

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 585, 586 & 587/KOL/2020
Assessment Years: 2016-2017, 2017-2018 & 2018-2019**

***Bishnupur Public Education Institute,.....Appellant
C/o. Subash Agarwal & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata-700069
[PAN: AABTB4176D]
-Vs.-***

***Commissioner of Income Tax (Exemption),.....Respondent
Kolkata,
10B, Middleton Row, 6th Floor,
Kolkata-700071***

Appearances by:

*Sri S.M. Surana, Advocate, appeared on behalf of the assessee
Shri Gourav Kanaujia, CIT(DR), appeared
on behalf of the Revenue*

**Date of concluding the hearing : April 19, 2022
Date of pronouncing the order: April 20, 2022**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present three appeals are directed against the common order of Id. Commissioner of Income Tax (Exemption), Kolkata dated 06.02.2020 passed under section 10(23C)(vi) of the Income Tax Act. The assessee has filed applications on 11.02.2019 under section 10(23C)(vi) of the Income Tax Act for grant of approval as an Educational Institution in A.Ys. 2016-17, 2017-18 and 2018-19 respectively, though the assessee has been enjoying registration under section 12A but it filed applications for grant of approval under section 10(23C)(vi). According to the Id. CIT(Exemption), these applications were time-barred and, therefore, he

rejected all the applications. The relevant finding recorded by the Id. CIT (Exemption) reads as under:-

“A prayer for condonation of delay in filing the application has been submitted vide letter dated 07.02.2019. The reason for delay in submission of application has been stated to be the ill-health of the President of the Society. While it is true, that the President of the Society was severely ill during this period, the prayer for condonation on this ground alone cannot be accepted as an institute which is having a turnover of Rs.6.08 crores, 4.86 crores and 10.32 crores in Assessment years 2016-17, 2017-18 and 2018-19 has to have someone to comply with the legal provisions in the absence of the President. It is highly unlikely that an institute having turnover of such magnitude will not have any other capable person to apply for registration on behalf of the institute. Therefore, a delay of more than three years, two years and one year respectively cannot be condoned. These applications are, therefore, rejected as they have not been filed within the limitation period. It is trite law that the law of limitation is to be construed strictly. On merits, the application was proposed to be rejected”.

2. The Id. counsel for the assessee on the strength of the judgment of Hon'ble Orissa High Court in the case of Padamashree Krutharth Acharya Institute of Engineering & Technology -vs.- Chief CIT reported in 309 ITR page 13 contended that the delay in filing the applications ought to be condoned and assessee should have been granted registration. On the other hand, Id. CIT(DR) relied upon the decision of the Hon'ble Madras High Court in the case of All Angels Educational Society -vs.- Chief CIT, Chennai-III reported in 72 taxmann.com 251. He submitted in this decision the judgment of the Hon'ble Orissa High Court has been considered. He thereafter relied upon the judgment of the Hon'ble Andhra Pradesh High Court in the case of Aurora Educational Society -vs.- Chief CIT reported in 20 taxmann.com 46. He also relied upon the judgment of the Hon'ble Orissa High Court in the case of Roland Educational & Charitable Trust -vs.- Chief CIT reported in 309 ITR page 50. On the strength of all these decisions, he contended that there is no provision under section 10(23C) to condone the delay and grant approval with

retrospective effect. In other words, the Id. CIT(Exemption) does not have any power to condone the delay in granting approval for earlier years.

3. We have duly considered the rival contentions and gone through the record carefully. Section 10(23C)(vi) has direct bearing on the controversy, therefore, we deem it appropriate to take note of the relevant part of this section. It reads as under:-

*“CHAPTER III
INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME.*

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

(1) agricultural income;

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority, or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority”.

4. The provisos appended to these clauses have been amended with effect from 1st June, 2020. The case before us is prior to this date therefore, we take note of the provisions available in these years. They read as under:-

“19-24. First and second provisos substituted by the Finance Act, 2020, w.e.f. 1.6.2020. Prior to their substitution, first and second provisos, as amended by the Finance (No. 2) Act, 1998, w.e.f. 1.4.1999, Finance Act, 1999, w.e.f. 1.4.1999, Finance Act, 2007, w.e.f. 1.6.2007 and Finance (No.2) Act, 2019, w.e.f. 1.9.2019, read as under:-

Provided that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via);

Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the compliance of such requirements under any other law for the time being in force by such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as are material for the purpose of achieving its objects and the prescribed authority, may also make such inquiries as it deems necessary in this behalf”.

5. The Hon’ble Madras High Court in the case of All Angels Educational Society while considering the issue whether the Id. CIT(Exemption) has power to condone the delay in filing application for grant of approval under section 10(23C) or not, has considered the judgments of Hon’ble Supreme Court in the case of State of U.P. -vs.- Harish Chandra AIR 1996 SC 2173 as well as Union of India -vs.- Kirloskar Pneumatic Co. Limited AIR 1996 SC 3285 and held that where there is no provision to empower the statutory authority to condone the delay, than the authority cannot condoned. The finding of the Hon’ble Court in Paragraphs no. 15 & 16 worth to note, which read as under:-

“15. However, considering the legal position that there is no power to condone the delay in filing an application under Section 10(23C) of the Act, this Court is not inclined to exercise its extraordinary jurisdiction to condone the delay. However, this Court is inclined to give appropriate direction to the respondent to consider the petitioner's application as an application for the subsequent assessment year, namely, 2013-2014 in

accordance with law. Such direction is issued considering the peculiar facts and circumstances of the case and that the petitioner could not have made an application for the subsequent assessment year 2013-2014, since their application for assessment year 2012-2013 was still pending consideration and the impugned order came to be passed only on 13.11.2013. The respondent is at liberty to consider the amended objectives of the petitioner Trust.

16. Accordingly, the writ petition is partly allowed and the finding rendered by the respondent that the petitioner's application cannot be considered as the same is time barred is affirmed and the finding with regard to objectives of the Society by respondent holding that the Society cannot be said to be solely for education purpose is set aside. Consequently, the matter is remanded back to the respondent for fresh consideration and the petitioner's application is directed to be considered for the assessment year 2013-2014 in accordance with law and while doing so, may consider the amendments made to the objectives of the petitioner Trust. No Costs. M.P. No. 1 of 2014 is closed".

6. Similar is the view of Hon'ble Andhra Pradesh High Court propounded in *Aurora Educational Society -vs.- Chief CIT (supra)*. The Hon'ble Orissa High Court has also considered this aspect in the case of *Roland Educational & Charitable Trust* reported in 309 ITR page 50. The concluding paragraph of the judgment is worth to note in this aspect, which read as under:-

"Be that as it may, we are here concerned whether in the absence of any statutory provision to condone the delay in presenting the application under section 10(23C)(vi), the Chief Commissioner of Income Tax can exercise any such power".

7. The adjudicating authorities under the Income Tax Act are quasi judicial authorities. They can grant approval with retrospective effect if such mechanism is provided in the Act. There is no such provision nor there is any power to condone the delay after considering the reasonable reasons. A reasonable cause can be taken into cognizance for condoning the delay, if such provision is provided in the Act while considering any issue for adjudication. Therefore, considering the above proposition, we are of the view that *Id. CIT(Exemption)* has rightly rejected the

application of the assessee for grant of approval under section 10(23C)(vi) of the Income Tax Act. All these three appeals are rejected.

8. In the result, all the appeals of the assessee are dismissed.

Order pronounced in the open Court on April 20, 2022.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 20th day of April, 2022

- Copies to :*
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C/o. Subash Agarwal & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor, Kolkata-700069***
 - (2) ***Commissioner of Income Tax (Exemption)
Kolkata,
10B, Middleton Row, 6th Floor, Kolkata-700071***
 - (3) *Commissioner of Income Tax- ,*
 - (4) *The Departmental Representative*
 - (5) *Guard File*
- TRUE COPY**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.