(vi) of the Act when the assessee already have registration u/s 12AA of the Act. Whether this view of the Ld. CIT (Exemption) is in accordance with law correct needs to be addressed. We

observe that Central Board of Direct Taxes vide Circular No.14 of 2015 dated 17.8.2015 with the subject of “clarification on certain issues related to grant of approval in case of Section 10(23C)(vi) of the Act” clarified on the issue about the necessity for registration u/s 12AA while seeking approval/claiming exemption u/s 10(23C)(vi) of the Act (which is the exact case of the assessee). The relevant portion of the circular dealing with this issue is reproduced below:-

2. Necessity for registration u/s 12AA while seeking approval/claiming exemption u/s 10(23C)(vi)

2.1 Section 10(23C)(vi) does not prescribe any stipulation which makes registration u/s 12AA a mandatory pre or post condition, In fact, provisions of section 11 and 10(23C) are two parallel regimes and operate independently in their respective realms although the compliance criteria may be common to both. Hence obtaining prior registration before granting approval u/s 10(23C)(vi) cannot be insisted upon..

2.2 However, in case of a trust or an institution having obtained registration u/s 12AA as well as approval u/s 10(23C)(vi), if registration is withdrawn at some point of time due to certain adverse findings, the withdrawal of approval u/s 10(23C)(vi) shall not be automatic but will depend upon whether these adverse findings also impact the conditions necessary to keep approval u/s 10(23C)(vi) alive.

13. Hon’ble jurisdictional High Court in the case of CIT V. Franciscan Clarist Society (supra) held that without considering the actual activities undertaken by the society the exemption cannot be denied merely relying on the bye-laws.

14. Examining the facts of the instant case in the light of the above

judgment as well as Central Board of Direct Taxes Circular No.14 of 2015 dated 17.8.2015, we observe that the assessee society is having the object both in the nature of performing charitable activities and also running for educational purpose without any purpose of earning profits. Claiming exemption for the profits earned from performing educational activities is provided in Section 10(23C)(vi) of the Act and the benefit of claim of exemption for receipts/income from charitable activities is provided u/s 11 of the Act. For getting both the exemptions assessee needs to be separately registered u/s 10(23C)(vi) of the Act and registration u/s 12AA of the Act. Both the provisions work independently and there is no provision of law which shows that if the assessee is registered u/s 12AA of the Act it cannot be granted claim u/s 10(23C)(vi) of the Act or vice versa. Ld. CIT (Exemption) should have focused on examining the activities undertaken by the assessee and if assessee society fulfil the conditions for getting the registration u/s 10(23C)(vi) of the Act it should not be denied merely because the assessee society enjoys registration u/s 12AA of the Act.

15. *We, therefore in the given facts and circumstances of the case and in view of the discussions herein above set aside the issue of approval u/s 10(23C)(vi) of the Act to Ld. CIT (Exemption) for afresh examination after giving reasonable opportunity of being heard to the assessee as per the terms indicated above.*

8. On going through our above decision in the case of *Reva (Sunil) Educational Society (supra)* and examining the facts of the instant appeal we are of the considered view that the issues raised before us are same and therefore following our own decision we restore the issue of approval u/s 10(23C)(vii) of the Act to Ld.

CIT(Exemption) for necessary examination. Further registration u/s 12AA of the Act granted to the assessee should not be a bar for granting approval u/s 10(23C)(vii) of the Act. Needless to mention that opportunity of being heard should be provided to the assessee and all the issues raised in this appeal are restored to Ld. CIT (Exemption) for deciding afresh as per terms indicated above.

9. In the result appeal of the assessee is allowed for statistical purpose.

The order pronounced in the open Court on 18.03.2020.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 18 March, 2020

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore