
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income Tax Appeal No.229 of 2017
Date of decision: July 14, 2017

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant

versus

M/s Haryana State Pollution Control Board, Panchkula

....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Denesh Goyal, Sr. Standing Counsel for the appellant-Revenue.

AJAY KUMAR MITTAL, J.

1. The appellant-Revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 04.09.2016 (**Annexure A-3**) passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, 'the Tribunal') in ITA No.668/CHD/2016 for the assessment year 2012-13, claiming the following substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in upholding the order of CIT(A) in deleting the additions made by the AO simply on the ground that exemption certificate u/s 10(23C)(iv) had been granted to the assessee?
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> (ii) Whether on the facts and circumstances of the case the

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Hon'ble ITAT was justified in accepting the results based on the provisional balance sheet when the requirement for claiming exemption u/s 10(23C)(iv) was that the audited balance sheet was required to be filed along with the return of income on or before the due date?

(iii) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in granting relief on capital expenditure even when the exemption u/s 10(23C)(iv) was denied by the AO?"

2. A few facts necessary for adjudication of the controversy involved as narrated in the appeal may be noticed. The assessee-respondent filed return of income claiming exemption under Section 10(23C)(iv) of the Act. The Assessing Officer (AO) framed assessment by denying the exemption under Section 10(23C)(iv) of the Act as it was not approved by the prescribed authority. Credit for capital expenditure which was allowable to an exempted entity was also denied. The AO made the additions of excess of income over expenditure of ₹15,15,89,376/- apart from additions of capital expenditure of ₹1,52,03,549/- (Annexure A-1). Against the Nil returned income, the total income was assessed at ₹ 16,67,92,925/-. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Panchkula, [in short, 'the CIT(A)], who vide order dated 22.03.2016 (Annexure A-2), allowed the assessee's claim for exemption under Section 10(23C)(iv) of the Act and the capital expenditure by treating the same as application of income. The CIT(A) allowed the relief on the ground that the Commissioner of Income Tax (Exemptions)'s order dated 01.03.2016 granting exemption under Section 10(23C)(iv) of the Act for the assessment years 2006-07 to 2011-12 was also applicable

for the instant assessment year 2012-13. Not satisfied with the order passed by the CIT(A), the Department-Revenue filed an appeal before the Tribunal. Vide order dated 04.09.2016 (Annexure A-3), the Tribunal upheld the order passed by the CIT(A), holding that the amount spent by the assessee-respondent was clearly application of income in nature which had been spent to achieve the objects. Further, when the assessee had been granted approval under Section 10(23C)(iv) of the Act and the exemption was available with it, there was no question of disallowing any amount of this nature (Annexure A-3). Hence, the instant appeal by the appellant-Revenue.

3. We have heard learned Sr. Standing Counsel for the appellant-Revenue.

4. Admittedly, the assessee filed return of income declaring Nil income. During the year under consideration, the assessee was having income of ₹ 15,15,89,376/-, but after claiming exemption under Section 10(23C)(iv) of the Act, the assessee showed Nil income in the return of income. The CIT(A) noticed that CIT(Exemption) vide order dated 1.3.2016 had granted exemption under Section 10(23C)(iv) of the Act to the assessee with effect from assessment years 2006-07 to 2011-12. It was further observed that after considering the explanation of the assessee in the light of the Circular No.7/2010, once the approval had been granted under Section 10(23C)(iv) of the Act, that would be valid until withdrawn. The relevant extract from Circular No. 7/2010 dated 27.10.2010 reads as under:-

> "Approvals under sub-clauses (vi) and (via) of Section 10(23C) are governed by the procedure contained in rule

2CA. Rule 2CA was amended with effect from 01.12.2006, inter alia by substitution of the existing sub-rule 3 by a new provision which is reproduced below:-

> "(3) The approval of the Central Board of Direct Taxes or Chief Commissioner or Director General, as the case may be, granted before the Ist day of December, 2006 shall at any one time have effect for a period not exceeding three assessment years."

Read in isolation, without any further guidance as was given by way of explanatory notes to Finance Act, 2006 in respect of amendment of sub-clauses (iv) and (v) of Section 10(23C), the above amendment leaves some scope for doubt about the period of validity of the approval under Section 10(23C)(vi) and (via) on or after 1.12.2006. For the removal of doubts if any in this regard, it is clarified that as in the case of approvals under sub-clauses (iv) and (v) of Section 10(23C), any approval issued on or after 1.12.2006 under sub-clause (vi) or (via) of that sub-Section would also be a one time approval which would be valid till it is withdrawn."

5. When the matter was taken by the revenue in appeal, it was recorded by the Tribunal that in the present case, capital expenditure had not been charged to Profit and Loss Account. The third proviso to Section 10(23C) of the Act provides for "xxxx....applies its income or accumulates it for application, wholly or exclusively to the objects for which it is established....xxxxx". Thus, the amount was spent by the assessee towards the object. It was further recorded by the Tribunal, after examining the matter that the amounts spent by the assessee were clearly the application of its income in nature which had been spent to achieve the objects of the assessee. The assessee had been granted approval under Section 10(23C)(iv) of the Act and thus, there was no question of

disallowing of any amount of this nature.

6. Adverting to the judgment relied upon by learned Sr. Standing counsel for the appellant-Revenue in '**Commissioner of Income Tax vs. Red Rose School' (2007) 212 CTR 394 (All)**, it may be noticed that it was held by the Allahabad High Court that the Commissioner of Income Tax has to satisfy himself about the genuineness of the activities of the trust or institution and also about the objects of the trust or the institution. On being satisfied, the CIT would either grant the certificate or would reject the prayer for exemption. The proposition of law enunciated therein is not disputed. However, each case has to be decided on its own facts. Similar is the position in **St. Francis Convent School vs. Central Board of Direct Taxes and others, (2012) 67 DTR 251 (P&H).** In view of the findings of fact recorded by the CIT(A) and the Tribunal in the present case, as noticed hereinabove, the revenue cannot derive any benefit from these pronouncements.

7. Learned Senior Standing Counsel for the appellant-Revenue has not been able to point out any error in the order passed by the Tribunal. He has also not been able to produce any material to substantiate the claim made in the appeal. Thus, no substantial question of law arises and the appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 14, 2017 **(AVNEESH JHINGAN)**
'gs' **JUDGE**

Whether speaking/reasoned? **Yes**
Whether reportable? **Yes**