IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No. 4904/MUM/2011
(Assessment Year : 2005-06)
ITA No. 4905/MUM/2011
(Assessment Year : 2006-07)
ITA No. 5734/MUM/2011
(Assessment Year : 2008-09)

Landmark Education India,
E-13, Vrindavan, LBS Marg,
Ghatkopar (W),
Mumbai 400086 ... Appellant
PAN:AAATL 0059L
Vs.
The ITO (Exemption) II(1)
Mumbai .... Respondent

Appellant by	: Shri J.D.Mistry
Respondent by	: Ms. Savita Bundas

Date of hearing	:	11/04/2016
Date of pronouncement	:	11/04/2016

ORDER

PER G.S. PANNU,AM:

The captioned three appeals have been preferred by the assessee pertaining to assessment years 2005-06, 2006-07 and 2008-09, which involve somewhat similar issues, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. We may first take up the appeal in ITA No.4904/Mum/2011 for assessment year 2005-06, which is directed against the order of CIT(A)-1, Mumbai dated 24/02/2011, which in turn has arisen from the order passed by the Assessing Officer dated 31/12/2007 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act'), pertaining to the Assessment Year 2004-05. In this appeal, the main Grounds of appeal raised by the assessee read as under:-

> *"1.On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) (,CIT(A)') erred in confirming the action of the learned Assessing Officer ('AO') by holding that the Appellant is not entitled to deduction under section 10(23C)(vi) of the Income Tax Act, 1961 (the Act), since the conditions thereof are not fulfilled.*
>
> *2. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming the action of the learned AO by holding that the Appellant is not entitled to exemption of its income under section 11 of the Act.*
>
> *3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in denying exemption u/s.11 of the Act on the ground that the activities carried on by the Appellant cannot be considered as 'education' under section 2(15) of the Act, without giving any opportunity of being heard to the Appellant though the said ground was not taken by the learned Assessing Officer in the Assessment Order while denying exemption u/s.11."*

3. Before we proceed further, the brief background of the case can be summarized as follows. The appellant is a company registered under Section- 25 of the Companies Act, 1956 and is thus, an entity which is existing not for profit. The objects of the assessee are in the field of education, as is evident from the objectives reproduced by the Assessing Officer in Para-3 of the assessment order. At the time of hearing, the Ld. Representative for the assessee explained that the

appellant was engaged in imparting classical education relating to self development of an individual. It was also explained that the education was imparted through conduct of classes and provision of instruction material, etc. Thus, it is stated to be engaged in education. It was further explained that before the introduction of section 10(23C)(vi) in the Act by the Finance (No.2) Act 1998 w.e.f. 01/04/1999, assessee was claiming exemption under section 10(22) of the Act as an 'educational institution'. It has been pointed out with reference to the copies of assessment orders for assessment years 1985-86, 1995-96, 1996-97, 1997-98 and 2001-02, placed in the Paper Book at pages 81 to 86 that the income of the assessee was accepted by the Assessing Officer in the scrutiny assessment as exempt under section 10(22) of the Act and/or exempt in terms of sections 11/12 of the Act.

3.1 In so far as the A.Y 2005-06 under consideration is concerned, assessee filed its return of income declaring total income at 'Nil' after claiming exemption under section 10(23C)(vi) of the Act on the ground that it was an educational institution existing solely for educational purposes and not for the purposes of profit. The return of income filed by the assessee was subject to scrutiny assessment, whereby the total income has been assessed at Rs.23,50,286/- and the claim of exemption under section 10(23C)(vi) of the Act was denied. The ostensible reason advanced by the Assessing Officer is to the effect that the appellant is not approved by the prescribed authority, a mandatory requirement contained in section 10(23C)(vi) of the Act. The alternate claim of the assessee for the benefit of sections 11 and 12 of the Act was also denied by the Assessing Officer on the ground that the assessee could not furnish copy of registration granted under section 12A of the Act.

3.2 The aforesaid two actions of the Assessing Officer have since been affirmed by the CIT(Appeals) also, primarily for the reasons advanced by the Assessing Officer. The appellant is in further appeal before us on the aforesaid two issues by way of Grounds of appeal No.1 & 2 respectively. In so far as Ground of appeal No.3 is concerned, the same arise from the decision of the CIT(Appeals) in holding that even otherwise, assessee is not entitled for the benefits of sections 11/12 of the Act, for the reason that the activities carried out by the assessee cannot be construed as 'education' as understood for the purposes of section 2(15) of the Act.

4. In the above background, the Ld. Representative for the assessee has advanced his arguments before us. The preliminary point raised by the Ld. Representative for the assessee is to the effect that the assessee had duly applied to the prescribed authority for approval under section 10(23C)(vi) of the Act dated 01/11/1999 and also subsequently on 18/11/2004, and copies of such applications have been placed in the Paper Book at pages 19 to 40 and pages 41 to 48 respectively. Ld. Representative for the assessee explained that the two applications have neither been rejected and nor any formal approval has been granted. With regard to the alternative plea of eligibility for exemption under sections 11/12 of the Act, the Ld. Representative for the assessee pointed out that the registration under section 12A of the Act was granted to the assessee on 01/07/1981 and that assessee could not produce the certificate of registration as it was a very old matter.

Nevertheless, it has been explained that there was no scope for doubting the grant of registration under section 12A of the Act because Director of Income Tax (Exemption), Mumbai passed an order under section 12AA(3) of the Act dated 30/12/2008 cancelling the registration granted to the assessee originally vide order No.INS/14336 dated 01/07/1981. The Ld. Representative for the assessee explained that though such order of DIT(E) dated 30/12/2008 has since been quashed by the Tribunal vide an order in ITA NO.1144/Mum/2009 dated 29/12/2009 but in any case, the registration granted to the assessee under section 12A of the Act could not have been doubted by the Assessing Officer merely for non-production of the requisite copy of the certificate of registration. It was, therefore, contended that the Assessing Officer has erroneously refused to consider the alternate claim of the assessee for exemption under sections 11/12 of the Act.

5. At this stage, it was put to the Ld. Departmental Representative that neither the Assessing Officer and nor the CIT(Appeals) have doubted the fact that assessee has duly applied for approval required under section 10(23C)(vi) of the Act and further that there is no rejection of the same. Though non-rejection of assessee's application does not tantamount to deemed approval, so however, it was incumbent for the Assessing Officer to ascertain the status of such application before proceeding to deny assessee's claim for exemption under section 10(23C)(vi) of the Act, especially considering the fact that in the earlier assessment years assessee has been allowed the exemption under section 10(22) of the Act and/or under sections 11/12

of the Act. But such an approach by the Assessing Officer is conspicuous by its absence.

6. In the aforesaid background, it was noticeable that so far as the appellant is concerned, it had complied with the initial requirement of making an application seeking approval required under section 10(23C)(vi) of the Act. It is also not disputed by the Revenue that such applications have not been adversely disposed off by the 'prescribed authority'. Under these circumstances, in our view, the manner in which assessee's preliminary plea for exemption under section 10(23C)(vi) of the Act has been dealt with by the income-tax authorities is quite unjustified and deserves to be revisited. Therefore, we deem it fit and proper to set-aside the matter back to the file of Assessing Officer, who shall revisit assessee's claim for exemption under section 10(23C)(vi) of the Act afresh. In the ensuing proceedings, the Assessing Officer shall obtain from the 'prescribed authority' the status of assessee's applications pending for approval under section 10(23C)(vi) of the Act. The Assessing Officer shall bring to the notice of the 'prescribed authority' the pendency of assessment of assessee's claim for exemption under section 10(23)(vi) of the Act for want of disposal of application by the prescribed authority and only thereafter, the Assessing Officer shall proceed to adjudicate assessee's claim for exemption under section 10(23C)(vi) of the Act as per law.

7. In so far as assessee's alternative claim for exemption under sections 11/12 of the Act is concerned, the same, in our view, has been erroneously shut-out by the Assessing Officer merely because assessee could not produce a copy of the registration granted under section 12A

of the Act. Non production of the copy of registration certificate would not defeat the claim for exemption under sections 11/12 of the Act in this case, especially considering the factual matrix that assessee has indeed been granted registration under section 12A of the Act on an earlier date i.e. 01/07/1981, which is very much in the knowledge of the Revenue. Apart therefrom, we find that in assessment year 1985-86 vide an order under section 143(3) of the Act dated 31/01/1985, the Assessing Officer has clearly noted that assessee is registered with the Commissioner of Income Tax under section 12A(a) of the Act under No.INS/14336 dated 01/07/1981 and assessee was allowed exemption under section 11 of the Act. Even in the assessment order for assessment year 2001-02, passed under section 143(3) of the Act dated 27/04/2004 assessee has been allowed exemption under section 11 of the Act and it has been specifically noted that assessee was engaged in imparting systematic education and training in specific areas. Therefore, in our view, the action of the Assessing Officer in refusing to adjudicate assessee's alternate claim for exemption under sections 11 and 12 of the Act was unjust and unsustainable. Under these circumstances, in our view, it would be in the fitness of things that in the ensuing remand assessment proceedings, the assessee is allowed liberty to press it's claim for exemption under section 11/12 of the Act, if it's preliminary claim for exemption under section 10(23C)(vi) fails. We hold so. In such a situation, the Assessing Officer shall be required to consider assessee's claim for exemption under sections 11/12 of the Act on its merits as per law.

7.1 In so far as the decision of the CIT(Appeals) in holding that the activities being carried out by the assessee do not amount to 'education' within the meaning of section 2(15) is concerned, the same ,in our view, cannot be approved straightaway. Firstly, the Ld. Representative for the assessee has pointed out that such an aspect was not visited by the Assessing Officer and in any case, the CIT(Appeals) has proceeded to adjudicate the aforesaid without allowing any opportunity to the assessee of being heard. In our view, this aspect of the controversy can be visited, if such a need arises, by the Assessing Officer in the course of the ensuing assessment proceedings, which we have remanded back to his file. Therefore, on this aspect also, we set-aside the order of the CIT(Appeals).

7.2 In nut-shell, the order of the CIT(Appeals) is set-aside and the assessment is restored back to the file of the Assessing Officer to be carried out de-novo, keeping in mind our directions in the earlier paragraphs and after allowing the assessee a reasonable opportunity of being heard, in accordance with law.

7.3 Resultantly, the Grounds of appeal No.1,2 & 3 raised by the assessee are disposed off in the aforesaid manner.

8. In so far as assessment year 2006-07 is concerned, issues raised are identical and, therefore, our decision for assessment year 2005-06 shall apply mutatis mutandis in assessment year 2006-07 also.

9. In so far as assessment year 2008-09 is concerned, in this appeal, Grounds of appeal No.1 & 2 are identical to Grounds of appeal No. 1 & 2, considered by us in assessment year 2005-06 and, therefore, our

decision in the appeal for assessment year 2005-06 shall apply mutatis mutandis in this year also.

9.1 The only other Ground of appeal in assessment year 2008-09 is by way of Ground No.3, which reads as under:-

> *"3.On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming the action of the learned AO by holding that Rs.51,68,340/- payable to Landmark Education International in connection with tuition fees and reimbursement of expenses is disallowable under section 40(a)(ia) of the Act."*

9.2 On this aspect also, the Ld. Representative for the assessee submitted that the same can be revisited by the Assessing Officer in the ensuing remand proceedings to which the Ld. Departmental Representative had no objection. In so far as the merit of the issue is concerned, the Ld. Representative for the assessee pointed out that the Assessing Officer has wrongly held that payment of Rs.51,68,340/- made to Landmark Education International is liable for deduction of tax at source so as to be covered within the mischief of section 40(a)(i) of the Act. It was also pointed out that the impugned payments reflect mere reimbursement of expenses and, therefore, no tax is deductible at source. Nevertheless, in view of our decision to set-aside the matter relating to the assessment of income back to the file of Assessing Officer, even the aspect of application of section 40(a)(i) is also remanded back to the file of Assessing Officer for adjudication afresh as per law.

10. Resultantly, the appeals of the assessee for assessment years 2005-06, 2006-07 and 2008-09 are allowed, as above.

The above decision was pronounced in the open court at the conclusion of the hearing in the presence of both the parties on 11/04/2016.

Sd/-	Sd/-
(RAM LAL NEGI)	(G.S. PANNU)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 11/04/2016

Vm, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai