

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 22 / 2016

Commissioner of Income Tax,(Exemption), Kailash Heights, 3rd
Floor, Lal Kothi, Tonk Road, Jaipur 302015.

----Appellant

Versus

M/s Public Rose Shiksha Samiti, Tijara Road, Alwar.

----Respondent

For Appellant(s) : Mr. Daksh Pareek for Mr. Sameer Jain

For Respondent(s) : Mr. Gunjan Pathak with Ms. Ishita Rawat

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Judgment

31/10/2017

1. By way of this appeal, the appellant has assailed the judgment and order of the tribunal whereby tribunal has dismissed the appeal of the department and confirmed the order of CIT(A).

2. This court while admitting the appeal on 12.5.2016 framed following substantial question of law:-

“Whether the ITAT was correct in extending the scope of exemption provided u/s 10(23)c(iii ad) even to the institution which are not established solely for the purpose of education and otherwise fund were used for the private and other purposes thus, institution is working with motive of earn profit.”

3. The facts of the case are that the assessee Samiti (Society) filed its return of income on 22.9.2009 in Form No. ITR-7 declaring total income at NIL after claiming exemption u/s 10(23C)(iiiad) of

IT Act, 1961. The assessee has claimed loss of Rs.29,756/- under the head "profit and gains of business". In the computation filed alongwith the return of income the assessee has claimed to carry forward business loss of Rs.29,756/- The return was processed u/s 143(1) on 1.9.2010 at returned NIL income. The case was selected for scrutiny and a notice u/s 143(2) was issued on 31.3.2010 and served on the assessee through speed post. The case was received on transfer from ITO, Ward 1(14), Alwar on 29.11.2011 in compliance to order u/s 127 of the CIT, Alwar vide letter No.CIT/Alw/ACIT/(Hqrs.)/Juris (127)/2010-11/1751 dt. 24.11.2011. A notice u/s 142(1) was issued on 29.11.2011 calling certain details as per questionnaire already issued fixing the date of hearing on 5.12.2011. In compliance, Sh. Mahesh Jain, CA/AR alongwith Sh. Praveen Jain, Accounts Officer of the Samiti attended the proceedings from time to time and filed details and explanations as required during the course of assessment proceeding which are placed on record. They produced the books of accounts consisting of cash book, ledger and subsidiary registers/record which have been examined on test check basis. The case has been discussed with them.

4. Counsel for the appellant contended that CIT(A) as well as Tribunal have wrongly held that the institution is carrying only educational motive. He relied upon the order of the AO who while considering the matter rightly assessed the income of the assessee.

5. Counsel for the respondent Mr. Pathak has taken us to the order of the tribunal wherein it has been observed as under:-

"5. We have heard the rival contentions of both the parties and perused the material available on record. As per the Assessing Officer the total receipt of the samiti was at Rs.1,46,81,760/-. However, the Id. CIT(A) found that total receipts were less than Rs. One crore. On verification of the total receipt mentioned by the Assessing Officer on page 3 of the assessment order, there was a transaction of land for Rs.47,90,000/-. The Hon'ble Madras High Court has considered the issue of annual receipts as envisaged in Section 10(23C)(iiiad) of the Act in the case of CIT vs. Madrasa E-Rakhiyath-Us-Salihath Arabic College (2015) 120 DTR 238/226 Taxman 372 (Mad.) (HC) wherein the annual receipt, the sale proceed of land and Bond held not be equated to annual receipt as stated u/s 10(23C)(iiiad) of the Act. If the sale of land to the tune of Rs.47,90,000/- reduced from the total receipt, it come within the limit prescribed u/s 10(23C)(iiiad) of the Act. Further the Hon'ble Jurisdictional High Court and Hon'ble Supreme Court's decision referred by the Assessing Officer has been considered by the Hon'ble Gujarat High Court in the case of Gujarat State Co-operative Union Vs. CIT 195 ITR 279 wherein it has been held that word education was not used in a wide or extended sense so as to include addition to the knowledge of a visitor to a zoo or museum, the High Court held that the museum cannot be taken an educational institution existing solely for educational purposes. The object of the samiti as mentioned by the Assessing Officer in his assessment order supports the assessee's claim that it is an educational institution. The Coordinate Bench has allowed the assessee's registration u/s 12AA of the Act in ITA No.676/JP/2010 order dt. 13/5/2011 from financial year 2000-01. Therefore, we uphold the order of the Id. CIT(A)."

6. He has also taken us to the judgment of Madras High Court in Commissioner of Income Tax vs. Madrasa-E-Bakhiyath-US-

Salihath Arabic College reported in (2015) 278 CTR (Mad.) 374 wherein it has been held as under:-

"5. We find that in the above said provision the key emphasis is on the words annual receipts. The sale proceeds of land and bonds cannot be equated to annual receipts as stated under [Section 10\(23C\)](#) of the Act. The sale in the case on hand is in the nature of conversion of a capital asset from one form to another. Therefore, the denial of the benefit of [Section 10\(23C\)](#) of the Act to the assessee by the Assessing Officer was rightly interfered with by the Commissioner of Income Tax (Appeals) and confirmed by the Tribunal."

7. Taking into account the observations made by the tribunal in para no.5 as reproduced above as well as decision of Madras High Court (supra), the issue is answered in favour of the assessee and against the department.

8. The appeal stands dismissed.

(VIJAY KUMAR VYAS)J.

(K.S. JHAVERI)J.

Brijesh 35.

सत्यमेव जयते