

ITAT justified rejection of sec. 10(23C) approval as primary object of society was non-educational activity

Summary – The Visakhapatnam ITAT in a recent case of Desales Educational Society., (the Assessee) held that where assessee was having objects other than educational objects and said objects were non-educational, Commissioner (Exemption) was justified in rejecting application of assessee for grant of approval under section 10(23C)

Facts

- The assessee was an educational institution running the school in the name of Saint Francis Desales Schools. Though objects of the society include educational purpose, the objects other than educational objects include to encourage sportsman and adventurous spirit in the pupils and those connected with the institution; to print, publish and exhibit films, journals, periodicals, books for the diffusion of useful knowledge and to provide residential accommodation either free of cost and educate, train and assist financially the social workers, staff, students, orphans.
- The Commissioner (Exemption) found that the objects other than educational objects were primary/dominant objects independent of other objects with distinctive nature and they not ancillary or incidental to any of the other objects. The Commissioner (Exemption) further observed that it cannot be inferred that each and every one of the object was related to the education in order to allow the benefit under section 10(23C)(vi). Hence, he held that the society did not exist solely and exclusively for the purpose of education.
- On appeal:

Held

- The assessee is an educational institution running the school in the name of Saint Francis Desales Schools. Though objects of the society include educational purpose, the objects other than educational objects include to encourage sportsman and adventurous spirit in the pupils and those connected with the institution to print, publish and exhibit films, journals, periodicals, books for the diffusion of useful knowledge and to provide residential accommodation either free of cost and educate, train and, assist financially the social workers, staff, students, orphans.
- Plain reading of section 10(23C)(vi) clearly shows that for grant of approval under section 10(23C)(vi) the institution must exist solely for educational purpose and not for profit. The Commissioner (Exemption) in his order has given a clear finding that the other objects on MOA are primarily dominant objects independent of other objects with distinctive nature and they are not ancillary or incidental to any other objects mentioned in the Memorandum of Association. The assessee could not controvert the finding of the Commissioner in its order.
- As per the provisions of section 10(23C), the primary requirement is that the assessee should exist solely for the purpose of education. In the present case, the objects mentioned include non-

educational objects and the assessee has not satisfied the condition of existence solely for educational purposes.

- In the instant case, the other objects are clearly non-educational and are the main objects of the society. As observed by the Commissioner (Exemption), they cannot be considered as ancillary or incidental objects to the primary objects as argued by the assessee. The assessee argued for conditional grant of approval but there is no such provision in the Act for conditional grant of approval. As discussed earlier the approval would be granted only if the institution exists solely for educational purposes.
- Accordingly, the order of the Commissioner (Exemption) is upheld and the appeal of the assessee is dismissed.