

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER

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| ITA No.1642/Bang/2016 |
| (Assessment year: 2005-06) |

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| M/s. Public Education Society, St. Miras High School, #45/37, Gubbanna Layout, 6 th Block, Rajajinagar, Bengaluru. PAN : AABPT1260A | Vs. | The Deputy Director of Income Tax (Exemptions), Circle-17(2), Bengaluru. |
| Appellant | | Respondent |

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| Assessee by | : | Shri. Prathik. P, CA |
| Revenue by | : | Shri. Saravanan B, Addl. CIT |

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| Date of hearing | : | 29.11.2016 |
| Date of Pronouncement | : | 02.12.2016 |

ORDER

Per George George K, JM :

This appeal instituted, at the instance of the assessee society, is directed against the order of the CIT (A)-14 [LTU],

Bangalore, dated 30.06.2016. The relevant assessment year is 2005-06.

2. The assessee society has, in its grounds of appeal, raised two effective grounds, namely:

(1) that the Hon'ble CIT (A)[LTU] ought to have held that the assessee was entitled to the benefit of exemption u/s 10(23C) of the Act under the facts and in the circumstances of the case; In the alternative and without prejudice, the CIT (A) ought to have held that the income of the assessee was to be computed in accordance with the provisions of s. 11 of the Act; &

(2) that the contributions to the building fund in a sum of Rs.27,28,900/- being in the nature of corpus donations ought to have been excluded from the total income of the assessee.

3. Briefly stated, the facts of the issue are as follows:

The assessee society has been running three schools in different parts of Bangalore under the name 'St. Miras High School'. For the assessment year 2005-06, the assessee society had furnished a return of income on 31.5.2007, admitting Rs. 'Nil' income along with auditor's report, statement of accounts etc. According to the AO, as the said return was belated, no action was initiated on it. Subsequently, a notice u/s 148 of the Act was issued on 27.11.2007, requiring the assessee society to furnish its return of income. As there was

no response from the assessee, a notice u/s 142(1) was issued along with notice u/s 143(2) of the Act. In response, the assessee's authorized representative appeared on 3.12.2008 and requested the AO to treat the return of income already furnished as in response to the notice u/s 148. After due consideration and verification of the books of accounts, bills, vouchers, bank accounts etc., the AO had concluded the assessment, determining the total income of the assessee society at Rs.35,19,200/- with the following reasoning:

“The assessee is running 3 educational institutions in the name of St. Miras High School at 3 places in Bangalore. The gross receipts exceed (sic) exceeded Rs.1 crore. The assessee is neither registered u/s 12A (a) nor notified u/s 10(23C) of the Act. Therefore, the entire income earned is taxable. Section 11 has no application.”

4. Aggrieved, the assessee society took up the issue with the CIT (A)-LTU for consideration. According to the CIT (A), three hearing notices posting the case for hearing on 27.8.2015, 27.4.2016 and finally on 21.6.2016 were issued to the assessee society to comply with the same. As there was no compliance to any of the hearings notices issued (supra), the CIT (A) had chosen to dismiss the appeal of the assessee society with a remark *“the appellant's obvious disinterest in pursuing this appeal, I am left with no option but to dismiss the*

same confirming the AO's view [Refer: Para 5 of the CIT (A)'s order].

5. Aggrieved, the assessee society has come up with the present appeal. During the course of hearing, the submissions made by the assessee society's counsel are summarized as under:

- That registration under s. 12A deserves to be granted to the assessee society with effect from AY 2005-6 itself, as the facts as well as the findings of the AO will establish that the conditions for the grant of registration, subject to condonation of delay in filing the application for registration are fulfilled. The society was established and exists solely for education purposes and not for profit and, there was no finding by an authority to controvert this claim. In the light of the earlier order of this Hon'ble Bench dated 23.12.2009, therefore, the application for registration dated 4.11.2008 and the subsequent application dated 27.5.2009 for condonation of delay, registration ought to be granted w.e.f. AY 2005-06 and the income of the assessee society has to be computed by giving effect to the provisions of s. 11 and other relevant provisions; and
- That without prejudice to what has been submitted, having regard to the ratio laid down by the Hon'ble High Court of Karnataka in the case of CIT v. Children's Education Society [358 ITR 373 (Kar)], the assessee society was entitled to the benefit of exemption u/s 10(23C)(iiiad) as the gross receipts of each educational institution run by it were well below the limit of Rs.1 crore prescribed by s. 10(23C)(iiiad) read with rule 2BC of the Income-tax Rules and, therefore, the AO had erred in law in denying the benefit of the exemption under the said provision. The entire income of the assessee society for the AY

2005-06, was exempt under the provisions of s. 10(23C)(iiiad) of the Act.

In conclusion, it was pleaded that the stand of the authorities below deserve to be reversed.

5.1. On the other hand, the learned DR present supported the stand taken by the AO as well as the CIT (A) and, accordingly, urged that no interference of this Bench is warranted at this stage.

6. I have carefully considered the rival submissions, perused the relevant materials on record and also the documentary evidences produced by the learned Counsel for the assessee society in the form of a paper book. At the outset, we would like to point out that the entire income earned by the assessee society was brought under the tax net by the AO on a sole ground that *'The assessee is running 3 educational institutions in the name of St Miras High School at 3 places in Bangalore. The gross receipts exceeded Rs.1 crore.'* Thus, the gamut of the issue before us for adjudication is: **whether the assessee was entitled for exemption when the gross receipts of the assessee society exceeded Rs.1 crore from**

all the three educational institutions OR of each educational institution run by it?

6.1. The above question has been answered explicitly by the Hon'ble jurisdictional High Court in the case of **Commissioner of Income-tax and another v. Children's Education Society** reported in **[2013] 358 ITR 373 (Kar)**. For ready reference, the relevant portion of the ruling of the Hon'ble Court is reproduced as under:

“(on page 34) Each educational institution is a separate entity controlled under various statutes for various purposes. The management of these educational institutions may be in the hands of the societies or the trust, but, for all other purposes, they are different, independent entities. ‘Any person’ in section 10(23C) refers to the assessee and ‘on behalf of’ refers to such institution. It may be an university, it may be an educational institution, it may be a hospital or other institutions of similar nature. As all such institutions are independent entities and they generate income when that income is received by the assessee, it becomes the income in the hands of the assessee and it is such income which is sought to be excluded while computing the total income of the assessee under section 10. The test prescribed under the provision is not the income of the educational education. It is the aggregate annual receipts of such educational institution that is prescribed at Rs.1 crore. Therefore, the expression ‘aggregate annual receipts’ has to be understood in the context in which it used and the purpose for which the provision was inserted, keeping in mind, the scheme of the Act. Therefore, in the case of an assessee running several educational institutions, if any of them is wholly or substantially financed by the Government, then the income from such educational institution received by the assessee is not included while computing its total income. Similarly, income from each educational institution if it is not receiving any aid from the Government wholly or substantially in respect of which the aggregate annual receipts do not exceed Rs.1 crore received by the assessee, is also not included while computing the annual total income of the assessee. The aggregate annual receipts of other educational institution means, the total annual receipts of each educational institution.”

6.2 In consonance with the ruling of the Hon'ble Court (supra), we are of the view that **the aggregate annual receipts of other educational institution means, the total annual receipts of each educational Institution.** To examine the said issue, the case is restored to AO. It is ordered accordingly.

6.3 We have since allowed the assessee's appeal; its second plea of 'contribution to the building fund being in the nature of corpus donations to be excluded from the total income' has not taken up for adjudication.

7. In the result, the assessee's appeal is allowed for statistical purpose.

Order pronounced in the open court on 02/12/2016.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place : Bangalore
Dated : 02/12/2016
/NS/

Copy to :

1. Appellant
2. Respondent
3. CIT(A)-II Bangalore
4. CIT
5. DR, ITAT, Bangalore
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore