

Accountants Act, 1959 for the regulation of the Profession of Cost and Works Accountants. The objectives of the ICWAI are specified in the Cost and Works Accountants Act, 1959 and the Cost and Works Accountants Regulations, 1959. The main objects of ICWAI are :-

- i) enrolling students for the examinations conducted by the ICWAI and framing regulations for training of the students.
- ii) conducting various examinations of the ICWAI.
- iii) imparting training to the registered students by way of establishing and operating Coaching Administration.
- iv) Granting Certificate of Membership to persons qualifying specified examinations conducted by the ICWAI.
- v) Imparting or arranging to impart practical and/or theoretical training to the Members of the ICWAI- Continuing Education Programmes.

3.1 In the Preamble to the CWA Act it was stated that the said Act was being enacted to make provision for the regulation of the profession of cost and works accountants.

3.2 The ICWAI has been established having its objects the control, supervision, regulation of the Profession of Accountancy. The Central Government approved the ICWAI u/s 10(23A) of the Income-tax Act, 1961 whereby a substantial part of the income of the ICWAI became Exempt from the chargeability to Income-tax. The ICWAI being a Charitable Institution solely for the purpose of Education, also got itself registered u/s 12A of the Income-tax Act, 1961. So, the incomes of the assessee institution is exempt under sections 10(23A) as well as 11(1) in accordance with the provisions contained in those two sections.

3.3 The ICWAI in its Return of Income specified the particular income which should be considered as exempt u/s 10(23A) and other incomes which should fall in

the category of incomes covered u/s 11(1). Simultaneously, those expenses which are directly relatable to the incomes exempt u/s 10(23A), are reduced from the gross incomes considered u/s 10(23A) for determining the actual income that should be claimed as exempt u/s 10(23A). All the other incomes i.e. those incomes which are not being considered for the purpose of claiming exemption u/s 10(23A), are eligible for exemption u/s 11(1) to the extent such incomes are applied for the specified charitable purpose, viz Education. During the assessment proceedings, on being asked by the Learned AO, the assessee explained the basis according to which certain categories of incomes were being classified as being directly covered u/s 10(23A) and the other were considered for the purposes of section 11(1). It was explained that the particular incomes and the expenses which had been on account of the Members and the Students, were considered as being covered u/s 10(23A). The assessee submitted before the Learned AO that the assessee being an educational institution, all its incomes and expenses were as a whole covered u/s 11(1), but since the assessee had been separately approved u/s 10(23A), firstly the particular incomes and the directly related expenses thereto, were being considered for exemption u/s 10(23A) and the rest of the incomes and outgoings were considered u/s 11(1). It was also submitted before the Learned AO that the expenses considered to have direct nexus to the incomes exempt u/s 10(23A), had not been incurred for earning the relevant incomes, but because of their proximity to the concerned incomes, such expenses were reduced from the gross incomes for claiming exemption of the net income u/s 10(23A). It was specifically submitted before the Learned AO that all expenses, other than those considered as directly relating to the income covered u/ s 10(23A), were actually 'Applications' of the balance of incomes of the year and so such incomes to the extent of the 'Application' were exempt u/s 11(1)(a).

3.4 The Learned AO stated in the order that according to him the expenses not specifically considered by the assessee towards income, eligible for exemption u/s 10(23A), should be considered as "Common Expenses" and the same should be

apportioned in between the segment u/s 10(23A) and segment u/s 11(1) on the basis of the gross incomes considered under sections 10(23A) and 11(1). The Learned AO determined the ratio of 10.21:1 of incomes in between the segment u/s 10(23A) and the segment u/s 11(1). The Learned AO applied the above-mentioned ratio determined by him and held that the expenses aggregating to Rs. 16,69,67,652/-, being other than the particular expenses shown as relating to the income eligible for exemption u/s 10(23A), should be allocated as Rs. 15,20,73,125/- for the segment u/s 10(23A) and Rs. 1,48,94,527/- for the segment u/s 11(1). The Learned AO also allocated the capital expenditure aggregating to Rs. 2,95,40,570/- being the cost of fixed assets purchased during the year, for the segment u/s 10(23A) for Rs. 2,69,05,371/- and for the segment u/s 11(1) for Rs. 26,35,198/- by applying the above-referred ratio of 10.21:1.

3.5 The assessee submitted that no expense was incurred by the assessee to earn any income, but all the expenses were towards the fulfillment of its objective, viz., regulation of the profession of accountancy and education. However, since certain specific expenses are being considered as having direct nexus with the incomes considered for determining the incomes exempt u/s 10(23A), those specific expenses are not being claimed as "Applications" u/s 11(1)(a). The assessee submitted that it was wrong on the part of the Learned AO in allocating the expenses which had not been considered as related to incomes exempt u/s 10(23A), proportionately on the basis of gross incomes considered u/s 10(23A) and u/s 11(1). The assessee further submitted that the AO did not appreciate that the expenses not being considered as directly related to the incomes exempt u/s 10(23A), should have been considered as "Applications" of incomes deductible in accordance with the provisions of section 11(1)(a). The assessee further submitted that the AO failed to appreciate that the expenses claimed as "Applications" u/s 11(1)(a), had not been incurred for earning the incomes whether u/s 10(23A) or u/s 11(1) and, therefore, there should not have been

any apportionment of the expenses on the basis of gross incomes considered under those sections.

3.6 The assessee further submitted that the Learned AO's action in treating the expenses, other than those specifically related to incomes exempt u/s 10(23A) as alleged "common expenses", means that the Learned AO is considering the assessee as a commercial organisation where expenses were being incurred for earning of incomes. Allocation of expenses on the basis of gross incomes, points to the assumption as if the assessee had the objective of earning the incomes and not for educational activities for which it had been established through a Central Act passed by Parliament. The Learned AO totally ignored the assessee's objectives of applying all of its income towards its educational activities. The assessee submitted that the approval given by the Government of India u/s. 10(23A) shows the recognition by the Govt. of India of the assessee's activities for the regulation of the profession of accountancy. The registration by the Income-tax Department u/s 12A recognises the assessee's charitable status. The assessee submitted that those expenses had been incurred by the assessee not to earn any income but those were actually 'Application' of the incomes towards educational activities of the assessee.

3.7 The assessee submitted that the capital expenses had been incurred by the assessee for acquiring new fixed assets for the purposes of its educational activities, out of the Incomes of the appellant and therefore such capital expenses were of the nature of 'Applications' of incomes which were exempt u/s 11(1)(a). The assessee submitted that there should not be any allocation of the capital expenditure in between the incomes considered u/s. 10(23A) and 11(1)(a).

3.8 The assessee submitted reiterated its submissions before the Learned CITA and prayed that the Learned AO may be directed to consider the entire capital expenditure

of Rs.2,95,40,570/- as Application of the assessee's incomes other than those considered u/s. 10(23A) and to allow deduction u/s. 11(1)(a) in respect thereof.

4. On 1st appeal, the Id.CIT(A) held as under:-

“5.1 The assessee is a charitable institution and a regulator established by Government of India under an Act of Parliament for regulating the profession of accountancy. The AO has treated this institute as a commercial establishment which incurs expenses for earning income. Whatever are the outgoings are the applications of the institute's receipts and those cannot be treated as expenses incurred to earn income. Therefore, any allocation of the expenses, whether capital or revenue, to the receipts shown to be either under section 11 or 10(23A), is without any legal or accounting basis. It is further seen that in at least in last four years, the assessments of which have been completed u/s 143(3), no such attribution of expenses is done. There are no changes in the facts of the case in last four years vis-a-vis this year. Therefore, the AO is directed to compute the income without allocating the expenses, whether capital or revenue, to different heads of receipts and treat the entire expenses as application of income under section 11”.

5. Aggrieved, the revenue is in appeal before us on the following ground:-

1. That on the facts and the circumstances of the case and also in the question of law, the Ld. CIT (A)/ Jalpaiguri erred in holding that indirect expenses incurred by the assessee should be treated entirely as application of income u/s 11(1)(a) without apportioning any part thereof against income exempted u/s. 10(23A).

6. The Ld. DR vehemently relied on the order of the Id.AO and reiterated the facts as laid down in the assessment order. In response to this, the Id. AR apart from reiterating the submissions made before the lower authorities argued that the Id.AO had erroneously proceeded by treating the assessee institution as a commercial institution forgetting the fact that the assessee is only charitable organization. Hence, the principle of expenditure incurred for earning of any income as would be normally seen in a commercial organization does not arise in the facts and circumstances of the case.

He further argued that he is agreeable for apportionment of expenses between section 10(23A) segment and section 11 segment in the ratio of direct expenses incurred by each of the segments. He further placed copy of the scrutiny assessment orders passed by the Id.AO for the A.y.s 2010-11, 2011-12 & 2012-13, wherein it has been mutually agreed by both the department as well as the assessee institution for apportionment of common expenses in the ratio of direct expenses incurred by the respective segments.

7. We have heard the rival submissions and perused the materials available on record. The facts stated herein above remain undisputed and hence the same are not reiterated herein for the sake of brevity . The short point that requires to be adjudicated is apportionment of common expenses/indirect expenses between section 10(23A) segment and section 11 segment in a rational manner. The Id.AO has apportioned the same in the ratio of gross receipts of the respective segments. However, on perusal of the scrutiny assessment orders framed u/s. 143(3) of the Act by the Id.AO for the A.Ys 2010-11, 2011-12 & 2012-13, it is seen that both the revenue as well as the assessee institution had arrived at a consensus with regard to apportionment of common expenses/indirect expenses in the ratio of direct expenses incurred by section 10(23A) and section 11 segments. We find that both the revenue and assessee had tried to resolve this ongoing dispute by arriving at a consensus. Hence, by placing reliance on subsequent assessment orders passed for the A.y.s 2010-11, 2011-12 & 2012-13, we deem it fit and appropriate to follow the same as rationale for apportionment of common expenses/indirect expenses and accordingly, direct the Id.AO to follow the same for this assessment year also, which would resolve the dispute under appeal before us. Accordingly, the ground no.1 raised by the revenue is allowed for statistical purpose.

8. The last ground to be decided in this appeal is as to whether the Id.CIT(A) is justified in treating the provisions for arrear salary of Rs.2,90,19,471/- as application of income in the facts and circumstances of the case.

9. The brief facts of this issue are that during the assessment proceedings the Id. AO asked the assessee to explain in regard to a provision of Rs.2,90,19,471/- made towards arrears of salaries. The assessee explained before the Id. AO that it had all along been following the mercantile system of accounting and, accordingly, whenever any particular liability got crystallised, the same was provided in the accounts. At the assessee's Council Meeting held on 12th and 13th February, 2009, the liability towards arrear salaries, had been determined at Rs.2,90,19,471/- and the same was provided in the accounts for the FY 2008-09. Since the liability related for the years earlier to the FY 2008-09, as per the general accounting principles, full provision for the entire arrears was made in the accounts of the year 2008-09. However, as regards the actual payments to be made, it was decided to spread over the payments in three FYs viz. 2008-09, 2009-10 and 2010-11. It was submitted before the AO that in view of the assessee's following mercantile system of accounting, the accounting entry was not to be made on the basis of the actual payments but on the basis of accrual only. Hence, it was submitted that the entire liability towards arrear salaries for Rs.2,90,19,471/- should be considered as allowable application of income for the FY 2008-09 (relevant for the assessment year 2009-10).

9.1 The Id. AO stated in the assessment order that the assessee had allegedly failed to submit any evidence to prove and substantiate that the provision had been made on the basis of certain acceptable scientific method to a reasonable certainty in reference to past records and he declined to accept the provision as an ascertained liability. The Id. AO also stated that the claim of the assessee to treat the provision made for arrear salaries was being disallowed by him since according to him the liability had allegedly been made on estimate and said liability had allegedly not crystallised during the year.

9.2 The assessee submitted that the liability of Rs. 2,90,19,741/- had been calculated only on the basis of the past records of the concerned employees and the

said liability should not be considered as an alleged unascertained liability. The assessee further submitted that it had also been brought to the attention of the Id. AO that the said liability had since been discharged by the assessee by actual payments made during the FY 2008-09 itself and in the subsequent two FYs which would prove the correctness in computation of the liability towards arrear salaries. The assessee submitted that the Id. AO did not mention anything in his order about the explanations furnished by the assessee and also the fact of payment of the entire sum of Rs. 2,90,19,741/- during the assessment proceedings.

9.3 Before the Id. CITA, the assessee submitted that in view of the fact that the assessee had been maintaining its accounts strictly in accordance with the mercantile system of accounting and since the provision had been made for arrear salaries on the basis of the actual figures available from the past records which was approved by the Council of the assessee, the Id. AO's action in not accepting the assessee's claim to treat the sum of Rs. 2,90,19,471/- as an application of income, was unjustified. Accordingly, the assessee submitted that the Id. AO may be directed to include the sum of Rs.2,90,19,471/- as the application of income u/s. 11(1)(a) of the Act.

10. On appeal, the Id.CIT(A) has held as under:-

“5.2 The assessee follows mercantile system of accounting and the liability to pay arrears as per the recommendations of 6th Pay Commission had been ascertained clearly during the FY and the entire provision was actually disbursed to the concerned employees before completion of assessment. Therefore, the apprehension of AO that this liability was unascertained is without basis. The AO is directed to allow the entire expenses on this head as application of income u/s.11(1) for this year.”

11. Aggrieved, the revenue is in appeal before us on the following ground:-

2. That on the facts and the circumstances of the case, The Ld. CIT (A) Jalpaiguri erred in holding that the Provision for Salary of Rs. 2,90,19,471/- towards arrears had been

ascertained and disbursed before completion of assessment though there was a specific point in the 'notes on accounts' to the contrary and that the assessee failed to submit evidence to substantiate the provision.

12. The Ld. DR vehemently relied on the order of the Id.AO. In response to this, the Id. AR relied on the impugned order of the Id.CIT(A).

13. We have heard the rival submissions and perused the materials available on record. At the outset, it is not in dispute that the assessee institution is following the mercantile system of accounting. We find that the assessee had provided for provision of salary arrears in its books based on the recommendations of the 6th Pay Commission, which got crystallised somewhere in February 2009 and treated the same as an ascertained liability by providing in its books of account. The assessee claimed the same as an application of income u/s. 11(1) of the Act. We agree with the arguments of the Id.AR that payment of salary arrears in 3 yearly installments commencing from Ays. 2009-10 to 2011-12 does not matter as far as the applicability of application of income u/s. 11(1) especially when the assessee is following the mercantile system of accounting. In view of aforesaid finding, we find no infirmity in the impugned order of the Id.CIT(A) in this regard. Hence, ground no.2 raised by the revenue is dismissed.

14. In the result, the appeal of the revenue is partly allowed for statistical purpose.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 30 - 03 - 2016

Sd/-
(S.S.Viswanethra Ravi, Judicial Member)

Sd/-
(M. Balaganesh, Accountant Member)

Date 30 -03-2016

Copy of the order forwarded to:-

- 1.. The Appellant/Department: Shri Gautam Patra, DDIT(E)-I, 5th Fl., 10B Middleton Row, Kol-71..
- 2 The Respondent/Assessee: The Institute of Cost & Works Accountants of India, 12 Sudder Street, Kol-16.
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

**PRADIP SPS