

Section 10(23C) recognition not to be denied to a society pursuing other objects along with education

Summary – The Allahabad High Court in a recent case of Neeraj Janhitkari Gramin Sewa Sansthan., (the Assessee) held that where the assessee, a society, was running a degree college and it made an application for approval under section 10(23C)(vi) the said application could not be rejected merely on ground that it was not filed by an educational institution itself.

Facts

- The assessee, a society, was registered under the Societies Registration Act, 1860. It was running a degree college in Mainpuri. It was also registered with the Income-tax department. It made an application for approval under section 10(23C)(vi) for assessment year 2009-10 onwards.
- The Commissioner rejected the said application on the grounds that (i) the approval under section 10(23C)(vi) was available only to an educational institution existing solely for the educational purposes while the memorandum of the assessee-society stipulated other objects as well, and (ii) the application for approval should have been filed by the educational institution while it had been made by the society.
- On writ.

Held

- The first and foremost question which is required to be considered is whether the application for approval under section 10(23C)(vi) at the instance of the assessee-society was maintainable or not.
- The Supreme Court in the case of *American Hotel & Lodging Association Educational Institute v. CBDT* [2008] 301 ITR 86/170 Taxman 306 had considered the effect of insertion of clause (vi) in section 10(23C) by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999 and held that the provisions of clause (vi) of section 10(23C) are analogous to provisions of section 10(22). The Punjab and Haryana High Court had the occasion to consider the effect of section 10(23C)(vi) in the case of *Pinegrove International Charitable Trust v. Union of India* [2010] 327 ITR 73/188 Taxman 402 and while replying to a specific question whether a society registered under the Societies Registration Act, 1860 was eligible to apply for approval under section 10(23C)(vi) held that the application for approval under section 10(23C)(vi) was maintainable at the instance of a society. Similar view had been taken by the Delhi High Court in the case of *Digember Jain Society for Child Welfare v. DGIT (Exmp.)* [2010] 329 ITR 459/185 Taxman 255.
- Therefore, the application filed by the assessee-society cannot be rejected on the ground that it is not at the instance of 'educational institution' as referred to under section 10(23C)(vi) and rule 2CA.

- The next question which was examined by the HC was whether the assessee's application for approval under section 10(23C)(vi) can be rejected on the ground that the memorandum of association provides for various other objects apart from educational activities.
- In this regard, the argument of the assessee was that even though under the unamended bye-laws of the society various other aims and objects were mentioned, but according to application for approval the society is only carrying on educational activities. In the application, there is a specific assertion that the only source of income of the society is the nominal fees being charged from students and it has no other source of income. The assessee has placed strong reliance on the judgment of the Allahabad Court in the case of *C.P. Vidya Niketan Inter College Shikshan Society v. Union of India* [Writ petition No. 1185 of 2011, dated 16-10-2012]. In the said case the assessee was a society which had made an application for approval under section 10(23C)(vi) and its application was rejected on the ground that benefit of section 10(23C)(vi) is available only to an educational institution existing solely for the purpose of imparting education, while the application has been made by a society having many activities that appear to be other than educational. In that case the Court had held that even though the aims and objects of the society may contain several objects, but if it has been proved by material on record that the society is not perusing any other activity apart from education, then in such case the society will qualify for grant of approval under section 10(23C)(vi).
- The HC observed on perusal of the impugned order that the pleading in this regard have not been taken into consideration. Further in the impugned order although there is a finding that the assessee-society is having many objects other than educational, but there is no application of mind to the assertion made by the society that it is only pursuing the educational activity and no other.
- Where a society is pursuing only educational objects and no other activity, then the application by such a society for grant of approval under section 10(23C)(vi) cannot be rejected on the ground that its aims and objects contain several other objects apart from educational and application by such a society is perfectly maintainable.
- Therefore, the impugned order passed by the Commissioner was liable to be quashed. The HC sent back the matter to the Commissioner for a fresh decision in accordance with the observations made by the HC.