

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.539/SRT/2019**

**निर्धारणवर्ष/Assessment Year: (2019-20)**

*(Physical Court Hearing)*

The Star Education Trust, 9A, Ratnanilam Apartment, Piplod, Surat-395009.	<b>Vs.</b>	The CIT(Exemption), Ahmedabad.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABTS2856F</b>		

<b>Assessee by</b>	Shri Sapnesh Sheth, CA
<b>Respondent by</b>	Shri Ashok B. Koli, CIT(DR)
<b>Date of Hearing</b>	21/12/2022
<b>Date of Pronouncement</b>	11/01/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2019-20, is directed against the order passed by the Learned Commissioner of Income Tax (Exemption), Ahmedabad, [in short “the ld. CIT(E)”], in Appeal No. CIT(Exemption), Ahmedabad/2019-20/56D/10005, dated 27.09.2019, under section 10(23C)(vi) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. The grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the ld. Commissioner of Income Tax (Exemption) has erred in not granting exemption u/s.10(23)(vi) of I.T. Act to the assessee trust.*

*2. It is therefore prayed that order of ld. Commissioner of Income-tax (Exemption) rejecting exemption application of assessee may please be quashed.*

*3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. Brief facts of the issue in dispute are stated as under. The assessee is an education trust and made an application in Form 56D on 26.09.2018 seeking

approval u/s 10(23C)(vi) of the Act. The application was accompanied by copy of trust deed, Certificate of Charity Commissioner and Audit Report for the F.Y. 2015-16, 2016-17 and 2017-18. The assessee trust is charitable trust registered with Assistant Charity Commissioner, Surat dated 25.03.1998. The trust is carrying out educational activities through its institution namely, Tiny Star Higher Secondary School at Rajkot.

4. Learned CIT(E ) noted that as per second proviso of section 10(23C) it is specifically mentioned as under:

*"The prescribed authority, before approving any fund or trust or institution or any university or other educational 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, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf."*

5. In view of the above provisions, the CIT(E) called from the assessee, vide letter dated 23.08.2019, requesting the assessee to furnish following details/documents:

- 1. Please produce documentary evidence regarding charitable activities carried out by you during F.Y. 2017-18.*
- 2. Please furnish complete details with address of properties acquired/taken on rent/lease from 01.04.2017 to 31.03.2018.*
- 3. Please furnish full details of investment made of funds of institutions, showing nature, amount and income from the investments, alongwith supporting documentary evidences.*
- 4. Please furnish details of benefits given to interested persons.*
- 5. Details of surplus amount, which is carried forward from earlier years in excess of 85% of income and its application with complete details and documentary evidences.*
- 6. Please furnish details of Revenue Expenses for F.Y. 2017-18 (excess of Rs.1 Lakhs).*

<i>Purpose of expenses</i>	<i>Mode of transaction</i>	<i>Name &amp; address of the party</i>	<i>Amount paid</i>	<i>Date of payment</i>	<i>Source of payment</i>
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*1. Please furnish details of TDS made by you during the financial year 2017-18 in the below format.*

<i>Name and address the deductor</i>	<i>TAN of deductor</i>	<i>Nature of transaction</i>	<i>Amount deducted</i>	<i>Amount deposited with date</i>	<i>Due date for deposit</i>	<i>Default in depositing</i>
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1. Please furnish copy of Audit report for the F.Y. 2017-18

1. As per provisions of Section 10(23C)(vi) of the Act, approval is to be granted to those institutions existing solely for educational purposes and not for purposes of profit. However, from the trust deed it is seen that there are multiple objects. The trust is not formed solely for education. You are requested to explain why approval should be granted u/s 10(23C)(vi) of the Act when there are multiple objects in the trust deed."

6. The assessee did not appear on the given date nor filed any written submission before Id CIT(E ). Subsequently, a reminder was issued by CIT(E ) on 09.09.2019, requesting the assessee to appear on 16.09.2019 alongwith the documents/details.

7. In response, the assessee filed its submission on 16.09.2019 in the dak section. On perusal of the reply, it was noticed by Ld. CIT(E) that some details were not provided. Accordingly, a letter was issued by Id CIT (E ) online on 20.09.2019 requesting the assessee to submit the below mentioned details/documents/reply on 24.09.2019.

*"1. Please furnish self-certified copy of Trust deed.*

*1. Please furnish self-certified copy of registration certificate issued by Charity Commissioner.*

*1. Please furnish reasons for not rejecting its application for approval u/s. 10(23C)(vi) of the Act as the provision itself states that approval is to be granted to those institutions existing solely for educational purposes and not for purposes of profit. As per the trust deed clause 2 and 4 is not exclusively for educational purpose.*

*1. As per your reply filed in this office you have stated that IDS provisions are not applicable to you. You are requested to explain under which clause your trust has been granted exemption from TDS provisions.*

*1. You have not furnished details of benefits given to interested persons from the income of the trust."*

8. In response to the letter of CIT (E), one of the Trustees appeared on 24.09.2019 and filed written submission in respect to the details/explanation called for. The assessee, vide its reply dated 23.09.2019, submitted that clause 2 and 4 of trust deed are framed in respect of co-related, like mandatory activities related with education. For overall development of students and to provide complete education, the activities like sports, music, social and other cultural activities for giving high values of "Sanskar" in life are conducted. The assessee has relied on the judgement of Hon'ble Supreme Court in the case of M/s. Queen's Education

Society vs. Commissioner of Income Tax. The assessee has also relied upon the judgment of Hon'ble ITAT in the case of Sutej Educational Charitable Trust Vs Commissioner of Income Tax (Exemptions).

9. However, after going through the reply of the assessee, the Ld. CIT(E) rejected the contention of the assessee and observed that as per the provisions of section 10(23C)(vi) of the Act of 1961, it is obligatory on the part of the authority to examine the record and object of the society objectively and therefore taking into consideration the documents on file, it was held that the objects particularly clause 2 and 4 of the Applicant Trust are contrary to the object of the educational purpose and therefore, it is concluded that the applicant does not exist solely for educational purpose. In view of the above- mentioned facts, Id CIT( E) concluded that the trust does not exist solely for educational purpose as per provisions of section 10(23)(vi) of the Act. Therefore, application of the Trust seeking approval u/s 10(23C)(vi) of the Act, was rejected by Ld CIT(E ).

10. Aggrieved by the order of the Id. CIT(E), the assessee is in appeal before us.

11. Shri Sapnesh Sheth, Learned Counsel for the assessee pleaded that assessee trust was created for the purpose of education and only purpose of the assessee trust is to provide education. However, there are some ancillary objects also such as, promotion of sports, cultural and morale program among the students etc. The Ld. Counsel, took us through the object clause of the trust and stated that none of the object clause of the assessee trust is inconsistent with the main object of the trust. In addition to the main object, subordinate objects are there to promote education such as social, cultural, sports, etc. These activities are necessary for building the bodily strength and character of the students. The Ld. Counsel also explained the figures mentioned in Profit and Loss account and Balance Sheet of the assessee trust and contended that there is no commercial activity getting reflected in these financial statements, and therefore assessee trust is solely engaged in the educational activities only. Hence, Id Counsel prays the Bench that

registration should be granted to the assessee Trust under section 10(23)(vi) of the Act.

12. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that objects of the assessee trust is not solely for the purpose of education. There is lot of diversification in the objects of the assessee trust. The clause relating to free and concessional education is not there in the trust deed. Not even a single poor student is getting free education from the assessee trust. The Ld. DR therefore, pointed out that there are multiple objects in the trust deed and hence the exemption denied by the ld. CIT(E) should be upheld.

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld. CIT(Exemption) and other materials brought on record. Before us, the Ld. Counsel has submitted the English Translation copy of object clause of the trust deed of the assessee, which is reproduced below:

***“Free English Translation of object clause of Trust deed of the Star Education Trust dated 12.03.1998.***

*1. to carry all types of activities so as to spread and impart education among people and to comment and develop institution, hostels, kindergarten, bal anganvadi etc. for imparting education from pre-primary to post-graduation.*

*2. The trust will undertake activities for overall development of human in the field of social, economic, cultural, sports and General Public Utility.*

*3. To carry out and support all types of activities for building the character of students and their intellectual and physical development and make them self-reliant and hardworking.*

*4. the trust will undertake educational and moral activities and also become helpful to those institutions running such activities.*

14. From the above objects, of the assessee-trust it is abundantly clear that assessee's sole object is to provide education to students. The other ancillary activities, like promotion of cultural, social and sports, are necessary for building the character of students, therefore these other ancillary activities are just to promote the main activity of education. Hence, after going through the object clause of the assessee trust, we note that assessee trust is solely engaged in

educational activities. In order to promote good principles and ethical behavior among the students, the other activities, such as sports, social and cultural etc. are carried out by the assessee-Trust.

15. The Id Counsel submitted before the Bench the acknowledge copy of return of income along with computation of total income for assessment year 2018-19 which is placed at paper book page no.12. The audit report for AY.2019-20 is submitted, which is placed at paper book page no.14. The copy of profit and loss account and balance sheet for AY.2018-19 is submitted, which is placed at paper book page nos. 17 to 18. The trust deed of the assessee trust is placed at paper book page no.19. The assessee also submitted the Certificate of Registration with Charity Commissioner. which is placed at paper book page no.23 of the assessee`s paper book.

16. From the above documents and evidences, it is vivid that Profit and loss account of the assessee-trust contains the activity, stating fee received from students, bus transportation fee and books fees etc. received from students, whereas in the expenses side, we note that there are transportation expenses, educational expenses, expenses to purchase the books, salary payment to teachers and staffs. Therefore, from the above Profit and loss account of the assessee trust it is clearly established that assessee trust is engaged in the educational activities and there is nominal profit which are earned by the assessee while conducting these charitable activities. The assessee-trust does not have profit motive, the small profit generated while carrying out charitable activities, does not mean that assessee is engaged in the commercial activities. Such small profit so earned is again utilised for charitable activities by the assessee-trust.

17. The Ld. Counsel also submitted before the Bench, the approval granted to assessee-trust, from June 2011 by Gujarat Secondary and Higher Secondary Studies Board, Gandhinagar to 9<sup>th</sup> standard (vide PB. 46 to 47). The Ld. Counsel submitted the approval granted from June 2012 by Gujarat Secondary and Higher Secondary Studies Board, Gandhinagar to commence 10<sup>th</sup> standard (vide PB. 48). The approval granted from June 2013 by Gujarat Secondary and Higher

Secondary Studies Board, Gandhinagar to commence 11<sup>th</sup> standard. The Ld. Counsel also submitted the approval granted to assessee-trust from June 2014 by Gujarat Secondary and Higher Secondary Studies Board, Gandhinagar to commence 12<sup>th</sup> standard. The Ld. Counsel submitted the relevant portion of Samagra Shiksha Program, Department of School Education (vide paper book page nos.56 to 57). The Ld. Counsel also submitted the relevant portion of Right to Education, Department of School Education and Literacy (vide paper book page nos. 58 to 59). From these documents and activities, it is clearly established that assessee -trust is engaged solely in the educational activities. Therefore, considering these facts, as narrated above, we are of the view that assessee-trust deserves certificate, under section 10(23C) (vii) of the Act. Hence, we direct the Ld CIT(Exemption) to grant registration/certificate, to the assessee-trust under section 10(23C) (vii) of the Act.

18. In the result, appeal of the assessee is allowed.

Order pronounced on 11/01/2023 by placing the result on the Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सूरत /Surat

दिनांक/ Date: 11/01/2023

**SAMANTA\*\***

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat