

F.No.197/38/2015-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi
August 17th , 2015

Sub: Clarification on certain issues related to grant of approval and claim of exemption u/s 10(23C)(vi) of the Income-tax Act, 1961.

Sub-clause (vi) of clause (23C) of Sec 10 of the Income-tax Act, 1961 ('Act') prescribes that income of any university or other educational institutions, existing solely for educational purposes and not for purposes of profit, shall be exempt from tax if such entities are approved by the prescribed authorities. Such approval is not required in cases of university or educational institutions wholly or substantially financed by the Government [sub-clause (iiiab)] or if their aggregate annual receipts do not exceed Rs. 1 crore [sub-clause (iiid) r.w. rule 2BC]. Thus, while granting approval to entities covered under sub-clause (vi), the prescribed authority has to ensure that the applicant institution must exist "*solely for educational purposes and not for purposes of profit*". There are several Provisos to clause (23C) of section 10 and prescribe, *inter alia*, various monitoring conditions subject to fulfillment of which only, the exemption can be availed.

These monitoring conditions include mode and manner of application of funds, maintenance and audit of books of accounts in certain situations etc. Some other Provisos prescribe the manner of making application u/s 10(23C)(vi) and the circumstances when an approval granted earlier can be withdrawn.

Representations have been received seeking clarification on certain issues related to operation of section 10(23C)(vi). These have been examined by the Board and following clarifications are made –

1. Scope of enquiry while granting approval-

- 1.1 Clarification has been sought on the scope of enquiry that can be made by the prescribed authority while granting approval u/s 10(23C)(vi), i.e., whether it would be sufficient for the prescribed authority to consider the nature, existence

for non-profit purposes and genuineness of the applicant institution or the conditions prescribed under various Provisos are also required to be considered at the stage of granting approval.

1.2 In this connection, attention is drawn to the decision of Hon'ble Supreme Court in case of American Hotel and Lodging Association Educational Institute vs. CBDT [301 ITR 86](2008) in which it has been held that at the time of granting approval u/s 10(23C)(vi), the prescribed authority is to be satisfied that the institution existed during the relevant year solely for educational purposes and not for profit. Once the prescribed authority is satisfied about fulfillment of this criteria i.e. the threshold pre-condition of actual existence of an educational institution under section 10(23C)(vi), it would not be justifiable, in denying approval on other grounds, especially where the compliance depends on events that have not taken place on the date on which the application for grant of approval has been made.

1.3 However, the prescribed authority is eligible to grant approval u/s 10(23C)(vi), subject to such terms and conditions as deemed necessary including those falling within the framework of various Provisos to the said clause of section 10. It has also been clarified in the said judgment that the compliance of prescribed conditions can be gauged while monitoring the case and in case of any breach thereof, the approval can be withdrawn. It is, therefore, clarified that the principle laid down by the Apex Court in American Hotels case (*supra*) must be followed while considering the applications filed seeking approval for exemption u/s 10(23C)(vi).

2. Necessity for registration u/s 12AA while seeking approval /claiming exemption u/s 10(23C)(vi)

2.1 Section 10(23C)(vi) does not prescribe any stipulation which makes registration u/s 12AA a mandatory pre or post condition. In fact, provisions of section 11 and 10(23C) are two parallel regimes and operate independently in their respective realms although some of the compliance criteria may be common to both. Hence obtaining prior registration before granting approval u/s 10(23C) cannot be insisted upon.

2.2 However, in case of a trust or an institution having obtained registration u/s 12AA as well as approval u/s 10(23C)(vi), if registration is withdrawn at some point of time due to certain adverse findings, the withdrawal of approval u/s 10(23C)(vi) shall not be automatic but will depend upon whether these adverse findings also impact the conditions necessary to keep approval u/s 10(23C)(vi) alive.

3. Generation of surplus out of gross receipts

A doubt has been raised whether generation of surplus out of gross receipts would necessarily 'breach' the threshold condition that the educational institution should exist '*solely for educational purpose and not for the purpose of profit*'. Perusal of prescribed provisions clearly reveal that mere generation of surplus cannot be a basis for rejection of application u/s 10(23C)(vi) on the ground that it amounts to an activity of the nature of profit making. In fact, the third Proviso to the said clause clearly provides that accumulation of income is permissible subject to the manner prescribed therein provided such accumulation is to be applied "*wholly and exclusively to the objects for which it is established*". Hence, it is clarified that mere generation of surplus by educational institution from year to year cannot be a basis for rejection of application u/s 10(23C)(vi) if it is used for educational purposes unless the accumulation is contrary to the manner prescribed under law.

4. Collection of amounts under different heads of fee from students-

It has been brought to the notice that collection of small amounts from students by way of application fee, examination fee, fee for issuing transfer certificate, subscription fee for library etc. is being treated by some Assessing Officers as profit making activity resulting in denial of exemption u/s 10(23C)(vi). Collection of small and reasonable amounts under different heads of fee, which are essentially in the nature of fee connected with imparting education and do not violate any Central or State regulation does not, in general, represent a profit making activity. Hence, there is no justification for treating the charging of small amounts under different heads of fee as profit making activity unless the amount in the nature of 'capitation fee' is charged directly or indirectly.

5. Impact of extraordinary powers of the Managing Trustees to appoint remove or nominate other trustees.

5.1 Doubt has been expressed whether extraordinary powers to the Managing Trustees to appoint or remove other trustees and also to nominate their successor affect the nature of charitable activity of the trust and whether in such an eventuality, exemption can be denied.

5.2 There is no provision under the Act which calls for denial of exemption merely on account of appointment or removal of trustees. Although answer to such a situation would normally depend on the factual implication of such arrangement, the same should generally not be a ground for denying exemption unless the nature of activities of the trust or institution get changed or modified or no longer remain to exist 'solely for educational purpose and not for purposes of profit'. Hence denial of exemption would not be justifiable only on the ground of induction of new trustees or removal of existing ones.

6. Field authorities are advised to keep the above position in mind while dealing with the matters of approval /exemption u/s 10(23C)(vi). Similar principles would also apply to cases covered u/s 10(23C)(via) of the Act.

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Director to the Government of India

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