

## Application for sec. 10(23C) relief can be made even prior to April 1 of AY for which exemption is sought

**Summary – The High Court of Punjab & Haryana in a recent case of Shri Guru Ram Dass Ji Educational Trust., (the Assessee) held that In terms of 14th proviso to section 10(23C), application for exemption of income can be filed even prior to 1st April of relevant assessment year, from which exemption is sought**

### Facts

- The assessee trust was constituted with the purpose of facilitating the charitable, social, cultural, educational, vocational and economic development of the society. It was registered under the provisions of Societies Registration Act, 1860. Since in the relevant assessment year, its receipts exceeded Rs. 1 crore, it applied to the Chief Commissioner seeking exemption under section 10(23C)(vi). As required, Form No. 56-D, prescribed under rule 2CA of the Income-tax Rules, 1962, was also filed.
- In pursuance to the said application, the department sought from the assessee certain information including its accounts for the year ending 31-3-2014, objects of the trust and returns of income filed earlier which were duly submitted.
- During the course of the hearing it was pointed out that the assessee had prematurely filed the application on 24-3-2014 and that the same could only have been filed after the expiry of financial year 2013-14 and before 30-9-2014. Accordingly, assessee's application was rejected
- On writ:

### Held

- Under section 10(23C)(iiiad) read with section 10(23C)(vi) and the 1st proviso to section 10(23C), an institution, which is not wholly or substantially funded by the Government, solely set up for the purpose of education and not for the purpose of profit, whose receipts exceed Rs. 1 crore, to claim exemption under section 10(23C), is required to make an application in the prescribed manner to the prescribed Authority. Thus, as soon as the receipts of such institution exceed Rs. 1 crore, an application for grant of exemption can be made.
- A plain reading of the 14th proviso to section 10(23C), leaves no doubt that an application under the same can be filed on or before 30th September of the relevant assessment year, from which the exemption is sought. The said proviso simply gives an outer date for making the application, which is 30th September of the assessment year, for which the exemption is sought. The proviso does not say that the application is to be made between 1st April and 30th September of the assessment year, for which the exemption is sought. The plain and simple meaning, as made out on reading the proviso, is unambiguous. No external aid is necessary. If the stand of the revenue is to be accepted, then one would have to necessarily add to the 14th proviso a condition that the application shall be

made after 1st April and before 30th September of the relevant assessment year, from which the exemption is sought. There is no necessity to do so.

- The aforesaid view causes the revenue no prejudice. A trust may know or have reason to believe prior to 1st April that its receipts are likely to exceed Rs. 1 crore. There is no reason why such an institution ought not to be permitted to make the application even before the 1st day of April of the relevant year. If, for any reason, the receipts do not exceed Rs. 1 crore, the application would not be processed further. Neither the revenue nor the assessee would be prejudiced. If the application is moved prior to 1st April of the assessment year, from which the exemption is sought, during the pendency of such application, if any relevant information is required, the Authorities are well within their rights to ask for the same before taking a final decision on the application. In fact, in the case in hand, the accounts for the year ending 31-03-2014 were asked for by the authorities and the same, along with the audit report, were duly supplied by the assessee.
- Prior to the year 2009, applications under the 14th proviso to section 10(23C) were required to be filed before 31st March of the financial year, for which the exemption was being sought. As per the amendment brought about in the year 2009, which came into effect from 01-04-2009, the 14th proviso was amended to what it reads presently. As per the Notes of Clauses, the amendment was being made to allow filing of applications on or before 30th September of the relevant assessment year, from which the exemptions were being claimed. Had the Legislature intended to fix a date, only after which such an application could be made, it would have specified the same.
- To reject the application of the petitioner, the Chief Commissioner also relied upon Clauses 11 to 19 of Form No. 56-D. According to him, the information sought for under these clauses would not be available by the end of financial year, for which the exemption is sought.
- It is the unrebutted case of the assessee that the above stated columns were the same even prior to the amendment made in the year 2009. At that time, applications for seeking exemption could be made only prior to 31st March of the relevant financial year, for which the exemption was being sought. The information supplied by the applicant against these columns at that time was considered adequate by the Department.
- Even otherwise, if an application under the 14th proviso, as it stands today, is filed prior to 1st April of the relevant assessment year, for which exemption is sought for and after the filing thereof, any further information is still needed by the revenue authorities, before taking a final decision thereupon, that information can be sought for from the applicant. As observed earlier, this was done in the case in hand, in which all the accounts for the year ending 31-03-2014, when asked for, were duly provided by the assessee much before the passing of the order impugned before us.
- Note 1(a) to Form No. 56-D provides that an application can be filed before the specified date and Note 3 clearly provides that after filing of the application, an applicant shall furnish any other documents or information as required by the Chief Commissioner or any other Authority authorised by the Chief Commissioner, as the case may be. These Notes clearly indicate that the application can be filed even prior to 1st April of the relevant assessment year, from which the exemption is sought.

- In view of the above, the impugned order passed by the Chief Commissioner is set aside with a direction to the Chief Commissioner to consider the application filed by the assessee for grant of exemption under section 10(23C), on merits.