

More on Schools and tax

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Tax Matters/ S.P. Babuta
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In the last Article 'School must file IT Return' an informed reader raised a doubt about mandatory filing of IT Return He stated that filing of Return was not mandatory for all schools. He further contended that it was mandatory only where the annual receipts of educational institution exceeded Rs1.00 Crore vide Section 139(4C)(e) of IT Act 1961 read with Rule 2BC(1) of IT Rules 1962. In the light of this , the whole issue needs to be discussed threadbare.

Exemption under Income Tax Act is subject to the following conditions:

The educational institution should:

- exist solely for educational purposes and
- not for purposes of profit.

The availability of the exemption has to be evaluated each year, by checking the application of income which can only be done if an income tax return is filed every year.

Educational institutions with aggregate annual receipts upto Rs.1 crore are exempt under section 10(23C)(iiiad) whereas those with aggregate annual receipts over Rs.1 crore have to apply to the Chief Commissioner of income tax for approval. The application has to be made in a prescribed form along with prescribed particulars which inter alia include audited Final Accounts. It is here that there had been a misplaced interpretation that since such institutions had the approval from the income tax department its application of funds stands evaluated therefore filing of return may not be necessary. It is in this context that section 139(4C)(e) read with Rule 2BC(1), came in, making filing of I.T. Return mandatory even in such cases, for evaluation of application of funds year after year.

Following case laws would make it more clear:

1. On reading of Section 10(23C) as a whole, it is clear that in order to avail the said exemption, the trust/society/institution should have existed during the relevant period solely for educational purposes and not for purposes of profit.

The exemption from income tax has nothing to do with the sources of income which may be any, rather it depends only on the application of all such incomes during the year.. So it can be safely inferred that application has to be evaluated every year.

Since the availability of the exemption has to be evaluated each year to find out whether the institution existed solely for educational purposes and not for the purposes of profit , filing of return is required every year.

Ref: Aditanar Educational Institution vs. Addl.CIT (1997) 139 CTR(SC)7: (1997) 224 ITR 310 (SC)

2. Section 139(4A) enjoins upon every person who is in receipt of income derived from property held under trust for charitable or religious purposes to file a return if the total income in respect of which he is assessable exceeds the maximum amount which is not chargeable to income-tax. The total income for this purposes is to be computed without giving effect to the provisions of Sec 10/11/12.

It is mandatory for an Educational Institution to furnish return of income every year because the assessee's claim for exemption has to be decided by the Department only after the relevant material is placed before it by filing returns. If there is default penalty can be levied for non-filing of return

Ref: Director of Income-tax (Exemption) v. Malad Jain Yuvak Medical Relief Centre, 250 ITR 488 (Bom) / 168 CTR 484 (Bom).

The application of the funds to the charitable purposes has got to be examined every year and the entire issue would also require consideration every year because of the change in the fiscal laws introduced from time to time.

HELD and observed that where a person holds net wealth assessable under the Act, but claims exemption under any of the provision of the Act, he is bound to file a return.

: Ref: Thanti Trust v. WTO (1999) 235 ITR 621 (Mad)

Submission of return by charitable trust is essential even if income is exempt. If the total income of the charitable trust (without claiming exemption u/s 11, 12 & 13A) exceeds the maximum amount not chargeable to tax then submission of return by the trust is essential.

Held in **Lala Gopi Mal Kuthiala Trust v. ITO [1962] 46 ITR 436 (Punj.)**.

Moreover recently in a seminar where the author was a speaker on the topic , the Chief Commissioner of Income Tax in his address stated that the educational institutions may even be covered under the one by six scheme under section 139(1) whereby the educational institution would still be liable to file the income tax return if:

- it is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise
- is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, etc.,
- is a subscriber to a cellular telephone .
- has incurred expenditure for himself or any other person on travel to any foreign country.
- Is the holder of a credit card
- Is a member of a club with entrance fee more than Rs.25,000/-