

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.745/PUN/2015
निर्धारण वर्ष / Assessment Year : 2006-07

Mercedes Benz Education Academy,
Plot No.26, Rajiv Gandhi Infotech Park,
MIDC Phase – I,
Hinjewadi, Pune – 411057

.... अपीलार्थी/Appellant

PAN: AAATM1757A

Vs.

The Income Tax Officer,
Ward 11(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke
प्रत्यर्थी की ओर से / Respondent by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 03.04.2019	घोषणा की तारीख / Date of Pronouncement: 17.05.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against the order of CIT(A)-I, Pune, dated 31.03.2010 relating to assessment year 2006-07 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT (A)-I, Pune erred in law and on facts in confirming the action of the learned AO in denying the benefit of exemption u/s 10(23C)(vi) of the ITA 1961.*

2. *The learned CIT(A) erred in law and on facts in not appreciating that the appellant has been submitting form 56D (for claiming exemption u/s 10(23C)(vi) of the ITA, 1961) from time to time. The learned CIT(A) ought to have appreciated that the procedure adopted by the appellant was in tandem with the footnote & action point given at the end of form 56D.*
3. *The learned CIT(Appeals)-I, Pune has also erred in law and on facts in confirming the action of AO in denying the exemption u/s 10(23C)(vi) without appreciating that the appellant is existing solely for imparting education.*
4. *Alternatively and without prejudice, the learned CIT(A) erred in law and on facts in not granting benefit of set off of past years deficits (losses) against the taxable income of the appellant.*

3. The present appeal is filed after delay of 1784 days. The assessee has filed an Affidavit along with an application for condonation of delay in filing the present appeal late. The main plea of assessee was that because of multiplicity of proceedings going on before different authorities, filing of present appeal was delayed. The learned Authorized Representative for the assessee has filed before us an events chart of various assessment proceedings / appellate proceedings between the period 28.12.2007 to 21.05.2015, on which date the present appeal was filed before the Tribunal. Looking at the factual aspects of the case, wherein against the assessee, proceedings starting from assessment year 2002-03 were pending. The question which arises is whether the assessee was prevented by sufficient cause in filing the appeal late before the Tribunal. The learned Authorized Representative for the assessee before us has pointed out that the issue raised in present appeal now stands covered by different orders of Tribunal and lenient view may be taken in the factual aspects of the assessee.

4. The learned Departmental Representative for the Revenue however, has strongly objected to the condonation of delay in filling the appeal late by the assessee and it has been stressed that where the matter was old and the assessee was ignorant for almost five years before exercising his duty of filing appeal before the Tribunal, the delay in the case is not explainable. It is

alleged that the assessee lacks sincerity and seriousness towards legal procedure and where the deliverance of justice is complete and absolute when it was done within reasonable time, then request was made to reject the petition for condonation of delay.

5. Admittedly, the receipt of order of CIT(A) is on 30.04.2010 by the assessee, wherein the last date for filing the appeal before the Tribunal was 29.06.2010. However, the appeal was filed before the Tribunal on 18.05.2015 i.e. after delay of 1784 days i.e. approximately five years. The assessee before us has filed events chart, wherein it was pointed out that after assessment orders were passed for various years, the appeals were filed before the CIT(A) starting from assessment year 2005-06 onwards and simultaneously re-assessment proceedings for assessment years 2002-03 to 2004-05 also were initiated and against the said orders of Assessing Officer, appeals were filed before the CIT(A); so as on 30.04.2010 nearly for all the years starting from assessment year 2002-03 onwards, appeals were pending before the CIT(A). Thereafter, various orders were received from the CIT(A) and the Tribunal for assessment year 2005-06 first on 31.05.2011 and for assessment years 2002-03 to 2004-05 on 14.02.2013 and for assessment year 2007-08 on 14.02.2013 with simultaneously the matter being re-adjudicated by either Assessing Officer or CIT(A) for all these years and the appeals thereafter being filed before the Tribunal, The assessee claims that it by an inadvertent mistake, had lost sight of the fact that appeal for assessment year 2006-07 was not filed within stipulated time. However, it was filed on 21.05.2015 after delay of about 1784 days.

6. In the totality of the facts where there were multiple proceedings pending before different Forums in the case of assessee, we find the plea of assessee to be bonafide and the delay in filing the present appeal is thus, condoned. It

may be pointed out that the Hon'ble Bombay High Court in recent decision in Vijay Vishin Meghani Vs. DCIT (2017) 398 ITR 250 (Bom) had condoned the delay of 2984 days on the ground that sufficient cause existed for condonation of delay. Further, we find support from the ratio laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Mst. Katiji & Ors. (1987) 167 ITR 471 (SC), wherein it was first laid down that sufficient cause should exist for condonation of delay; secondly, it was also held that the issue of sufficient cause should be interpreted with a view to do even-handed justice and most importantly it was held that where substantial justice was pitted against technicality of non-deliberate delay, then cause of substantial justice was to be preferred. The learned Authorized Representative for the assessee has relied on various other decisions of various Benches of Tribunal, which are being relied upon on similar issue.

7. Before parting, we may also refer to the decision of the Hon'ble Supreme Court in Anil Kumar Nehru Vs. ACIT reported in 101 taxmann.com 191 (SC), wherein the delay of 1662 days was condoned as there was acute financial crisis and multiple legal proceedings pending and hence the Court held that there was sufficient cause for condoning the delay. Another point which was considered in the case of Anil Kumar Nehru Vs. ACIT (supra) was that where the Courts have to decide question of law between parties in any case in respect of earlier assessment years, then explanation of assessee should have been accepted and the delay in filing the appeal should be condoned. In the present case also before us, the issue has been decided by the Tribunal for earlier years and since the issue stands covered by earlier order of Tribunal, we proceed to address the issue raised on merits after condoning the delay in filing the present appeal late by 1784 days.

8. Now, coming to the merits of issue raised, the assessee is aggrieved by the orders of authorities below in denying the benefit of exemption under section 10(23C)(vi) of the Act on the ground that the assessee has not submitted requisite form for claiming the aforesaid exemptions.

9. The issue which arises in the present appeal is of deemed registration in the hands of assessee, wherein registration to charitable trust has been allowed in assessment years 2005-06 and 2007-08 and the year under appeal being assessment year 2006-07, was in between year and whether the assessee was entitled to the said claim of exemption or not.

10. Briefly, in the facts of the case, the assessee was managing an international school by the name of Mercedes Benz Education Academy at Hinjewadi, Pune. In the return of income filed for assessment year under consideration, the assessee had claimed exemption under section 10(23C)(vi) of the Act. Since the assessee was unable to produce the order granting approval under the aforesaid section, the Assessing Officer was of the view that income of assessee was chargeable to tax and he computed the income under the head 'Income from business or profession'.

11. Before the CIT(A), the assessee contended that application in Form No.56D, dated 27.10.2005 was filed along with return of income for assessment year 2005-06 filed on 31.10.2005 seeking exemption for the next three assessment years. The CIT(A) noted that the assessee had not furnished any copy of application in Form No.56D in support of its claim of having furnished the same. Secondly, under Rule 2CA, the statutory requirement was that application in Form No.56D should be submitted to the Chief Commissioner of Income, who was the prescribed authority under section 10(23C)(vi) of the Act and not before the Assessing Officer along with return of income. Thirdly, it

was noticed that enclosures to the said return of income were filed seeking approval only for the year ending 31.03.2005 and not for three assessment years as claimed by the assessee. The CIT(A) has scanned and reproduced Form No.56D at pages 5 and 6 of appellate order. Therefore, the claim of assessee that the society sought exemption for three assessment years from assessment year 2005-06 to 2007-08 in Form No.56D, dated 27.10.2005 filed along with return of income for assessment year 2005-06 was held to be not factually correct. In the said Form 56D, the CIT(A) noted the assessee to have sought approval only for assessment year 2005-06 and not for subsequent two assessment years. The assessee had sought approval for assessment year 2006-07 i.e. the year under appeal in other Form No.56D, dated 26.10.2006 filed along with return of income. With respect to the said application, it was pointed out that the same was filed along with return of income, was not a valid application as the same should have been filed during the financial year and not after the close of financial year.

12. Then the CIT(A) addressed the second issue of deemed registration, where the Commissioner has not disposed of the application within period of 12 months from the end of the month in which such application was filed. Reference was made to ninth proviso to section 10(23C) of the Act, which provided that an application made on or after 13.07.2006 i.e. the date on which Taxation Laws (Amendment) Bill, 2006 received the assent of the President of India and it was observed that the said proviso was not applicable to the application submitted by the assessee i.e. first application which was filed along with return of income for assessment year 2005-06 and also other belated application filed on 26.10.2006. Thus, the plea of assessee of eligibility for exemption under section 10(23C)(vi) of the Act was not legally tenable and rejected. The CIT(A) also upheld the order of Assessing Officer in taking the

status of assessee as AOP and not charitable trust though in earlier years, the status of assessee was taken as trust engaged in educational activities.

13. The grievance of assessee before us is against the aforesaid denial of exemption claimed under section 10(23C)(vi) of the Act.

14. The learned Authorized Representative for the assessee pointed out that the Tribunal vide its order dated 31.05.2011 in ITA No.672/PN/2009, relating to assessment year 2005-06 had noted the arguments of assessee when moved an application seeking approval for exemption under section 10(23C)(vi) of the Act in Form No.56D before the Chief Commissioner of Income Tax for assessment year 2005-06 i.e. the year under appeal and for the next two years along with return of income for assessment year 2005-06 well in time on 13.03.2006 but the same has not been disposed of. The Tribunal further noted that the Taxation Laws (Amendment) Act, 2006 with retrospective effect from 01.04.2006 in proviso to section 10(23C)(vi) of the Act has provided that granting or rejecting of application, order is required to be passed within period of 12 months from the end of the month in which such application was received. The Tribunal noted the inaction of Chief Commissioner of Income Tax in neither approving nor rejecting the application and noted that till Taxation Laws (Amendment) Act, 2006 with retrospective effect from 01.04.2006, there was no time limit was prescribed for the action of Chief Commissioner on such application for the approval; thus, inference by implication would be that w.e.f. 01.04.2006 if the Chief Commissioner does not act upon the said application, then after passing of period of 12 months from the end of the month in which such application was received, it would be deemed that claimed approval was accepted / granted. The Tribunal held that in the present case till 01.04.2009 when the first appellate order was passed, admittedly, application for approval moved on 13.03.2006 before the learned Chief Commissioner was not

disposed of. It was further held that the period of three years in view of the Tribunal was more than reasonable for deeming the authority below that application for approval of claim of exemption under section 10(23C) of the Act has been allowed by the Chief Commissioner. The Tribunal thus, directed the Assessing Officer to frame assessment for assessment year 2005-06 afresh treating the assessee as enjoying approval of exemption under section 10(23C) of the Act for the claim period in its application dated 13.03.2006.

15. Consequent to the assessment order passed in assessment year 2005-06, the Assessing Officer had reopened the assessment proceedings for assessment years 2002-03 to 2004-05 and also completed assessment proceedings for assessment year 2007-08. The Tribunal while deciding the appeal for captioned assessment years in ITA Nos.1913 to 1916/PN/2013, vide order dated 30.11.2015 had applied the ratio laid down by the larger Bench of Hon'ble Allahabad High Court in CIT Vs. Muzafar Nagar Development Authority in Income Tax Appeal No.348 of 2008, order dated 05.02.2015 and held the assessee not entitled to the aforesaid exemption under section 10(23C)(vi) of the Act, in the absence of any approval being granted by the prescribed authority. The Tribunal further in Miscellaneous Application moved by the assessee noted the plea of assessee that the decision of larger Bench of Hon'ble Allahabad High Court in CIT Vs. Muzafar Nagar Development Authority (supra) has been overruled by the Hon'ble Supreme Court in CIT & Anr. Vs. Society for the promotion of Education (2016) 382 ITR 6 (SC) and allowed Miscellaneous Application moved by assessee. The Tribunal in MA No.49/PUN/2016 for assessment year 2007-08 noted the assessee had filed application before the Commissioner for granting approval under section 10(23C)(vi) of the Act on 31.03.2006 which was not disposed off within period of six months, the registration would be deemed to be granted to assessee

w.e.f. 30.09.2006 i.e. after the expiry of six months from the date of making application. The Miscellaneous Application for earlier assessment years 2002-03 to 2004-05 were dismissed as the application was filed on 31.03.2006.

16. Further, the Tribunal in ITA No.672/PN/2009, relating to assessment year 2005-06, vide order dated 31.05.2011 taking note of the fact that the assessee had furnished application for approval before the Chief Commissioner on 13.03.2006 was not disposed of for period of three years i.e. till passing of first appellate order; held that it was more than reasonable for deeming that the application for approval of the claimed exemption under section 10(23C) of the Act has been allowed by the Chief Commissioner. The Revenue in this regard had moved Miscellaneous Application against the order of Tribunal for assessment year 2005-06. The Miscellaneous Application was dismissed by the Tribunal in MA No.89/PN/2013 vide order dated 04.02.2014 and it was noted that the assessee had moved an application in the office of CCIT on 13.03.2006. The said application in prescribed form to the CCIT through the office of Commissioner was even acknowledged by the ITO, Ward 9, Akurdi, Pune vide letter dated 23.06.2006. The Tribunal then observed that as per Note below Form No.56D, the application form should be sent to CCIT or DG through CIT or DIT (Exemption) having jurisdiction over the assessee and the assessee had precisely done the same. The Tribunal thus was of the view that the application filed by assessee through the office of Commissioner was the basis for taking view that deemed approval recognizing the society needs to be allowed. Thus, the Miscellaneous Application filed by Revenue amounting to review of its own order by the Tribunal was held to be not permissible under law.

17. So, the situation now which arises after different orders of Tribunal is that taking cognizance of application filed before the Commissioner on

13.03.2006, which was not disposed of by the CCIT within period of six months as envisaged in the Act, the Tribunal vide different orders relating to assessment years 2005-06 and 2007-08 have held that it is case of deemed approval where the application was not disposed of within stipulated time and hence, the assessee was eligible to claim exemption under section 10(23C)(vi) of the Act. The year under appeal before us is assessment year 2006-07 and the assessee is also relying on the said application dated 13.03.2006 filed before the Commissioner which was not disposed of within time and the case of assessee is that deemed approval is thus, granted to the assessee and the assessee is eligible to claim exemption under section 10(23C)(vi) of the Act. We find merit in the plea of assessee.

18. Before parting, we may also refer to provisions of Rule 2CA(i) which were prevalent from 03.04.2001 to 01.06.2007 i.e. before its amendment, wherein guidelines for approval under sub-clause (vi) and (via) of clause 23C of section 10 of the Act are provided. The prescribed authority under the aforesaid section was the Chief Commissioner or the Director General to whom the application has to be moved as provided in sub-rule 2. The said sub-rule 2 provides that application for approval shall be made in Form 56D by the institution and clause 3 provides that approval of CBDT or the Chief Commissioner or the Director General, as the case may be, shall at any one time have effect for a period not exceeding three assessment years. Explanation to Rule 2CA provides that for the purpose of this rule, the Chief Commissioner or Director General means the Chief Commissioner or Director General to whom the Assessing Officer having jurisdiction to the assessee, is subordinate. It is also provided that application has to be made to the Commissioner, who in turn, shall forward the same to Chief Commissioner or the Director General.

19. Now, taking the stock of the factual aspects of the case, application in Form No.56D was filed before the CIT-5, Pune on 13.03.2006, under which the assessee is seeking exemption for block of three years starting from assessment year 2005-06 and 2007-08. The Tribunal for assessment years 2005-06 and 2007-08 have already held the assessee entitled to the aforesaid exemption. Consequently, we hold that the assessee is also entitled to claim the aforesaid deduction for the intervening year i.e. for assessment year 2006-07 and direct the Assessing Officer to compute the income in the hands of assessee after allowing exemption under section 10(23C)(vi) of the Act. Thus, the grounds of appeal raised by assessee are allowed.

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

Order pronounced on this 17th day of May, 2019.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 17th May, 2019.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)I, Pune;
4. The CIT-I, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune