

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

I.T.A. Nos. 1858 & 1859/HYD/2017

Assessment Years: 2012-13 & 2013-14

Laxmi Narsimha Swamy Educational Society, ZAHIRABAD [PAN: AAAAL2081R]	Vs	Income Tax Officer (Exemptions)-3, HYDERABAD
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(Appellant)

(Respondent)

For Assessee	:	Shri S. Rama Rao, AR
For Revenue	:	Shri Pawan Kumar, DR

Date of Hearing : 08-11-2018

Date of Pronouncement : 26-12-2018

ORDER

PER S. RIFAUR RAHMAN, A.M. :

These two appeals filed by the assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-9, Hyderabad, dated 06-07-2017, for the AYs. 2012-13 & 2013-14.

2. Brief facts of the case are that the assessee, a registered society, running educational institution, filed its return of income for the AYs. 2012-13 & 2013-14 declaring NIL income for both the years. The gross receipts for the AYs. 2012-13 &

2013-14 stood at Rs. 1,21,27,575/- and Rs. 1,77,80,710/- respectively. It was observed that assessee has claimed exemption u/s. 10(23C)(iiiad) of the Income Tax Act [Act], even though the gross receipts exceeded Rs. 1 Crore. The assessee is also not registered neither u/s. 12A nor u/s. 10(23C) of the Act. The excess of income over expenditure was declared by assessee in the financial statement of the society. It is further observed that the assessee in the computation of income, reduced 15% of the receipts and also the capital expenditure from the gross receipts and filed the return of income as NIL. Subsequently, the assessment was re-opened by issue of notice u/s. 148 on 21-03-2016. Accordingly, assessments were completed on 30-06-2016 by assessing the total income at Rs. 9,43,020/- and Rs. 22,37,480/- respectively for both the assessment years. Penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income were initiated for both the years and penalty was levied for both the assessment years with the minimum levy of Rs. 98,971/- and Rs. 4,91,496/- respectively for the AYs. 2012-13 and 2013-14.

2.1. Aggrieved with the above order, assessee preferred appeals before the CIT(A), who confirmed the penalty levied by Assessing Officer. Aggrieved with the above order, assessee preferred appeal before us by raising the following grounds of appeal, which are common for both the assessment years, except change in the amounts:

“2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in holding that the

assessee furnished inaccurate particulars of income attracting levy of penalty u/s. 271(1)(c) of the I.T. Act.

3. The learned Commissioner of Income-Tax (Appeals) erred in confirming levy of penalty u/s. 271(1)(c) of Rs. 98,971/-”.

3. Ld.AR submitted that - it is a fact that assessee is running educational institution and during these assessment years i.e., AYs. 2012-13 and 2013-14, the gross receipts of the assessee crossed Rs. 1 Crore, therefore, assessee is not eligible for exemption u/s. 10(23C)(iiiad) of the Act. In the same assessment year, assessee applied for exemption u/s. 10(23C)(vi) of the Act on 30-11-2012 for AY. 2012-13 and 23-09-2013 for AY. 2013-14. The above applications were rejected by the CIT(Exemptions) on technical grounds like delay in filing the application for exemption for the AY. 2012-13 and for AY. 2013-14, it is on the object clause discrepancies. He submitted that all the relevant information which were required for completion of the assessments were made available to the Assessing Officer at the time of re-assessment and the information was made available to the department while applying for exemption u/s. 10(23C)(vi) of the Act. He submitted that it is only a mistake in calculating the exempt income while filing the return of income and it is not furnishing of inaccurate particulars.

4. Ld.DR objected to the submissions of the Ld.AR and submitted that society is formed in the year 2006 and all along assessee is well aware of the provisions of the IT Act and aware that it is not eligible to claim exemption u/s. 10(23C) of the Act

even though assessee claimed exemption u/s. 10(23C)(iiiad) of the Act to avoid payment of tax. He relied on the orders of the Ld.CIT(A).

5. In the rejoinder, Ld.AR submitted that wrong and inaccurate are different terms, it is clear from the return of income that assessee has claimed 15% as deduction which is not allowed u/s. 10(23C). It shows that assessee is not aware of the income tax law and he further submitted that all the information was filed by assessee while applying for exemption u/s. 10(23C)(vi) of the Act.

6. Considered the rival submissions and material on record. We observe that assessee is running an educational institution in the name and style of Shri Krishnaveni Talent School. In the AY. 2012-13, the gross receipts crossed the exemption limit prescribed u/s. 10(23C)(iiiad) of the Act. Therefore, assessee is not eligible for exemption u/s. 10(23C)(iiiad) of the Act from the AY. 2012-13 onwards. Subsequently, assessee has applied for exemption u/s. 10(23C)(vi) of the Act by making an application before the CCIT on 30-11-2012 for the AY. 2012-13 and on 23-09-2013 for the AY. 2013-14. It is noticed that in the application for exemption u/s. 10(23C)(vi) of the Act, assessee has filed Form No. 56-D in which assessee has declared the gross receipts for three assessment years. The above application was rejected by the Ld.CCIT(E) on technical grounds i.e., filing of application within six months relevant for the assessment year seeking exemption. We

noticed that all along the information relating to gross receipts of assessee were in the knowledge of the department, the Assessing Officer has initiated the reopening proceedings subsequent to rejection of application for exemption u/s. 10(23C)(vi) on 06-11-2013, the re-opening proceedings were initiated only on 11-05-2016. Accordingly, assessments were completed on 30-06-2016. Further, we noticed that when this information was brought to the notice of the assessee, assessee agreed that it does not have exemptions u/s. 10(23C) of the Act and paid the relevant tax. It is also important to note that the assessee has filed its return of income on 24-09-2012 and applied for exemption u/s. 10(23C)(vi) of the Act on 30-11-2012 with a belief that the exemption will be granted. For levy of penalty u/s. 271(1)(c), it is important that the intention of assessee is relevant. In this case, assessee was in mistaken belief that the exemption will be granted u/s. 10(23C)(vi) of the Act and accordingly, it did not care to modify the return of income filed before applying for exemption u/s. 10(23C)(vi) of the Act. Since the exemption applications were rejected on technical ground, and in the application, assessee has disclosed all the information and also filed the relevant financial statements, in support of claiming exemption u/s. 10(23C), since the application for exemption was rejected and the department has reopened assessment in order to bring the wrongly claimed income as exemption to tax, assessee has also agreed and paid the relevant tax and did not proceed for any appeal. It shows that the assessee agreed its mistake and assessee has supplied all the relevant information before the

Assessing Officer and also in the application for exemption. Assessee has not concealed the gross receipts nor altered the gross receipts in order to claim any exemption. Assessee has filed the return of income by claiming the exemptions inadvertently or with the mistaken belief that it is exempt from tax or with the mistaken belief that its application for exemption u/s. 10(23C)(vi) of the Act will be approved. Therefore, we do not see any reason to believe that assessee has filed inaccurate particulars of income at the time of re-assessment. What is relevant for penalty is the behaviour of the assessee and in the re-assessment proceedings, the assessee has furnished all the relevant information for completion of re-assessment and paid the relevant tax in due course. Therefore, we are cancelling the penalty imposed u/s. 271(1)(c) on the ground that assessee has not submitted inaccurate particulars. Grounds for both the assessment years are allowed.

7. In the result, both the appeals of assessee are allowed.

Order pronounced in the open court on 26th December, 2018

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated : 26th December, 2018

TNMM

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy to :

- 1. Laxmi Narsimha Swamy Educational Society, H.No. 8-99, Allipur Village, Zahirabad.*
- 2. Income Tax Officer (Exemptions)-3, Hyderabad.*
- 3. CIT(Appeals)-9, Hyderabad.*
- 4. Pr.CIT-(Exemptions), Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*