

IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' MUMBAI

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.487/Mum/2021
(Assessment Year :2019-20)**

The Sardar Partapsingh Education society 265, Sant Niwas Shahid Bhagatsingh Road Fort, Mumbai-400 001 Maharashtra	Vs.	The Commissioner of Income Tax (Exemptions) Room No.617, 6 th Floor Piramal Chamber Lalbaug, Parel Mumbai – 400 012
PAN/GIR No. AACTT2904N		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajeev Wagley
Revenue by	Shri T.S. Khalsa
Date of Hearing	09/06/2021
Date of Pronouncement	11/06 /2021

आदेश / O R D E R**PER MAHAVIR SINGH (V.P.):**

This appeal of the assessee in ITA No.487/Mum/2021 for A.Y.2019-20 is directed against the order of rejection of application u/s.10(23C)(vi) of the Act passed by the Id. Commissioner of Income Tax (Exemptions) hereinafter referred to as Id. CIT(E) vide his proceedings in ITBA/EXM/S/EXM15-2020-21/1031924389(1) dated 30/03/2021

2. We have heard rival submissions and perused the materials available on record. The assessee is an education society running

educational institution by the name Daffodils High Public School for standard I to X with affiliation to CISCE at Bhandup, Mumbai. The Assessee society was formed through Memorandum of Association of society dated 31/03/1978 and is duly registered under Societies Registration Act, 1860 under Registration No.BOM-205/78 dated 25/05/1978. The assessee is also registered as a Public Charitable Trust under Bombay Public Trust Act, 1950 since 24/10/1978. As per the predominant objects in the Memorandum of Association and Rules and Regulations of the society, the assessee society has been established solely for the purpose of education. The objects of the assessee society as per the Memorandum of Association dated 31/03/1978 are as under:-

- a) To encourage and spread education among all people irrespective of caste, creed and religion, by providing facilities for education, pre-primary, primary, secondary, collegiate, technical, physical and the like.*
- b) To found, conduct, aid and take over educational institutions with Marathi, Hindi, English, Gujarati and Punjabi medium of instructions from K.G. to college level or higher technical courses.*
- c) To establish educational institutions and facilities etc. viz. Hostels, libraries, reading rooms, play grounds, Halls, Coaching classes and dispensaries etc., and provide educational and vocational guidance.*
- d) To give text books, scholarships to deserving students and refundable scholarship, loans for higher education in India and abroad.*
- e) To arrange lectures, symposium, seminars, debates and elocution and essay competitions and sports etc.*
- f) To purchase, construct, maintain alter, take on lease exchange hire or otherwise acquire movable or immovable property which may be deemed necessary or convenient for any of the purposes of the society.*
- g) To print and publish any newspaper, periodicals, books or leaflets that the society may think desirable for the promotion of its objects.*
- h) To subscribe to any charity and to grant donations for public purposes.*

- i) To co-operate and federate and affiliate with organisation having similar objects*
- j) To invest any moneys of the society, not immediately required for any of its objects in such manner as may from time to time be determined.*
- k) To do all other things as are incidental or conducive to the attainment of the above objects or anyone of them.*

2.1. During the F.Y.2018-19, the Id. CIT(E) noted that there were 415 students studying in the school and staff consisting of 25 teachers and 3 non-teaching staff. It was also submitted that the assessee institution being a minority institution formed by Sikh minority, the provisions of Right to Education Scheme are not applicable to minority educational institutions, so free education is not provided to any student. The assessee trust preferred an application u/s.10(23C)(vi) in the prescribed form seeking registration thereon before the competent authority i.e. the Id. CIT(E). The educational activities of the assessee trust were started from the year 1979. One of the pre-requisites of getting affiliation with Council for Indian School Certificate Examination (CISCE), New Delhi was that the school should have a minimum of 2000 sq.mtrs of land, suitable building constructed on part of the land and proper play ground on the remaining land with adequate facilities as prescribed from time to time by the Council.

2.2. Yet another pre-requisite mentioned in the Rules and Regulations of seeking affiliation with CISCE was that of the land title document should be in the name of society / trust / company / school. In the case of ownership, the land title documents should be the sale deed, conveyance deed and gift deed duly registered before the Registration authority concerned. In case of lease, the lease deed of the land /

building should be duly registered before the concerned registration authority and should be for a minimum effective term of five years, with an appropriate renewal clause up to minimum of 30 years. Accordingly, in order to fulfil the requirements prescribed by CISCE in its affiliation rules and in view of the fact that assessee society did not have enough resources to purchase the land on its own to the extent of minimum of 2000 sq.mtrs, had resorted to take the land belonging to that trustees of the trust, on lease. Vide lease deed dated 31/03/2017, the assessee took land measuring 2200 sq.mtrs. on lease from Shri Amarjit Singh Nandrajog and Shri Charanjit Singh Nandrajog (trustees of the trust) for a period of 60 years from January 1988 valid till 31/12/2047 on a monthly rent of Rs.2 lakhs chargeable from F.Y.2018-19 relevant to A.Y.2019-20. The stamp duty of Rs.58,67,000/- was duly paid on the above registered lease deed. The said lease deed also provided for escalation of lease rent from time to time.

2.3. For the A.Y.2019-20, an application in Form 56 D was electronically filed by the assessee trust on 25/09/2019 with all the relevant documents for grant of exemption u/s.10(23C)(vi) of the Act. All the details called for by the Id. CIT(E) from time to time were duly furnished by the assessee trust. The Id. CIT(E) rejected the application for exemption u/s.10(23C)(vi) of the Act preferred by the assessee on the following grounds:-

- i. *that the Appellant did not solely exist for education purposes because there were several objects of non-education nature*
- ii. *that the Appellant was making huge surplus.*

iii. that the Appellant had contravened the provisions of S.13(1)(c) of I.T. Act, 1961 in as much as it had paid lease rent of Rs.24,00,000 p.a. to two of trustees of the Appellant (Rs.12,00,000/- each).

2.4. The Id. AR before us assailed each of the aforesaid grounds by making various arguments with specific reference to relevant supporting documents in the paper book.

2.5. Per contra, the Id. DR vehemently relied on the order of the Id. CIT(E) by stating that no new arguments were made by the Id. AR before this Tribunal and that all the arguments advanced by the Id. AR have already been considered by the Id. CIT(E) in his order dated 30/03/2021 while rejecting the claim of exemption u/s. 10(23C)(vi) of the Act.

2.6. It would be pertinent to adjudicate each of the grounds stated by the Id. CIT(E) for rejection of claim of exemption u/s. 10(23C)(vi) of the Act. The first ground of rejection is that the assessee trust is not existing solely for the purpose of education. To support this point, the Id. CIT(E) had placed reliance on the objects in para 'f' to 'k' thereon reproduced supra. In our considered opinion, on perusal of the entire objects enumerated in the Memorandum of Association of assessee society, we find that predominant objects that are listed in para 'a' to para 'e' as reproduced supra comprise only for the purpose of education. The objects mentioned in para 'f' to 'k' in the Memorandum of Association are only incidental objects for the attainment of the main objects i.e. existing solely for the purpose of education. It would be highly impossible to run the school without having any immovable property either on its own or by taking it on lease. Hence, one of the objects which is provided in the Memorandum of Association for purchasing the immovable property either

for acquiring the immovable property either by purchase or on lease is only an enabling position for the attainment of the main object of running a school on the said land. The said objects that are enumerated in para 'g' to 'k' again are only incidental to the attainment of the main object of educational purpose. Hence, we summarily dismiss the first ground of rejection of the Id. CIT(E) for denying exemption u/s. 10(23C)(vi) of the Act as it is without any basis.

2.7. We have perused the income and expenditure account together with the audited financial statements for the year ended 31/03/2016 to 31/03/2019 of the assessee trust. From the perusal of the same, we find that assessee trust had derived income only from educational activity and not otherwise. Hence, even the financial statements of the assessee support the contention of the Id. AR that the trust is existing solely for the purpose of education only and not of any other purpose. Even otherwise during the year under consideration, i.e. F.Y.2018-19 relevant to A.Y.2019-20, for which claim of 10(23C)(vi) of the Act is sought by the assessee trust, the assessee trust had carried all activities only with respect to education and not otherwise at all. Accordingly, the other incidental objects provided in the Memorandum of Association for smooth attainment and fulfilment of the main objects, was not even carried out by the assessee during the year under consideration. Hence, the objection of the Id CIT(E) that the objects contain other irrelevant activities (though factually it is not) deserve to be dismissed in limine. Reliance in this regard has been rightly placed by the Id. AR on the decision of the Hon'ble Jurisdictional High court in the case of Vanita Vishram Trust vs. CCIT reported in 327 ITR 121 (Bom).

3. The second objection of the Id. CIT(E) is that the assessee trust had derived surplus in its income and expenditure account, the details of which are tabulated by the Id. CIT(E) in pages 11,12,13 & 14 of his order. Since surplus was earned by the assessee trust, the Id. CIT(E) concluded that assessee trust is existing for the purpose of profit. We are unable to persuade ourselves to accept the arguments and wrong understanding of the Id. CIT(E) with regard to the provisions of the Income Tax Act and more particularly provisions pertaining to charitable trusts. Nowhere it is prescribed that a charitable trust should not make any surplus or should not make any profit. What is prescribed is that only such surplus / profit which is derived should not be distributed to private individuals i.e. trustees or their relatives. As long as the surplus / profits are re-deployed in the coffers of the assessee trust for its charitable trust being education, it is highly irrelevant and immaterial if the surplus is derived by the assessee trust on its regular charitable activities. Reliance in this regard had been rightly placed by the Id. AR on the following decisions:-

a) Decision of Hon'ble Jurisdictional High Court in the case of Vanita Vishram Trust vs. CCIT reported in 327 ITR 121 (Bom).

b) Decision of Hon'ble Madras High Court in the case of PKD Trust vs. ITO reported in 311 CTR 657.

c) Hon'ble Supreme Court in the case of Queens Educational Society vs. CIT reported in 372 ITR 699 (SC)

d) Decision of the Hon'ble Supreme Court in the case of Vishvesvaraya Tech University vs. ACIT reported in 384 ITR 37.

e) Decision of Hon'ble Supreme Court in the case of CCIT vs. St. Peters Educational Society reported in 385 ITR 66.

3.1. Moreover, the *Hon'ble Supreme Court in the case of American Hotel and Lodging Association Educational Institute vs. CBDT reported in 301 ITR 86* held that on the issue of deciding whether an institution is existing for profit or not, the mere excess of income over expenditure cannot be decisive. An institution cannot be considered to be existing for profit, if some surplus is generated over its expenditure. It is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit. Even otherwise, we find that the CBDT vide its Circular No.14/2015 dated 17/08/2015 had issued clarification on certain issues related to grant of approval and claim of exemption u/s. 10(23C)(vi) of the Act wherein it had categorically stated that the educational institution is entitled to generate surplus out of its gross receipts and mere generation of surplus by educational institution from year to year cannot be a basis for rejection of application u/s. 10(23C)(vi) of the Act if the said surplus is used for educational purpose and not distributed to private individuals as dividend. Even this CBDT Circular, which is binding on the Id. CIT(E), has not been followed by him while rejecting the claim of exemption u/s. 10(23C)(vi) of the Act.

3.2. We find that the Id. CIT(E) had merely looked into income and expenditure account of the assessee trust for coming to the conclusion that assessee had earned surplus and thereby existing for the purpose of profit. In our considered opinion, what is to be seen is the computation of income which are applicable to charitable trusts which works completely on a different principle wherein even the amounts invested in fixed assets are allowed as application of income. This has been conveniently ignored by the Id. CIT(E) while arriving at the conclusion that assessee has earned surplus. If the said investment made in fixed assets are considered as an application of income excluding depreciation thereon,

we find that for the A.Y.2019-20, the assessee had only incurred a deficit of Rs.43,76,494/-. Hence the observation of the Id CIT(E) that the assessee trust had made surplus during the A.Y. 2019-20 and thereby existing for profit, is factually incorrect. Hence there is no question of any surplus earned by the assessee, as per the computation of income as per the provisions applicable to charitable trusts for the A.Y.2019-20. Even otherwise, we find that the surplus in the income and expenditure account has not been distributed by the assessee to any trustees or their relatives as profits or as dividend. The said surplus has been re-deployed regularly for the educational objects of the trust. Hence, it could be safely concluded that the assessee trust is existing solely for the purpose of education and not for the purpose of profit. Hence the second objection raised by the Id. CIT(E) for rejecting the claim of exemption u/s. 10(23C)(vi) of the Act is hereby dismissed as baseless.

4. We find that the third objection raised by the Id. CIT(E) is that assessee trust has paid lease rent of Rs.24 lakhs to Shri Amarjit Singh Nandrajog and Shri Charanjit Singh Nandrajog (being trustees of the trust) for lease of the land on which assessee's school is functioning. We find that the Id. CIT(E) mentioned the brief history with regard to how the title of the said land passed to Shri Amarjit Singh Nandrajog and Shri Charanjit Singh Nandrajog and their eventual continuation of the lease to the assessee trust for a period of 60 years. It would be pertinent to reproduce the same as under:-

10. History of Assessee's own case:

The applicant society was formed in the year 1978 but the educational activity started from the year 1979 at Bhandup LBS Road when the trustees were Late

Smt. Rampyari Pratap Singh wife of Sardar Pratap Singh, Late Mr. Jaidev Singh Nandrajog and Late Mr. Tara Singh Nandrajog. The trust started educational institute on the present premises at Shivaji Talav, Bhandup West, Mumbai – 400 078 in the year 1988.

10.1. Sardar Pratap Singh was owner of the land on which the school building was constructed. Sardar Pratap Singh expired on 20.11.1973 leaving behind Sardar Jaidev Singh Nandrajog and Sardar Tara Singh Nandrajog who succeeded the said property.

10.2. Smt. Rampyari Pratap Singh wife of Sardar Pratap Singh, Sardar Jaidev Singh Nandrajog and Sardar Tara Singh Nandrajog were trustees of the applicant society which was formed in the year 1978 and operated the school of the society.

10.3. Sardar Jaidev Singh Nandrajog expired on 31.12.2015 leaving behind Mr. Amarjit Singh Nandrajog and Mr. Charanjeet Singh Nandrajog as legal heirs.

10.4. A deed of partition dated 01.09.2016 was executed between Mr. Amarjit Singh Nandrajog and Mr. Charanjeet Singh Nandrajog as legal heirs of Sardar Jaidev Singh Nandrajog on the part and Sardar Tara Singh Nandrajog on the other part. By virtue of the deed of partition Mr. Amarjit Singh Nandrajog and Mr. Chandrajeet Singh Nandrajog became owners of the land on which the school building stood, Mr. Amarjit Singh Nandrajog and Mr. Charanjeet Singh Nandrajog also became the members/trustees of the applicant society.

10.5. A lease deed was executed on 31/03/2017 between Mr. Amarjit Singh Nandrajog and Mr. Chandrajeet Singh on one part and the applicant society on the other part. Vide Lease Deed dated 31.03.2017, the lease of the land admeasuring 2200 sq. mt. (approx. 23672 sq.ft) was granted by Mr. Amarjit Singh Nandrajog and Mr. Chandrajeet Singh Nandrajog for a period of 60 years from January 1988 from which date school started functioning on the said premises to 31st December, 2047 on a monthly rent of Rs.2 Lakhs effective from 01.04.2014. An interest free deposit of Rs.25,00,000 was also paid by the society as per the lease deed,

10.6. From the table of expenses reproduced in table 2 of para 9.4 it can be seen that the applicant society has paid lease rent of Rs.24,00,000 for A.Y.2017-18 & F.Y.2018-19 and not for F.Y.2015-16 & F.Y.2016-17. The stamp duty of Rs.58,67,057 on the lease agreement has been paid by the society on 30.03.2017 and 50% of it i.e. Rs.29,33,529 has been written off in the I & E account in F.Y.2016-17.

11. As per the lease agreement the land was in the possession of the society from 1988 for which no rent was paid by the society from 1988 to 2013 i.e. for 25 years. After the death of Sardar Jaidev Singh Nandrajog on 31.12.2015 and after the deed of partition dated 01.09.2016 the members of the society have changed and the profit element has crept in. It is clear from the lease agreement that the rights of the society in the lane, on which its building is constructed, have been compromised in the lease agreement. The income of the society has been used to pay rent to the members which was not payable earlier. There appears to be

contravention of provisions of section 13(1)(c) of the income Tax Act in this regards as the persons to whom rent has been paid are trustees / members of the society. The school building was there before the lease agreement. There is change in the activity of the society from F.Y.2016-17 onwards. From the details of expenses given in Table 2 of para 9.4 it can be seen that the advertisement expenses increased from Rs.6,141 in F.Y.2015-16 to Rs.1,75,173 in F.Y.2018-19. Further promotion expenses of Rs.1,29,800 have been incurred in the year under consideration which was never incurred in earlier years. This shows that there is change in the manner in which the society is being run now. The society had applied for exemption u/s.10(23C)(vi) for the F.Y.2017-18 / A.Y.2018-19 however it later withdrew its application. Therefore, the F.Y.2018-19/A.Y.2019-20 is the first year in which application for exemption u/s.10(23C)(vi) is being pursued and decided upon.

4.1. From the aforesaid history recorded by the Id. CIT(E) in his order in pages 15 & 16 thereon, it could be seen that the main grievance of the Id. CIT(E) is that assessee trust has paid lease rent of Rs.24 lakhs to two trustees of the trust for taking lease on rent admeasuring 2200 sq.mtrs on which building of the school is constructed and on which the school is functioning as on date. We find that assessee trust had to ensure that it has minimum 2000 sq. mtrs on land, for functioning its school and for getting affiliation with CISCE as per the rules and regulations by CISCE. These documents are enclosed in pages 61 & 62 of the paper book filed before us. From the aforesaid history recorded by the Id. CIT(E), it could be seen that the registered lease deed was duly executed on 31/03/2017 by the present owners of the land i.e. Shri Amarjit Singh Nandrajog and Shri Charanjeet Singh Nandrajog to the assessee trust for a period of 60 years commencing from 01/01/1988 to 31/12/2047 on a monthly rent of Rs. 2 lakhs. It is an undisputed fact that assessee trust had not paid any lease rent to these two trustees up to 31/03/2018. The lease rent was paid only from 01/04/2018 onwards for taking the lease of land for running the school. We find that the Id. CIT(E) had stated that this payment of lease rent is in violation of provisions of Section 13 (1)(c) of the Act. It is pertinent to note that assessee trust had only sought claim

of exemption u/s. 10(23C)(vi) of the Act for which the provisions of Section 13(1)(c) need not be looked into as it is only applicable if exemption is claimed u/s.11/12 of the Act. Hence, we hold that reliance placed on the provisions of Section 13(1)(c) of the Act by the Id. CIT(E) is not applicable to the issue under consideration. Even assuming the provisions u/s.13(1)(c) of the Act are to be brought into operation in the instant case, then the Id. CIT(E) ought to have brought evidence on record by bringing comparative quotations to prove the fact that the lease rent paid in the sum of Rs. 2 lakhs per month to the trustees is excessive or unreasonable and beyond the fair market value thereon. On the contrary, we find that the Id. AR placed on record that market value of the land is Rs.13,03,76,400/- as per the registered lease deed and the payment of lease rent of Rs.24 lakhs works out to hardly 1.86% thereon. Hence, it could be safely concluded that the rent paid by the assessee trust to the trustees is not excessive or unreasonable. In view of the aforesaid observations, the third objection raised by the Id. CIT(E) for exemption u/s. 10(23C)(vi) of the Act is hereby dismissed. Accordingly, the grounds raised by the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced on 11/06/2021 by way of proper mentioning in the notice board.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai; Dated 11/06/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai