

Assessee could approach ITAT when Chief CIT had rejected sec. 10(23C) exemption application

Summary – The Ahmedabad ITAT in a recent case of Dharmaj Kelvani Mandal, (the Assessee) held that Where assessee-trust formed to carry out educational activities, filed an application for issuance of exemption certificate under section 10(23C)(vi) which was rejected on ground that it was empowered to collect funds and accept funds and it could also manage other institutions, since assessee had not taken up any other object mentioned in trust deed, and exclusively carried out activities of education, impugned order denying exemption was to be set aside

Appeal filed by assessee against order of Chief Commissioner rejecting its application for exemption of income under section 10(23C)(vi), was maintainable before Tribunal

Facts

- The assessee-trust was formed under Bombay Public Trust Act, 1950 to carry out various activities in the field of education. It was granted registration under section 12A. During relevant year, the assessee filed an application seeking issuance of exemption certificate under section 10(23)(c)(vi).
- The Commissioner rejected assessee's application on ground that it was empowered to collect funds and accept funds and it could manage other institutions as well.
- In the appellate proceedings, the revenue raised a preliminary objection that appeal filed by assessee against the order passed by Chief Commissioner was not maintainable before the Tribunal.

Held

- Section 253 provides a right to the assessee to file appeal before the Tribunal against the orders mentioned therein.
- Order passed by the prescribed authority is under sub-clause (vi) and sub-clause (via) of clause (23C) of section 10. A bare perusal of the above provision would indicate that appeal has been provided against the order of the prescribed authority passed under section 10(23C)(vi). The prescribed authority can be Commissioner or Chief Commissioner or any other Authority. If Legislature has no intention to provide an appeal against the order passed by the Chief Commissioner, then that could have been specifically provided in the clause. It could be provided that appeal would lie to the Tribunal against the order passed by the Commissioner or any other prescribed authority below the rank of Commissioner. The appeal is thus maintainable before the Tribunal.
- As far as merit of the case is concerned. the prescribed authority was of the opinion that under sub-clauses (b) and (c) of object clause, the assessee could entertain any other objects than education, therefore, the assessee is not entitled for approval under section 10(23C)(vi).
- If one examines the facts of the present case, then it would reveal that the assessee trust came to existence in 1954. It is running educational institutions. It has been registered under section 12AA of

the Act since 25-8-1998. It is also enjoying the exemption under section 80G. Thus, the department has never doubted about the genuineness of the activities of the trust and purpose of its existence. While rejecting the application of the trust under section 10(23C), the Chief Commissioner has not pointed out any specific aspect. He only harboured a belief that assessee might have some ancillary activities not associated with education. This is only a hypothetical observation. It is well settled that if the assessee had not taken other objections mentioned in the trust deed, and exclusively carried out activities of education, then approval under section 10(23C) could not be denied. Thus, the appeal of assessee is allowed and the prescribed authority is directed to grant approval under section 10(23C)(vi).