

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH  
'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य  
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ITA No. 7/CHD/2020  
निर्धारण वर्ष / Assessment Year : 2016-17

Sanskriti KVM School, Tanda Road, Jalandhar.	बनाम VS	The ACIT (Exemptions) Circle-1, Chandigarh.
स्थायी लेखा सं./PAN No: AACAS5326G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Y.K. Sud, C.A.

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 23.03.2021

उदघोषणा की तारीख/Date of Pronouncement : 29.04.2021

**Hearing conducted via Webex**

**आदेश/ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 03.10.2019 of CIT(A)-II Jalandhar pertaining to 2016-17 assessment year is assailed on the following grounds:

1. That the CIT(A) was not justified in upholding the action of the AO for denying the exemption of Rs. 4702618/- claimed by the assessee u/s 11 of the Income Tax Act, 1961.
2. That both AO & CIT(A) failed to appreciate that the exemption u/s 10(23c)(vi) was granted by the IT AT vide their order dated 22.02.2017 effective from Asst. Year 2015-16. Therefore the CIT(A) erred in not granting exemption on the pretext of filing of Form 10BB on 06.06.2017 during the pendency of assessment proceedings.
3. That both CIT(A) & AO failed to appreciate that filing of the Audit Report in Form 103B is directory and not mandatory and can be filed at the stage of assessment.

4. *That CIT(A) wrongly ignored the Circular No. 10/2019 dated 22.05.2019 . wherein the CBDT had granted blanket permission of condonation of delay in filing Form 10BB pertaining to Asst. Year 2016-17 which was binding on both the authorities.*
5. *That the order of CIT(A) & AO are against the law and facts of the case.*

2. At the time of hearing, ld. AR inviting attention to the impugned order submitted that the reasons prevailing with the ld. Commissioner for denying the claim of the assessee were not relevant and maintainable in law. Reliance was placed upon the order of the ITAT passed in assessee's own case for the immediately preceding assessment year dated 09.05.2019 wherein in ITA 1397/CHD/2018 on similar facts and circumstances, the departmental appeal was dismissed, copy of this order was filed. On a reading of this specific order, it was noticed that since the impugned order is dated 03.10.2019, the order of the ITAT having already been passed in May, 2019 was thus available to the parties prior to the passing of the impugned order, thus, why it was not relied upon before the First Appellate Authority it was questioned.

3. The ld. AR submitted that the order had specifically been relied upon.

4. In the circumstances, the ld. AR was required to point out from the submissions advanced before the ld. CIT(A) whether the specific order had been brought to the attention of the ld. CIT(A). On a reading of the submissions extracted in para 3, it was submitted that the assessee had specifically invited attention to the fact that in the immediately preceding assessment year, the order

passed by the CIT(A) was in assessee's favour. Relying upon the written submissions extracted in the order, it was his submission that on the same set of facts and circumstances, the order of the CIT(A) in assessee's own case decided in its favour was cited before the CIT(A) and the fact that this order was upheld by the ITAT was also brought to the notice of the CIT(A). The factum of the CIT(A)s order in assessee's favour in the immediately preceding assessment year it is seen is found mentioned in the order, however, reference to the order of the ITAT is not found therein. Accordingly, on 10.03.2021, ld. DR was given time to go through the record and point out whether there was any difference in facts and circumstances as to why the order passed in the immediately preceding assessment year was not to be followed by the CIT(A). After affording time on 10.03.2021 on this ground to the Revenue, the hearing, accordingly, commenced thereafter on 23.03.2021. The relevant extract of the court proceedings on 10.03.2021 is extracted hereunder for ready reference :

10/3/21 Present ~~was~~ Assessee: Sh. Y. K. Sud, CA  
" " Dept: Sh. Ashok Khanna, Adl. CIT  
Hearing via video:  
Mr. Sud relies on order passed  
by 10/3/21 in (A) in favour of  
assessee. Further your order  
passed by 10/3/21 is same facts  
relies upon Mr. Khanna to go  
8th floor. One paper filed with  
summary of the issues & to file to  
ld. Mr. Adl to 23rd March 2021  
Kept on P. Sud

ES

5. On the next date of hearing, ld. AR again relied upon the written submissions extracted in the impugned order. Inviting attention to the order of the ITAT in ITA 1397/CHD/2018 dated 09.05.2018 and the joint order dated 22.02.2017 in the case of the assessee being in ITA 528/ASR/2016 in consolidated order in ITA 526/ASR/2016 in the case of Kanya Maha Vidyalaya and others including the assessee. The year under consideration, it was reiterated is 2016-17 assessment year. Copy of the order of the CIT(A)-2 Jalandhar for 2015-16 assessment year dated 27.08.2018 was relied upon before the CIT(A). This order had been upheld by the ITAT wherein reference has also been made to the decision of the CIT(A) dated 14.06.2017 in 2014-15 assessment year. Copy of this is available at pages 29 to 35 of the Paper Book which has been referred to by the ITAT in the circumstances it was his submission that the assessee's appeal was allowable.

6. The ld. Sr.DR relying upon the order submitted that the approval u/s 10(23C)(vi) to the assessee was granted on 22.02.2017 and since form 10BB had not been filed in accordance with law and had been filed in the assessment proceedings, he would have nothing further to state.

7. The ld. AR in reply submitted that there is ample case law on the basis of which the filing of Form No. 10BB at the assessment stage was sufficient compliance of law in the peculiar facts of the

present case where the approval came late. No adverse fact is referred to or available non has the position of law been assailed. Relying upon the written submissions and the legal position as canvassed, it was his submission that the claim was allowable.

8. I have heard the submissions and perused the material on record. A perusal of the record shows that before the CIT(A), following submissions were advanced on behalf of the assessee :

*"The brief facts of the case are that the assessee Sanskriti KMV School was established by Arya Shiksha Mandal its parent body in the year 2003 for imparting education to Nursery to XII classes o the C.B.S.E. The school was duly affiliated by C.B.S.E. w.e.f. 0J. 04.2008 and ever since is recognized and imparting education on the pattern approved by C.B.S.E. . The school has been regularly filing its return of income by claiming exemption u/s 10(23C)(iiiad) since the receipts of the school were below Rs. 1 crore till Asst. year 2008-09. This exemption was duly allowed by the department without raising any kind of dispute till Asst. year 2008-09. However during the Asst. Year 2009-10 the receipts of the school exceeded Rs. 1 crore therefore application for registration of the school was made to the CCIT Ludhiana for granting of the registration u/s 10(23C)(vi). Further assessee applied for exemption before IT AT Amritsar bench who passed an order allowing exemption u/s 10(23C)(vi) to the school vide its order dated 22.02.2017. The assessee filed its return of income on 10.10.2016 declaring total income at Nil after claiming the entire surplus as exempt u/s 10(23C)(vi). The return was processed u/s 143(1). The notice u/s 143(2) was issued on 13.07.2017 and assessment u/s 143(3) was framed at an income of Rs 4702618/-. Hence this appeal before your goodself.*

*Ground No. 1, 2 & 3*

*In this regard it is submitted that Amritsar Bench of IT AT has passed an order in favour of the assessee by allowing exemption u/s 10(23c)(vi) vide its order dt 22.2.2017(Copy Enclosed).*

*It is not out of place to mention here that appeal of the assessee for Asst. Year 2014- \_ 15 and 2015-16 has already been allowed by your goodself vide order dated, 10.08.2016 Appeal No. 2/10296/16-17 and 27.08.2018 Appeal No 2/10574/17-18 CIT(A) Jal.*

*Ground No. 4*

*"In this regard it is submitted that assessee school is affiliated to CBSE and it may be stated that it is not government aided school but purely private school imparting education to the students from Nursery to +2 classes. The salaries paid to the staff are neither governed by CBSE nor governed by Government of Punjab since it is not aided school of government. It is totally the management to decide the salary structure payable to staff It is not understood how A.O had presumed the school compromises with the quality of education and what are the measures under which you are making false allegations that quality of education is compromised and there is tendency of earning high profits. The assessee school is charging fee as per the decision made by management under the various heads which are charged by all education institutions. The school is duly eligible to charge fee from students and it is not free school.*

*It is not the power of the A.O to intervene into the matters of charging of fees from students and paying salary to staff of school and it is not a criteria on the basis of which exemption u/s 10(23C)(Vi) be denied which has already been granted to the school by the ITAT-Amritsar vide its order dated 22.02.2017 and is applicable from the A.Y.2015-16.*

8.1 It is seen that considering the same, the claim was dismissed holding as under :

*4.1 I have carefully considered the facts of the case and submissions of the appellant. The assessee filed its return of income for A.Y. 2016-17 on 10.10.2016 declaring NIL income. The assessee is running an educational institution under the name and style of 'Sanskriti KMV School', Jalandhar. The lessee's application for approval u/s 10(23C)(vi) of the Income Tax Act, 1961 was rejected by the CIT(E), Chandigarh. The Hon'ble ITAT vide order in ITA No.528(Asr)/2016 dated 22.02.2017 directed to grant approval u/s 10(23C)(vi) to the assessee. The assessing officer has observed that the assessee did not have approval u/s 10(23C)(vi) of the Income Tax Act, during the year under consideration as the order of the Hon'ble ITAT was passed only on 22.02.2017. Moreover, form 10BB was also filed after the order of the ITAT i.e. on 06.06.2017. Therefore, the assessee has not satisfied one of the basic conditions for claiming exemption u/s 10(23C)(vi) of the Act. Further it was observed that the assessee was charging high fees under multiple heads and paying lower salaries to the staff. The assessee was thus functioning on commercial principle with misplaced focus on maximisation of surplus which is beyond the scope of 'Charitable purpose' as defined u/s 2(15) of the Income Tax Act, 1961.*

*6. During the appeal proceedings, Ld. Counsel has stated that Hon'ble ITAT, Amritsar has allowed exemption u/s 10(23C)(vi) vide order dated 22.02.2017. The assessee school is affiliated to CBSE and it is not government aided school but purely private school imparting education to the students, the school was entitled to charge the fees from the students. The assessee school is affiliated to CBSE. The assessing officer has observed that the assessee was functioning on maximisation of profits and not for charitable purposes as it was charging high fees and paying low salaries. It is observed that there is no restriction such on the rate of fees charged or the salaries to be paid to staff. Moreover, the assessee has been granted exemption u/s 10(23C)(vi) vide order of Hon'ble ITAT on 22.02.2017, therefore, the institute is running for the purposes of education i.e. for charitable purposes.*

*It is observed that form 10BB was filed by the assessee on 06.06.2017 as per CBDT Circular 10/2019, the assessee should have filed form 10BB by 17.10.2016. i.e. date of filing of return of income for A.Y. 2016-17. The assessee has not brought on record whether any permission was obtained from the CIT(Exemption) for late filing of Form 10BB. Since, the assessee has failed to file audit report in form 10BB within the stipulated time, therefore, the assessment made by the assessing officer is upheld. Grounds of appeal of the assessee are dismissed.*

8.2 On a perusal of the same, it is seen that there is no discussion as to why the order of the CIT(A) passed in the immediately preceding assessment year which has been upheld by

the Co-ordinate Bench was not considered while deciding the issue. A perusal of the record shows that in ITA 1397/CHD/2018, the Co-ordinate Bench proceeded to decide the issue in the following manner :

*2. The assessee school is engaged in the activities of imparting education. The Id. CIT(A) has allowed benefit of exemption u/s 10(23C)(vi) of the Act to the assessee school by following the order of the Tribunal dated 22.02.2017 passed in the own case of the assessee in ITA No. 528/Asr/2016 decided along with other appeals with the lead case titled as 'Kanya Mahavidyala vs. CIT(Exemptions)'. The Id. CIT(A) has further mentioned that even subsequent to the decision of the Tribunal dated 22.02.2017 (Supra), he has also allowed the claim of the assessee for A.Y. 2014-15 vide order dated 14.06.2017. Since, there is no change in the facts and circumstances, the Id. CIT(A) following the above order of the Tribunal (Supra) has allowed the claim of the assessee for year under consideration also.*

*3. The Id. DR has also fairly agree that the issue is squarely covered in the case of the assessee by the order dated 22.02.2017 (Supra) passed in earlier assessment year. No contrary decision has been cited before us, we therefore, do not find any merit in the order of the Id. CIT(A) in allowing the claim of the assessee for the year under consideration. The same is accordingly upheld.*

8.3 The position on facts and law as summed up by the Id. AR are extracted hereunder for the sake of completeness :

*Dear, sir,*

*The brief facts of the case are that the assessee is a public school imparting education to the students from nursery to XII th classes. The school is affiliated with CBSE w.e.f 1-4-2008 and ever since till today is recognized and imparting education on the pattern approved by the CBSE. The school was claiming exemption U/s 10(23c)(iiiad) and it was allowed by the department for A.Y 2013-14,2014-15,2015-16. The A.O denied the exemption on the grounds that the assessee is not an institution which exists solely for education purpose and has not been registered U/S 10(23c)(vi).The CIT (A)reversed the finding of the A.O in all the three years and held that the assessee is an education institution entitled to exemption u/s 10(23c)(vi), copies of the CIT(A) orders for all the three years are placed on paper book pages no's 22 to 28, 29 to 35 and 36 to 39 respectively. The appeals of the department against the order for A.Y 2013-14 and 2014-15 were dismissed by the ITAT on tax effect. However the department filed appeal for A.Y 2015-16 raising the ground before ITAT that the assessee is neither registered u/s 10(23c)(vi) nor it exists solely for the purpose of education and exists for other purposes i.e for the motive of profits . Copies of grounds of appeal are enclosed for your ready reference. The appeal of the department was dismissed by the ITAT vide order dated 9-5-19 placed on paper book page no 45&46. There is a specific finding that there are no changes in the facts & circumstances as compared to A.Y 14-15. In the A.Y 16-17 i.e the impugned year the A.O despite the settled*

*position by the CIT (A) and the ITAT again disallowed the exemption in Para 11 of the order on 2 grounds that assessee failed to prove that it was existing wholly & solely for education not for profit and secondly on the ground that assessee did not have approval u/s 10(23c)(vi) of the Act during F.Y 15-16. Further the A.O gave presumptive and unnecessary findings in the Para 8 & 9 that the assessee had been paying low salaries to the teachers and the quality of education is low.*

*The assessee filed an appeal before the CIT (A) and also filed written submissions which have been reproduced by her in Para 3 and entire explanation was given to CIT(A). Further the assessee also filed the order of ITAT for A.Y 2015-16 which the CIT (A) has clearly ignored. Evidence of filing the order of ITAT on 18/09/2019 is enclosed herewith.*

*The CIT (A) rejected the appeal of the assessee despite the order of ITAT by giving a finding in the Para 4.1 of the order that the assessee was an educational institution functioning on commercial principles with misplaced focus on maximization of surplus which is outside the scope of charitable purpose as defined in sec 2(15). This finding of CIT(A) is contemptuous of not following the order of her predecessor for A.Y 15-16 which was duly confirmed by the ITAT. The second observation of the CIT (A) that form no. 10BB was not filed along with the return of income by 17/10/2016 as prescribed in proviso of 10(23c)(vi). The CIT(A) failed to appreciate that assessee was denied exemption by the CIT(E) for F.Y 14-15 but the exemption was allowed by ITAT by reversing the order of CIT(E) vide their order dated 22/2/17 refer paper book page no 4. The assessee could file the form 10BB only after receiving this order of ITAT which was filed on 6-6-17 before the A.O which was not considered by the A.O on the ground that form 10BB is not filed along with the return of income. It is not understood as to how 10BB could be filed before the order of ITAT dated 22/2/17 especially when there is column no 6 in form 10BB which asks for the registration number without which it cannot be filed refer to Form no 10BB on page 1 of paper book.*

#### Legal position

*There are various deductions and exemptions under the income tax act for which an audit report is required to be obtained and also to be filed along with the return of income the such sections are 12A(b), 80 HHC, 80I, 80J, 32AB .*

*The Hon'ble Jurisdiction High Court as well as various other High Courts of the country have consistently given a finding that the filing of the audit report is not mandatory but directory in nature and can be filed to claim the exemption /deduction at the time of assessment proceedings or even appellant proceedings. The A.O cannot deny the exemption for non filing of the audit report along with the return and before processing of the return can direct the assessee to file the same as per the provisions of sec 139(5) and 139(9).”*

8.4 Accordingly, in the light of the facts and position of law as argued which stands unrebutted, relying upon consistency in the absence of any arguments to the contrary, the appeal of the



assessee is allowed. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

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

Order pronounced on 29<sup>th</sup> April,2021.

Sd/-  
(दिवा सिंह)  
**(DIVA SINGH)**  
न्यायिक सदस्य/Judicial Member

**“पूनाम”**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar