

No denial of exemption just because educational institution collected part of fees in Foreign exchange abroad

Summary – The Mumbai ITAT in a recent case of American School of Bombay Educational Trust., (the Assessee) held that where assessee educational institution existed solely for purpose of education and its receipts were applied only for educational purpose and Assessing Officer also did not make any charge against same, assessee could not be denied exemption under section 10(22) merely on ground that it was receiving fees from foreigner students in foreign exchange abroad by way of an arrangement with an educational organisation abroad

Facts

- The assessee institution, engaged in educational activities, had filled its return of income claiming exemption under section 10(22). The Assessing Officer noted that the assessee had not produced the books of account or documents to prove its claim of exemption made under section 10(22) that the assessee-trust solely existed for educational purposes. Further, the assessee was receiving part fees from students in India and part of fees was collected in foreign exchange abroad by an arrangement with an organization SAIESF USA which was out of purview of audit in India and how the funds utilized by said organization could not be ascertained. Further, the Assessing Officer observed that the expenditure claimed by assessee incurred by SAIESF on behalf of the assessee was not allowable as accounts of SAIESF were not audited either by CPA in USA or by any Chartered Accountant in India. Thus, he disallowed the exemption claimed by the assessee.
- However, on appeal, the Commissioner (Appeals) allowed the claim of exemption under section 10(22) holding that the condition precedent for claiming exemption under section 10(22) was that the educational institution must exist solely for educational purposes and not for profit and once this condition was fulfilled the fact that the recipient of income was a person other than the educational institution would not affect the position. Further, the exemption under section 10(22) could not be denied since revenue could not point out any case where any part of profit/income being diverted for purpose other than for educational purpose.
- On revenue's appeal to the Tribunal:

Held

- It is found from the facts of the case that during the infamous flood hit occurred in Mumbai, the assessee's school being located in a low lying area as a result, flood water entered the school premises and caused damages to the documents as well as various records, articles and goods lying in their premises. The copies of photographs also reveal these facts of damages. From the photographs it is found that damages to the records and documents and goods lying in the premises are clearly visible. Therefore, the assessee's liability to furnish the supporting documentary

evidences was caused by these circumstances which could be considered as reasonable cause. Moreover, from the heads of expenses claimed in the Income and Expenditure statements it is evident that these are the expenses which are necessarily required to have incurred for the purposes of running the school. Without the teachers and staff to whom salaries are required to be paid, school administration cannot be run. Similarly without the electricity the school cannot function. The school premises are taken by assessee on rental basis without which one cannot run a school. Similarly, repairs and maintenance expenses, legal and professional fees, general expenses, administration expenses etc., are all found to be in relation to the running of school. Without incurring these expenses, it is not possible to run a school. Therefore, the Assessing Officer was not justified in disallowing the entire expenses claimed in the income and expenditure statement filed along with the return of income, merely on the ground that assessee could not furnish the details and supporting evidences. The Assessing Officer has also not appreciated the fact that the records of assessee pertaining to these expenses were destroyed during the worst flood hit of Mumbai. Despite the fact that the records were damaged in the flood and also filing of FIR copy with the Assessing Officer, the Assessing Officer is found simply disbelieved the assessee's claim and merely on the ground that the assessee has not reported the damage of computer the details could be extracted, treated the entire expenditure as inadmissible. But without specifically pointing out any inadmissible expenses, the Assessing Officer has also to appreciate the fact that for running the school, the expenses are necessarily to be incurred without which the school cannot be run. Therefore, the Commissioner (Appeals) has rightly directed Assessing Officer to allow these expenses.

- The provisions of section 10(22) for claiming exemption provides that the requirement is that the university or the educational institute must exist solely for educational purposes in India in other words, the recipient of the income must have the character of an educational institute in India and its character outside India or it being a part of university existing outside India is not relevant for deciding whether its income would be exempt under section 10(22) or not. In the present case, there is no charge by Assessing Officer or now by department that the assessee does not exist solely for the purpose of education, hence there is no infirmity in the order of the Commissioner (Appeals), allowing the claim of exemption to assessee-institution under section 10(22). Accordingly, we dismiss the appeal of revenue.