

## No denial of sec. 10(23C) relief to school just because its governing body have object of Vedic teachings

**Summary – The Amritsar ITAT in a recent case of Raj Jain., (the Assessee) held that Merely because governing body of assessee-school had objects of religious nature and assessee-school did not have any objects of its own, it could not be said that objectives of assessee were also partly religious in nature, therefore refusal of exemption under section 10(23C) was not justified**

### Facts

- The assessee institution/school was run by a society namely, Arya Shiksha Mandal. The assessee claimed the excess of income over expenditure as exempt under section 10(23C)(iiiad) for assessment years 2007-08 and 2008-09 on the ground that the receipts of the school were less than one crore rupees.
- The Assessing Officer observed that the assessee institution had been claiming its entire income (excess of income over expenditure) as exempt under section 10(23C)(iiiad), as the receipts of the assessee institution in earlier years were less than Rs. 1 crore. When the receipts of the assessee institution exceeded Rs. 1 crore in assessment year 2012-13, it applied to the competent authority for getting approval under section 10(23C)(vi). However, approval to the assessee institution under section 10(23C)(vi) for the assessment year 2012-13 was refused by the Chief Commissioner on the ground that the assessee institution did not exist solely for educational purposes and the society which runs the assessee institution has aims and objectives which are religious in nature. The Assessing Officer held that the assessee institution did not exist solely for educational purposes and also due to denial of approval to the assessee institution for the assessment year 2012-13 under section 10(23C)(vi), the Assessing Officer denied the claim of exemption of income to the assessee institution under section 10(23C)(vi).
- On appeal, the Commissioner (Appeals) also confirmed the order of the Assessing Officer.
- On second appeal:

### Held

- Neither of the authorities, nor the revenue has been able to repudiate the assessee's categorical assertion that no religious education has ever been imparted by the assessee school right from its inception and that the assessee school is affiliated with the Punjab School Education Board (In short, 'PSEB'), and it is imparting education only on the patter of the PSEB, which pattern is a recognized pattern in India and is the pattern prescribed by the State Government in Punjab. In this regard, the counsel for the assessee has placed on record a copy of Affiliation Certificate, Sl. No. 1205, bearing School Code 0097713, issued by the PSEB, certifying that the assessee school is affiliated with the PSEB, up to the Sr. Secondary level, under Identity No. 003373, for the session 2004-05. It has been contended that this affiliation continues hitherto, in situ. There is no dispute about the aforesaid

affiliation of the assessee school with the PSEB, confirming the assessee's stand that the assessee school is imparting education under the PSEB pattern, which is a duly recognized educational pattern all over the country, having been prescribed in the State of Punjab as the Government recognized Sr. Secondary pattern of education.

- The department has not made out any case that the assessee school has been imparting any religious education. The only basis adopted by the authorities is that the objects of the assessee's school are absent and it is the objects of its governing body, Arya Shiksha Mandal, which are also the objects of the assessee school and these objects include propagation of Vedic teachings and other teachings of religious nature, *i.e.*, Vedic Dharma, Bramcharya, Aryan culture Classic Sanskrit and the Vedas. Now, it is incomprehensible as to how the mere existence of certain objects which, in the opinion of the taxing authorities, amount to objects of a religious nature, could form the basis for nursing a belief of escapement of income, when none of such objects has been shown to have been carried out by the assessee.
- It is thus evident that the Assessing Officer's first reason to believe escapement of income is a *non est* reason. It is trite that a reason of belief of escapement of income has to be a plausible reason, and the reason here, as discussed herein before, is not a plausible reason. This reason is, accordingly, set aside and cancelled.
- The other reason recorded by the Assessing Officer was that the assessee's application for grant of approval under section 10(23C)(vi) filed for the assessment year 2012-13, was rejected by the Chief Commissioner.
- The Assessing Officer was of the view that no registration is required under section 10(23C)(vi), where the receipts of the society are of less than Rs. 1 crore, but the assessee should exist solely for educational purposes, which was not so in the case of the assessee. The Commissioner (Appeals) again confirmed the Assessing Officer's view.
- The existence of the assessee solely for educational purposes has been elaborated and confirmed in the preceding paras. So far as regards the receipts of the assessee, firstly, neither of the Authorities has raised any objection with regard to the receipts of the assessee being less than the prescribed limit of Rs. 1 crore. For the assessment year 2007-08, the receipts of the assessee, as per the income and expenditure account for the year ending 31-3-2007, amounted to Rs. 52.01 lakhs, *i.e.*, much below the prescribed limited of Rs. 1 crore.
- The above apart, it is patent on record that in the case of Arya Shiksha Mandal, the governing body of the assessee school, in scrutiny assessment, the status as well as the nature of service of the Mandal was accepted as that of a charitable educational society.
- From the above discussion, it is evident that both the reasons recorded by the Assessing Officer for reopening the completed assessments of the assessee are based on factual errors, rendering the notice issued under section 147, finding its basis in the aforesaid reasons, to be an invalid notice. Consequently, all proceedings pursuant thereto, culminating in the impugned order for the assessment year 2007-08, are also held to be *null and void*.