

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.7984/Del./2019
Assessment Year 2011-2012

Gurudwara Kalgidhar Singh Sabha, R.K. Puram, Sector-6, Delhi – 110 022 PAN AABTG2029E	vs.	The Income Tax Officer (Exemptions), Ward-1(2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri G.S. Kohli, C.A.
For Revenue :	Shri Ved Prakash Mishra, Sr. D.R.

Date of Hearing :	18.02.2021
Date of Pronouncement :	19.02.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-40, Delhi, Dated 23.08.2019, for the A.Y. 2011-2012, challenging the Order of the Ld. CIT(A) in wrongly interpreting the provisions of Section 10(23C)(v) of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the Orders of the authorities below.

3. The facts of the case are that as per Individual Transaction Statement, information in this case was received that assessee has received interest other than interest on securities under section 194A of Rs.41,344/- and rent under section 194I of Rs.4,75,200/- during assessment year under appeal. It was also observed that the assessee has not filed income tax return for the assessment year under appeal. The A.O. called for explanation of assessee. The assessee stated that it has not filed its return of income for the assessment year under appeal. The A.O. noted that assessee has not filed return of income and huge cash was deposited in its bank account. The A.O, therefore, initiated the re-assessment proceedings under section 147 of the I.T. Act, 1961 and after getting approval, issued notice under section 148 of the I.T. Act, 1961, which were duly served upon the assessee. The assessee in response to the notice under section 148, submitted return of income

Dated 28.10.2018. The A.O. issued statutory notices and called for information.

3.1. The assessee is a Gurudwara and is not registered under sections 11 and 12 of the I.T. Act, 1961, the A.O, therefore, treated the same as normal AOP. The A.O. asked the assessee to furnish details of interest and rent received. The assessee submitted in its reply that it is a religious organisation and hence, is availing the benefit of exemption under section 10(23C)(v) of the I.T. Act. The assessee also claimed loss amounting to Rs.1,26,186/-. The A.O. noted that assessee has been grossly unable to prove its claim of exemption under section 10(23C)(v) of the I.T. Act since the assessee has been unable to present any evidence of it being registered under the said provisions. The A.O. also noted that for claiming the exemption under this provision it is mandatory to get approval from the Prescribed Authority. The system of this approval as provided under Rule 2C of the I.T. Rules mandated the approval of Chief Commissioner or Director General. However, in the case of the assessee, assessee failed to

provide any such approval or document that can substantiate such registration of the assessee. Therefore, contention of assessee was rejected.

3.2. The A.O. also gone through the details of other expenses and disallow expenses of Rs.88,943/- under section 69C of the I.T. Act, 1961, out of the general expenses, telephone expenses, water and electricity and washing expenses. The A.O, therefore, made addition of Rs.88,943/- and directed to charge tax @ 30%.

3.3. The assessee challenged the addition before the Ld. CIT(A) on merit as well as charging of income tax @30% on the assessed income. The Ld. CIT(A) considering the explanation of assessee, deleted the addition of Rs.88,943/- and as such there were no question of charging income tax @ 30%. This ground of appeal of assessee was allowed.

3.4. The assessee as regards denial of exemption under section 10(23C)(v) of the I.T. Act, contended before the Ld. CIT(A) that the requirement of approval under section 10(23C)(v) of the I.T. Act was provided by Rule 2C of

I.T. Rules w.e.f. 15.11.2014 and hence, there were no requirement for approval by the Prescribed Authority. The Ld. CIT(A), however, dismissed this ground of appeal of assessee. The findings of the Ld. CIT(A) in paras 5.2.2 and 5.2.3 are reproduced as under :

5.2.2. *I have considered the assessment order and the submissions of the appellant. Clause(v) of section 10(23C), as it exists subsequent to the amendment by the Finance Act, 2007, reads as under:*

“(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, (which may be approved by the prescribed authority), having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof.”

5.2.3. *Prior to amendment by the Finance Act, 2007, exemption under the said section was available only in those cases which were notified by the Central Government in the Official Gazette. Further, Rule 2C of the Income Tax Rules, 1962 lays down the guidelines for approval under sub-clauses (iv) and (v) of section 10(23C) and the said Rule was substituted subsequent to the change in the requirement of approval. Hence, the contention of appellant that approval for the purpose of said section was not applicable for the year under consideration is not correct since prior to approval by the prescribed authority for the purpose of claiming exemption, the trust or institution had to be notified by the Central Government in the Official Gazette. It is noteworthy that no documentary evidence with regard to notification by the Central Government for the*

purpose of section 10(23C)(v) has been submitted during the appellate proceeding also. Hence, in absence of any notification of the Central Government or approval of the prescribed authority for the purpose of section 10(23C)(v), the finding of the Assessing Officer that the assessee is not approved for the purpose of section 10(23)(v) is upheld. Grounds of appeal nos. 2 and 5 are dismissed.”

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that there were no requirement for approval by the Prescribed Authority in assessment year under appeal as it was provided w.e.f. 15.11.2014. He has also submitted that according to Section 115BBC(2) no addition could be made in case of Religious Trust or Institution in respect of anonymous donations and as such there were no requirement of assessee to get approval under section

10(23C)(v) of the I.T. Act, 1961, therefore, the findings of the Ld. CIT(A) are incorrect.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that since assessee made claim of exemption of income under section 10(23C)(v) of the I.T. Act, therefore, burden was upon assessee to prove that it has approval of the Prescribed Authority under the said Section as per Rules which assessee has failed to prove and as such there is no need to interfere with the Orders of the authorities below. He has submitted that w.e.f. 15.11.2014 the Prescribed Authority is Commissioner of Income Tax (Exemption).

6. We have considered the rival submissions and perused the findings. Section 10(23C)(v) of the I.T. Act, 1961 reads as under :

“In computing the total income of previous year of any person, any income falling out of any of the following clauses shall not be included -

“(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, (which may be approved by the prescribed authority), having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof.”

6.1. Rule 2C of the I.T. Rules, 1962 provides as under:

[Guidelines for approval under sub-clauses (iv) and (v) of clause (23C) of section 10.

2C. (1) The prescribed authority under sub-clauses (iv) and (v) of clause (23C) of section 10 shall be the Chief Commissioner or Director General, to whom the application shall be made as provided in sub-rule (2).

(2) *The application to be furnished under sub-clauses (iv) and (v) of clause (23C) of section 10 by a fund, trust or institution shall be in Form No. 56.*

Explanation.—For the purposes of this rule, “Chief Commissioner or Director General” means the Chief Commissioner or Director General whom the Central Board of Direct Taxes may, authorise to act as prescribed authority⁵⁶ for the purposes of sub-clause (iv) or sub-clause (v) of clause (23C) of section 10 in relation to any fund or trust or institution.]

6.2. The above Provisions and Rules are applicable to assessment year under appeal clearly show that in case assessee claims exemption under section 10(23C)(v) of the I.T. Act being a Trust/Institution meant for public religious purposes, it has to be approved by the Prescribed Authority. The Prescribed Authority under Rule 2C of the I.T. Rules,

1962, provides that Chief Commissioner or Director General shall be the Prescribed Authority and application under section 10(23C)(v) of the I.T. Act shall be filed in Form No.56. Thus, before claiming exemption under these provisions assessee shall have to obtain an approval of the Prescribed Authority. It is an admitted fact that assessee does not have any approval of Prescribed Authority under section 10(23C)(v) of the I.T. Act, 1961. The assessee contended before the Ld. CIT(A) that the requirement of approval under section 10(23C)(v) of the I.T. Act was provided by Rule 2C of I.T. Rules, 1962, w.e.f. 15.11.2014 and hence, there were no requirement for approval by the Prescribed Authority. We do not subscribe to such a view because even Section 10(23C)(v) of the I.T. Act, 1961, as reproduced above was applicable for the assessment year under appeal and it was necessary to get approval of the Prescribed Authority before claiming exemption under such provision. It is only on 15.11.2014 the Prescribed Authority was designated to be the Commissioner of Income Tax (Exemptions) as per Board's Notification Dated 05.03.2015.

Therefore, contention of Learned Counsel for the Assessee has no merit and is accordingly rejected. Learned Counsel for the Assessee also contended that as per Section 115BBC(2) the assessee need not to get approval under section 10(23C)(v) of the I.T. Act because in case anonymous donations is received by the Trust/Institution created or established wholly for religious purposes. However, it is not a case of the Revenue that assessee received any anonymous donations or if any addition have been made on that account under section 115BBC of the I.T. Act, 1961. Therefore, this contention of the Learned Counsel for the Assessee is also rejected.

6.3. Considering the totality of the facts and circumstances of the case and submissions of the Learned Counsel for the Assessee, it is clear that assessee does not have any approval under section 10(23C)(v) of the I.T. Act for the assessment year under appeal, therefore, there is no question of assessee getting any exemption under the same provision. The burden upon assessee to claim exemption under such provision have not been discharged by assessee

by producing any adequate evidence on record. The authorities below were, therefore, justified in rejecting the claim of assessee for denial of exemption under section 10(23C)(v) of the I.T. Act, 1961. It may also be noted here that whatever addition was made by the A.O. have been deleted by the Ld. CIT(A), therefore, this issue was left with academic discussion only and as such there is no need to interfere in view of the above discussion. Accordingly, appeal of the assessee dismissed.

7. In the result, appeal of the Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 19th February, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.