

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 324 & 325/Ind/2018		
निर्धारणवर्ष/ Assessment Years: 2014-15 & 2015-16		
M/s. Rajiv Gandhi Proudtyogiki Vishwavidyalaya, Bhopal	vs.	DCIT, CPC, Bangaluru
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AABTR 7174 F		

अपीलार्थी की ओर से/Appellant by	:	Shri Sumit Nema, Sr. Adv. & Shri Gagan Tiwari, Adv.
प्रत्यर्थी की ओर से/Respondent by	:	Shri Lal Chand, CIT

सुनवाई की तारीख/Date of hearing	:	17.05.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	29.05.2018

आदेश / O R D E R

PER KUL BHARAT, J.M. :

Both these appeals pertaining to assessment years 2014-15 & 2015-16 are directed against the order of CIT(A)-2, Bhopal, dated 28.02.2018. Both the appeals were taken up together since the identical grounds have been raised in both the years, which are being disposed of by way of this common and consolidated order.

2. First, we take up the assessee's appeal in I.T.A.No. 324/Ind/2018 pertaining to assessment year 2014-15. The assessee has raised following grounds of appeal :-

1. *That On the facts and in circumstances of the case, the intimation u/s 143(1) dated 09.1.2017 disallowing the claim of exemption u/s 10 of the I.T. Act, 1961 is illegal, void and without jurisdiction.*
2. *The appellant university being governed by the Rajiv Gandhi Proudhyogiki Vishwavidyalaya Adhiniyam, 1998 and being eligible for exemption 10(23C)(iiiab) being an educational institute wholly or substantially financed by*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

Govt. could not be assessed to tax by denying such an exemption through an intimation u/s 143(1).

- 3. That the Id. CIT(A) was not justified in upholding the disallowance of claim u/s 143(1) and Id. CIT(A) also failed to consider that the issue of exemption to the appellant university u/s 10(23C)(iiiab) is clearly a debatable one and could only be decided in the detailed assessment and not by way of intimation u/s 143(1).*
- 4. That the Id. CIT(A) erred in law and on the facts in treating the appellant as an institution claiming exemption u/s 10(23C)(iiiad) while the appellant in its return had claimed exemption in column 13 of the return under all clauses of sec. 10 since there was no separate column in the return for claiming exemption u/s 10(23C)(iiiab).*
- 5. That the Id. CIT(A) erred in law and on facts in failing to appreciate the settled principle that when a debatable question arises and when the issue is contentious, prima facie adjustment u/s 143(1) of the Act is not permissible.*
- 6. That without prejudice to the aforesaid grounds, the quantum of income determined at Rs.1,67,96,92,760/- for the assessment year 2014-15 is arbitrary excessive and high under the facts and circumstances of the case as the entire income has been taxed without any deduction of expenditure incurred by the appellant."*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

3. Briefly stated, the facts of the case are that the assessee filed its return of income u/s 139 for the assessment year 2014-15 on 30.03.2016, declaring total income at Rs. Nil. The return of income was processed at Centralized Processing Centre of the Revenue at Bangalore, thereby an intimation u/s 143(1) dated 09.01.2017 was issued intimating the assessee in respect of rejection of claim of exemption made u/s 10(23C)(iiiad) of the Income-tax Act, 1961. Aggrieved by this, the assessee preferred an appeal before the Ld. CIT(A), who after considering the various judicial pronouncements in respect of the proposition of granting opportunity to the assessee sustained the disallowance of exemption as made by the Processing Unit of the Revenue. The assessee being further aggrieved is in appeal before this Tribunal.

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

4. Grounds No. 1 to 5 are against rejecting the claim of exemption and making the adjustment u/s 143(1) of the Act.

5. Learned Senior Counsel of the assessee, Shri Sumit Nema, vehemently argued that the action of the authorities below is contrary to the settled principles of law and the judgment of the Hon'ble Jurisdictional High Court rendered in the case of M/s. Bharat Oman Refineries Limited, Mumbai vs. ITO, Bhopal in I.T.A.No. 16/2001 (M.P.). The Learned Counsel submitted that the assessee University is incorporated under the Rajeev Gandhi Proudyogiki Vishwavidyalaya Adhinyam, 1998, and the chapter V of the Adhinyam deals with finances of the university. He further contended that section 35 of the Adhinyam provides for establishment of the Vishwavidyalaya fund and the income from all the sources earned by the assessee university goes into Vishwavidyalaya fund. He further

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

contended that as per section 36 of the Adhiniyam provides the objects to which the Vishwavidyalaya fund may be applied. He contended that the assessee University filed its return of income u/s 139 for the assessment year 2014-15 and also 2015-16 declaring total income at Rs. Nil each after claiming exemption u/s 10 in the returns of income. He pointed out that in Column No.13, the amount claimed was exempt u/s 10, by which it can be safely inferred that the assessee claimed exemption wherever he was entitled to. The Ld. Counsel for the assessee further submitted that the income of the assessee university was exempt u/s 10(23C)(iiiab) being income of an Educational Institution wholly or substantially financed by the State Government. Therefore, the assessee university being governed by the Rajiv Gandhi Proudyogiki Vishwavidyalaya Adhiniyam, 1998 and eligible for exemption u/s 10(23C)(iiiab). He submitted that the Ld. CIT(A) failed to appreciate the fact

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

that the issue of exemption is a debatable issue, which could only be decided by way of a detailed scrutiny and inquiry u/s 143(3) of the Income-tax Act, 1961. This cannot be made by way of mere processing of return u/s 143(1) of the Act. The Ld. Counsel for the assessee submitted that the authorities below have wrongly appreciated that the specific exemption claimed by the assessee was u/s 10(23C)(iiiad) of the Act. Despite the fact that in column 13 of the return, the assessee had claimed exemption u/s 10. It is further submitted by the Ld. Counsel for the assessee that no separate column is provided u/s 10(23C)(iiiab) in the return of income. He submitted that the Act casts a duty on the Assessing Authorities to find out as to under which clause the assessee is entitled for exemption if any. He submitted that admittedly, the processing is made by the computer. At some occasion due to technical fault, the objection made by

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

the assessee are not considered and rejected summarily there being no system to appreciate the same. Under these facts, he submitted that the authorities have erred in treating the processing as valid scrutiny and demand so created as a recoverable demand. He submitted that this action of the Revenue is contrary to the judicial pronouncement, more particularly, in the case of M/s. Bharat Oman Refineries Limited, Mumbai vs. ITO, Bhopal in I.T.A.No. 16/2001 (M.P.). The Ld. Counsel for the assessee also placed reliance on the decision of Hon'ble Bombay High Court in the case of M/s. Bajaj Auto Finance Limited vs. CIT, Pune, ITR No. 25/2000. The Ld. Counsel for the assessee also placed reliance on the judgement of Hon'ble Delhi High Court in the case of Easter Industries Limited, vs. Union of India, (2013) 30 Taxmann 318 (Del). Further reliance was placed on the decision of the Tribunal in the case of ACIT vs. M/s. Som Distilleries & Breweries

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

Limited, Bhopal, I.T.A.No. 248/Ind/2012 (I.T.A.T. Indore).

The Ld. Counsel for the assessee also placed reliance on the judgment of the Hon'ble Karnataka High Court in the case of Director of Income Tax (Exemption vs. Dhamaparakasha Rajakarya Praskta B.M. Sreenivasaiah Educational Trust,(2015) 59 Taxman 33 (Karnataka). The Ld. Counsel for the assessee also placed reliance on the decision of Tribunal in the case of Ganapathy Educational Trust vs. ACIT (Exemption), (2013 37 Taxman 285 (Chennai Trib). The Ld. Counsel for the assessee submitted that had the Ld. CIT(A) considered this binding precedent, he would not have sustained the addition/adjustments made through intimation as issued by the CPC Bangalore. On the contrary the Ld. Departmental Representative supported the orders, more particularly, the impugned order of the Ld. CIT(A). He submitted that there is no illegality in the impugned order. He, thus, prayed that the

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

addition made may be sustained. He, in support of this contention has taken us through relevant provisions of law.

6. We have considered the rival contentions, perused the material on record and the case laws as cited above. The short question that arises for consideration is whether declining the claim of exemption made in the return of income, while processing such return of income u/s 143(1) would ipso facto authorized and entitled the Revenue to treat the disallowance so made as a recoverable demand without making any further inquiry as provided under the Act, for the purpose of scrutiny assessment.

7. Before us, the Ld. Departmental Representative has made relentless efforts to defend the action of the authorities below. He submitted that the assessee is not entitled for exemption under any of the provisions of the Act. He further contended that the assessee was required to demonstrate under which provisions of law, he is

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

entitled for exemption. Even if it is assumed for the sake of arguments that the assessee is entitled for exemption u/s 10(23C)(iiiab), the assessee was required to demonstrate the same by enclosing the supporting evidence. He contended that the requirement of law is that the Society should be financed by the Government. The Ld. Departmental Representative reiterated the submissions made before us. However, for the sake of clarity, we are reproducing below the written submission, which is also on record :-

**"Sub:-Written submission in the case of Rajiv
Gandhi Prodougiki Visvavidyalaya, Bhopal,
ITA No. 324& 325/Ind/2018, A.Y. 2014-15 &
A.Y. 2015-16-Reg.**

In the case of Visvevarya Technilogical University Hon'ble Apex Court has beautifully summed up the decisions of various benches of Supreme Court on the issue of allowability of exemption under section 10(23C)(iiiab), 10(23C)(iiiad) and 10(23C)(vi) of Income Tax Act 1961. In

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

this case, the appellant had claimed exemption under section 10(23C)(iiiab) which was, infact disallowed by the A.O. The view of A.O. was confirmed by CIT(A), ITAT and HC. While dealing with the issue of allowability of exemption under relevant section, Hon'ble Apex Court has beautifully analysed and adjudicated one of the twin conditions, which is found common in all the three sub sections, 10(23C)(iiiab),(iiiad)and vi. The question dealt with by the Hon'ble court was whether the university or education institution was existing solely for educational purpose and not for the purposes of profit. This issue has been found discussed elaborately in the case Queen's Educational Society by Hon'ble Apex Court. As many as five principles have been laid down at para 11 of said decision:

" 11. Thus, the law common to section 10(23c)(iii ad) and (vi) may be summed up as follows:

1. Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

2. The predominant object test must be applied- the purpose of education should not be submerged by a profit making motive.

3. A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

4. If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

5. The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons."

2. Besides, five principles/tests laid down as above, one more test was laid down in the decision of Apex Court in the case of Surat Art Silk Cloth Manufacturers association and American Hotel and Lodging Assn. Educational Institution.

The said principle is as under :-

2. " In order to ascertain whether the institute is carried on with the object of making profit or not it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established." (Paragraph 37)

In the decision of Queen's Society, above principle is reiterated at para 19 in the following words.

3. " The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall out of Section 10(23-C) is to ignore the language of the section and to ignore the tests laid down in Surat Art Silk Cloth case [CIT v. Surat Art Silk Cloth Manufactures' Assn.(1980) 2 SCC 31], Aditanar case [Aditanar Educational Institution v. CIT [(1997) 3SCC 346] and American Hotel & Lodging case [American Hotel & Lodging Assn. Educational Institute v. CBDT (2008) 10 SCC 509]. It is clear that when a surplus is ploughed back for educational purposes,

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

the educational institution exists solely for educational purposes and for purposes of profit."

3. *In brief, on the issue of allowability of exemption u/s 10(23c), we have 6 principles or tests laid down on the basis of as many as 5 Supreme Court decisions. The surplus limit of 6% to 15% has been laid down in the decision of Hon'ble SC in the case of Islamic Academy of Education, although this % age was in relation to reasonability of fee structure of private Educational bodies.*

In view of above discussion, the societies, Educational institutions, have necessarily to pass through following six (6) tests.

1. ***Activity of Educational Society should be primarily for educating people. In this process, if it makes surplus, it will not render the institution ineligible for exemption.***
2. ***Predominant object of educating people should not be taken over by profit making notice.***
3. ***There is a difference between "making a surplus" and running the institution for 'profit'. The former should not be mistook for later.***
4. ***If the surplus arises incidentally after meeting the expenditure, it will not cease to be one existing solely for educational purpose.***

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

5. *In overall view, the object is the 'profit' or 'education' to the people.*

6. *Whether the surplus or balance is applied wholly and exclusively to the objects for which the applicant is established. The object, being "Education" as explained in the case of Queen's Education Society.*

4. In view of settled principles as laid down on the basis of various supreme Court decisions, the instant appellant i.e. Rajiv Gandhi Prodougiki Visvawidayalaya has to pass through the above six principles besides certain statutory requirements like the approval of CBDT for the purpose of section 10(23C)(vi) of Income Tax Act, 1961 and also the requirements of express provisions of income tax law. Therefore, the facts of the case are required to be examined and analysed on the basis of above test and provisions of the act.

Facts of the Case:-

5.1 *The assessee University was established in the year 1998, by Madhya Pradesh Vidhan Sabha Act 13 of 1998 (The Rajeev Gandhi Proudhyogiki Vishwavidyalaya Adhinyam, 1998). As per the Chapter-II of the Rajeev Gandhi Proudhyogiki*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

*Vishwavidyalaya Adhiniyam, 1998, the Vishwavidyalaya shall be a **body corporate**. Further, the Vishwavidyalaya shall have perpetual succession and a common seal and shall sue and be sued by its name. The Vishwavidyalaya shall be competent to acquire and hold property and enter into contract in its own name. Thus, the Vishwavidyalaya was established as a **separate independent legal entity**. It is found that **the assessee had not been filing its return of income till AY 2013-14** despite the fact that it was required to file its return of income as per the provisions of the Income Tax Act, 1961. The assessee for the first time filed its return of income for AY 2014-15 and AY 2015-16, both belatedly on 30.03.2016 and 31.03.2016 respectively. The assessee claimed exemption of its income u/s 10 of the Act in row number 15 of part B-TI of the return of income, more specifically u/s 10(23C)(iiiad) of the Act, although it was not eligible for such exemption. The returns were processed u/s 143(1) of the Act by the Centralised Processing Centre (CPC), Bangalore and the claim of exemption u/s 10 was disallowed as such incorrect claim was apparent from information contained in the return of income. Accordingly, intimations cum demand notices were*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

issued u/s 143(1) of the Act on 09/01/2017 for AY 2014-15 and on 29/03/2017 for AY 2015-16 to the assessee. It is also found that the assessee filed rectification application on 05/04/2017 for AY 2014-15 before the CPC, which was rejected. Subsequently, the assessee filed appeal against these intimations before Id. CIT(A)-2, Bhopal and requested for stay of demand before the Assessing Officer after depositing 10% of the outstanding demand. The application for stay of outstanding demand was positively and reasonably considered by the Assessing Officer and after payment of 10% of the outstanding demand only, the assessee was granted stay of balance 90% of the outstanding demand by passing a speaking order till disposal of the first appeal before the Id. CIT(A) despite the instructions of the Board for payment of 20% of outstanding demand.

5.2 *Subsequently, the CIT (A) has passed a detailed speaking order u/s 250(6) of the Act on 28.02.2018 for AY 2014-15 and AY 2015-16 and upheld the intimations issued to the assessee disallowing the exemption u/s 10 of the Act relying upon the specific facts of the case and the judicial decisions in this*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

regard. Since, the demand was confirmed by the Id. CIT(A), the whole outstanding demand was payable/recoverable from the assessee as per the provisions of the I.T. Act and Instructions of the Board. Thus, a letter dated 06.03.2018 was served to the assessee for depositing of the outstanding demand. However, instead of paying the confirmed demand, the assessee has again filed stay application u/s 220(6) of the Act on 09.03.2018 and 12.03.2018 before the Assessing Officer. All these applications for stay have been duly considered and rejected by passing speaking order dated 12.03.2018 by the Assessing Officer. It is pertinent to mention here that the section 220(6) of the Act is not applicable in case of any demand confirmed in appeal. There is neither any provision in the Income Tax Act nor any Instruction of Board for stay of demand confirmed in appeal. It is also to mention that the assessee has been generating huge profits over the years and accumulated huge funds of

M/s.Rajiv Gandhi Proudlyogiki Vishwavidyalaya,Bhopal.

*almost one thousand crores and there is no liquidity crunch at all with the assessee for payment of outstanding demand. The assessee is neither eligible for exemption u/s 11/12 nor under section 10 of the Act and the income of the assessee is duly taxable as per the provisions of the Income Tax Act. The assessee also filed Writ petition before the Hon'ble MP High Court for Stay of the outstanding demand, which was **rejected** vide its order dated 14/03/2018. The Writ Petition was not admitted and the Hon'ble Court has given following observations:*

"It is observed that the petitioner has a remedy of filing an appeal before the Income Tax Appellate Tribunal and in such circumstances, the question of entertaining the present petition does not arise."

5.3 *However, while disposing off the petition, the Hon'ble High Court has given interim relief of 6 weeks to the assessee with liberty to assail the impugned order before*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

the appellate forum and directed the Department not to take any coercive action against the petitioner.

Scope of Section 143(1) of Income Tax Act, 1961

6. *According to the express provisions of section 143(1)(a)(ii) of the Act read with Explanation (a) to the section 143(1) of the Act, while processing u/s 143(1) of the Act, the total income or loss shall be computed after making the adjustment on account of incorrect claim, if such claim is apparent from any information in the return. The assessee in the return of income had claimed exemption u/s 10 of the Act in row number 15 of part B-TI of the return of income, which constitutes section 10(23C)(iiiad). The assessee before the Assessing Officer and the CIT(A) had admitted that the exemption was claimed u/s 10(23C)(iiiad) of the Act in the return of income. Now, for allowability of any claim of exemption u/s 10(23C)(iiiad) of the Act, the gross receipts have to be less than Rs. one crores. However, from the amount of income shown in the return itself it is clear that the*

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

receipts/income was much more than the prescribed limit. Thus the claim of exemption u/s 10(23C)(iiiad) was an incorrect claim, which was apparent from the information regarding the amount of income in the return itself. As such the return was correctly processed as per the provisions of section 143(1) of the Act. The Id. CIT(A) has also elaborately discussed this issue in his order and discussed relevant judicial pronouncements in this regard. The assessee now has claimed that it had claimed the exemption u/s 10(23C)(iiiab) of the Act, but it is factually incorrect. If such claim was to be made, it was to be made in the row number 16 not in 15 of the part B-TI of the return of income. The assessee itself admitted before the AO and the CIT(A) that it had claimed exemption u/s 10(23C)(iiiad) of the Act. Without any prejudice to the above, even for claiming any exemption u/s 10(23C)(iiiab) of the Act, any University has to be substantially financed by the Government meaning thereby it shall receive substantial grants from the

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

Govt. However, from the row number 5 of Part B-TI of return and Schedule VC of the return, it is clear that the assessee had not received any voluntary contribution/grant/donation during the years involved. In fact, the assessee had itself admitted before the AO and CIT that it had not received any donation since inception. Thus even if it was claim u/s 10(23C)(iiiab) in the return, then also such claim of exemption was an incorrect claim, which was apparent from the information regarding the amount of grant/donation/voluntary contribution received during the year in the return itself (Row No. 5 and Schedule VC). As such the return was correctly processed as per the provisions of section 143(1) of the Act.

Accumulation of Huge Funds

7.1 It is seen from the latest accounts furnished by the assessee that as on 31.03.2017, it had liquid assets of approx. 900 crores which has been accumulated from the profits over the years and kept

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

in Bank in form of Cash Balance and FDRs. From the accounts submitted. A copy of unaudited final balance sheet of University as on 31.03.2017 along with relevant schedule of FDRs is attached herewith as Annexure-A. This in itself shows that there are huge funds available with the assessee and by no stretch of imagination, it can be said that liquid funds are not available. It is also not out of place to mention here that the assessee has been earning huge profits and keeping the same in Cash or in FDRs and earning huge interest income. The same are not being ploughed back for the purposes of education. On the basis of accounts/financial statements submitted by the assessee from FY 2011-12 to FY 2016-17, the gross income and expenses of the assessee and consequent profits have been examined. The following table prepared on the basis of the same, in itself represents the year wise generation of huge profits in Rs. Lacs by the assessee in a regular and systematic manner: -

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

F. Y.	Gross Income (A)	Revenue Expenses (B)	Capital Expenses (C)	Total Expenses (D=B+C)	Revenue Profits (E = A-B)		Net Surplus even after Capital Expenditure (F=A-D)	
					Amount	Profit %	Amount	Profit %
2011-12	12804.11	3566.27	5538.91	9105.18	9237.84	72.15	3698.93	28.89
2012-13	12550.12	3838.48	6662.05	10500.53	8711.64	69.41	2049.59	16.33
2013-14	16796.96	3931.18	5427.46	9358.64	12865.78	76.60	7438.32	44.28
2014-15	15887.16	4194.5	1171.97	5366.47	11692.66	73.60	10520.69	66.22
2015-16	16306.23	4046.41	263.84	4310.25	12259.82	75.18	11995.98	73.57
2016-17	15030.97	4974.93	4437.38	9412.31	10056.04	66.90	5618.66	37.38

7.2 It may be seen from the above chart itself that there is huge generation of profits over the years. The profits are being consistently generated and invested in FDRs to earn more interest income. As discussed above, the assessee had almost 900 crores of accumulated funds which are lying in FDRs and Banks as on 31.03.2017 and the same have not been utilised either for any charitable purposes or for education purpose. In fact the funds have not been ploughed back for the purpose of creating assets for the purpose of education.

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

The university is not owned and run by the state government:

8. According to the Chapter-II of the Rajeev Gandhi Proudyogiki Vishwavidyalaya Adhiniyam, 1998, the Vishwavidyalaya shall be a body corporate. Further, the Vishwavidyalaya shall have perpetual succession and a common seal and shall sue and be sued by its name. The Vishwavidyalaya shall be competent to acquire and hold property and enter into contract in its own name. Thus, the Vishwavidyalaya was established as a separate independent legal entity having its own independent existence. Hon'ble Supreme Court in several judgments including in the case of Visvesvaraya Technological University v. Assistant Commissioner of Income-tax reported in [2016] 384 ITR 37 (SC) has categorically held that such a University cannot be termed as State. On the contrary, if the assessee succeeds in appeal, the

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

demand paid will be returned with interest which is almost parallel to the interest earned on FDRs. Thus, there is no logic in this ground and there is no reason of not paying the demand confirmed by the CIT(A). It is also important to mention here that the assessee argued before the Id. CIT(A) that it will apply before the Board (CBDT) for retrospective registration u/s 12AA of the I.T. Act. It is worthwhile to mention that the demand cannot be stayed in anticipation that the assessee will get retrospective benefit in future.

Claim of appellant not admissible under any sub clause of section 10(23C) of Income Tax Act, 1961:

9.1 *In view of the above claims made by the assessee, the eligibility of the exemption u/s 10(23C) of the Act of the assessee has also been examined. Considering the facts and circumstances of the case, the assessee is not found eligible for any exemption u/s 10 of the Act. As discussed in preceding Paras, the assessee in the return of income had claimed exemption u/s 10 of the Act in row number 15 of part B-TI of the return of income. The assessee before*

M/s.Rajiv Gandhi Proudtyogiki Vishwavidyalaya,Bhopal.

*the Assessing Officer and the CIT(A) had **admitted** that the exemption was claimed u/s 10(23C)(iiiad) of the Act in the return of income. However, the assessee is not eligible for exemption u/s 10(23C)(iiiad) of the Act as the gross receipts of the assessee are exceeding prescribed limit of Rs. One Crore. In fact, the receipts are much more than the limit prescribed and by no stretch of imagination, it can be covered u/s 10(23C)(iiiad) of the Act.*

9.2 *The appellant is not eligible for exemption u/s 10(23C)(vi) of the Act as the assessee is not approved u/s 10(23C)(vi) of the Act which is a prerequisite for claiming exemption u/s 10(23C)(vi) of the I. T. Act. As regards the claim of exemption u/s 10(23C)(iiiab) at this stage, which was neither claimed in the return of income nor before the Id. CIT(A), at the outset such claim has not been allowable by the AO in view of the judgment of Hon'ble Apex Court in case of Goetze India Ltd (Supra). Without any prejudice to the above, even on merits the claim of the assessee for exemption u/s 10(23C)(iiiab) of the Act is not allowable as it doesn't satisfy the preconditions for claiming exemption under that section. It is to not that for applicability of exemption u/s 10(23C)(iiiab) of the Act, the specific conditions mentioned therein has to be fulfilled. The section 10(23C)(iiiab) of the Act is reproduced as under:-*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(23C) any income received by any person on behalf of—

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government

9.3 In view of the above provisions, it is absolutely necessary that for claiming exemption under this section, the institution shall exist solely for educational purposes and not for the purposes of profit and it shall be wholly or substantially financed by the Government.

9.4 In the instant case, the assessee is neither wholly nor substantially financed by the Govt. nor is existing solely for the propose of education. Rather it has been established that the appellant institution is being run for the purpose of profit. Moreover, the appellant has not received any grant from the Government. The assessee itself in its submissions before the AO and the CIT has accepted that it has not received any donation/grant since inception.

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

9.5 *It is also pertinent to mention here that the word 'substantially' was not defined earlier in the Income-tax Act or Rules. However, **Explanation to section 10(23C)(iiiab) has been inserted w.e.f. 01.04.2015 i.e. AY 2015-16** and also accordingly the **Rules 2BBB** of the Income-tax Rules, 1962 have been inserted w.e.f. 12.12.2014 to clarify the position and percentage of Government Grants for considering any university as substantially financed by the Government for the purposes of section 10(23C) of the Act. The same rules are reproduced as under-*

Percentage of Government grant for considering university, hospital etc. as substantially financed by the Government for the purposes of clause (23C) of section 10.

2BBB. For the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty per cent of the total receipts including any voluntary contributions, of such university or other

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

educational institution, hospital or other institution, as the case may be, during the relevant previous year.

9.6 *In view of the above, it is evident that exemption under this particular section [10(23c)(iiiab)] is only available if the government grant is more than 50% of the total receipts of that previous year. In the instant case, admittedly no grants have been received by the assessee during the previous years. Thus, it is abundantly clear that the applicant is not entitled for claiming exemption u/s 10(23C)(iiiab) of the I.T. Act. w.e.f. 1.4.2015 i.e. AY 2015-16. It is also pertinent to mention here that even when the Explanation to this section and Rule 2BBB was not there before AY 2015-16, the Hon'ble jurisdictional ITAT, Indore Bench has examined this issue, in almost identical case, in the case of **M.P. Rajya Open School, Bhopal v. Deputy Commissioner of Income-tax-1(2), Bhopal** with regard to its eligibility u/s 10(23C)(iiiab) of the Act. The Id. ITAT vide its order dated 08.11.2012 reported in **[2013] 141 ITD 721 (Indore-Trib.)** has elaborately discussed the issue and after considering the submissions/arguments of the assessee concluded that the assessee is not eligible for exemption u/s 10(23C)(iiiab) of the Act. It was found by the Id ITAT that the assessee was not substantially financed by the Government and also it was held that the profit motive of the assessee is*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

clearly established. The relevant portions of the order of the Hon'ble Tribunal in this regard is reproduced herein under:-

"The figures mentioned in the expenses borne by the Govt. are also not actual and are notional, meaning thereby, these were not actually received by the assessee. Huge surplus has been generated by the assessee, therefore, it can be said that the profit motive of the assessee is clearly established. During hearing, the Id. Counsel for the assessee contended that the word "substantially" will be made even if the grants are 10%. We are not agreeing with this proposition because the word is "wholly or substantially", meaning thereby, either it can be 100% or near to 100% but in any case may not be less than 75% because it has been used with the word wholly and not singularly. Admittedly, there is no clear cut formula regarding percentage in the Act but some figure may be adopted under the facts and circumstances available on record."

9.7 *It is also pertinent to mention here that the Hon'ble Supreme Court in the case of **Visvesvaraya Technological University v. Assistant Commissioner of Income-tax** reported in **[2016] 384 ITR 37 (SC)** has categorically held that to consider any university or institution as wholly or substantially financed by Government as*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

contemplated under section 10(23C)(iiiab) of the Act, funds received from Government must be direct grants/contributions from governmental source and not fees collected from students under Statute. The Hon'ble Court has observed that the plain reading of the section implies that the phrase 'wholly and substantially financed by the Government' should only include grant received from the Government to meet the direct expenses of the University such as expenses incurred towards salary, infrastructure and for the purpose of other development activities of the University. The same order of the Hon'ble Court has further confirmed this decision in the order in review reported in [2016] 389 ITR 10 (SC).

9.8 *In addition to the above facts and position of law, it is also evident from the accounts produced by the assessee itself and the table given in preceding para, that huge surplus is being generated by the assessee over the years which is being accumulated as reserves and not expended/applied by the assessee institution for its objects. The same table is reproduced below, which clearly show that the University exists for profit only. The profits generated have been invested in FDRs to earn interest income instead of applying the same for charitable purposes.*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

Even despite of consistent generation of profits compared to the related expenses, there is no effort seen to reduce the fees from the students. Thus, the assessee is also existing for the purposes of profit and hence it is not eligible for exemption 10(23C)(iiiab) of the Act.

F. Y.	Gross Income	Revenue Expenses	Capital Expenses	Total Expenses	Revenue Profits (E = A-B)		Net Surplus even after Capital Expenditure (F=A-D)	
					Amount	Profit %	Amount	Profit %
	(A)	(B)	(C)	(D=B+C)				
2011-12	12804.11	3566.27	5538.91	9105.18	9237.84	72.15	3698.93	28.89
2012-13	12550.12	3838.48	6662.05	10500.53	8711.64	69.41	2049.59	16.33
2013-14	16796.96	3931.18	5427.46	9358.64	12865.78	76.60	7438.32	44.28
2014-15	15887.16	4194.5	1171.97	5366.47	11692.66	73.60	10520.69	66.22
2015-16	16306.23	4046.41	263.84	4310.25	12259.82	75.18	11995.98	73.57
2016-17	15030.97	4974.93	4437.38	9412.31	10056.04	66.90	5618.66	37.38

9.9 *It has been further held by the Hon'ble Supreme Court in the case of **Queens Education Society** reported in [2015] 372 ITR 699 (SC) that the surplus generated is to be ploughed back for educational purposes only, which is not satisfied in the case of assessee. In fact, the assessee is generating huge surpluses over the years and at the same time it is accumulating the profits*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

*and not expending/applying the same for its objects. Thus, the assessee is not ploughing back the surplus generated for educational purposes. Hence, it is clear that it is existing for profit. In almost identical facts and circumstances, the **Hon'ble Tribunal, Chandigarh Bench** in **I.K. Gujral Punjab Technical University Vs. CIT(E), Chandigarh** vide its recent order dated **23/02/2018** in **ITA No. 910/Chd/2017** has held that any University established by the Government is to be treated as existing for profit not for education if it has accumulated huge surpluses and earning interest income on the same instead of expending the same for the educational purposes. In the above referred case also, the assessee was a Technical University established by State Government. The assessee was not filing return of income and no audited balance sheet was filed. That Applicant-University had also been claiming itself to be covered under the provisions of section 10(23C)(iiiab) of the Income-tax Act, 1961. The facts of the instant case are squarely applicable as the assessee has accumulated huge surpluses of almost one thousand crores of rupees over the years and earning interest income on the same through investment in FDRs. Even though the assessee has applied for exemption u/s 12AA, but the fact remains that it is carrying out activities with profit motive and exist for profit. It does not exist for charitable purposes.*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

10. In view of above detailed discussion, there remains no iota of doubt that the appellant institution has never been eligible to claim exemption u/s 10(23C)(iiiab), 10(23C)(iiiad) and 10(23C)(vi) of Income Tax Act, 1961. The claim has been rightly rejected under the valid scope of section 143(1) of Income Tax Act, 1961. The same has been found to be apparent on the basis of details of Income, sources of income and claim of exemption filed under various specified columns. It is not out of place to mention that the system automatically negates the claim of appellant on the basis of mechanical, systematical and factual basis. Therefore, pray this Hon'ble Bench to dismiss the appeals of the institution both for the A.Y. 2014-15 & A.Y. 2015-16. "

8. We have given thoughtful consideration to the rival contentions. The Section 143 of the Act opens with the word "Assessment". As per Section 143(1), where return

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

has been made u/s 139 or in response to a notice under sub section (1) of Section 143, such return shall be processed in the following manner, namely, :-

“(a) the total income or loss shall be computed after making the following adjustments, namely:—

- (i) any arithmetical error in the return;*
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*
- (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139.*
- (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;*

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

(v) *disallowance of deduction claimed under sections 10AA, 80IA,, 80-IAB, 80IB, 80-IC, 80-ID or section 80IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; ,or*

(vi) *addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return;*

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode :

Provided further that the response received from the assessee, if any, shall be considere4d before making any adjustment, and in a case where no response is received within thirty days of the

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

issue of such intimation, such adjustments shall be made .

- (b) *the tax (and interest), if any, shall be computed on the basis of the total income computed under clause (a);*
- (c) *the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax (and interest , if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII any tax paid on self-assessment and any amount paid otherwise by way of tax (or interest)*

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

(d) *an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and*

(e) *the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:*

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

year from the end of the financial year in which the return is made.

Explanation.—For the purposes of this subsection,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme¹⁶ for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section.

(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the 31st day of March,

(1C) Every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2) :

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017]"

9. Further, as per Section 143(2), where the return has been furnished u/s 139, or in response to a notice under sub-section (1) of section 142, the AO or the prescribed income-tax authority as the case may be, if, considers it necessary to expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the AO or to produce, or cause to be produced before the AO any evidence on which the assessee may rely

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

in support of the return. Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is filed, as the Section 143(3) states that [on the day specified in the notice issued under] sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the AO may require on specified points, and after taking into account all relevant material which he has gathered, the income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

10. Keeping in view the above provisions, it is to be determined whether under the facts of the present case, whether there was no need to proceed u/s 143(2) and 143(3) of the Act and processing made u/s 143(1) would be sufficient to fasten the tax liability on the assessee,

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

whether the assessee has specifically objected to the adjustment as made by the Revenue.

11. The reliance is placed by the Ld. Counsel for the assessee on the judgment of the Hon'ble Madhya Pradesh High Court rendered M/s. Bharat Oman Refineries Limited, Mumbai vs. ITO, Bhopal in I.T.A.No. 16/2001 (M.P.), wherein the Hon'ble Court after considering the facts held that in the light of the nature of the deposit made and the source from which the interest is received in the present case if the law laid down in the case of CIT vs. Karnal Cooperative Sugar Mills Limited, (2000) 243 ITR 2 (S.C.), is applicable, then the interest earned may not fall in the category of income from other sources, but may come in the category of income earned from business. That being the legal position it is to be held that in the matter of assessment of income in question a debatable question arises and therefore taxing of income in the facts and

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

circumstances of the present case holding it to be covered as prima facie adjustment under section 143(1)(a) is not correct. Accordingly, the Hon'ble Court answered the reference in favour of the assessee and held that the question as to whether the income in the facts and circumstances of the present case could be taxed under the provisions of Section 143(1)(a) of the Act holding it to be prima facie adjustable, is not correct. The question is a debatable one and it requires consideration in accordance with the provisions of section 143.

12. Another judgement, the Ld. Counsel for the assessee has placed reliance is of the Hon'ble Bombay High Court, I.T.R.No. 25 of 2000, in the case of Bajaj Auto Finance Limited vs. CIT, Pune, wherein the Hon'ble High Court has held as under :-

"10. The issue that arises for our consideration is whether an adjustment by intimation u/s

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

143(1)(a) of the Act can be made where the issue which arises for consideration is a debatable issue. In the present facts, the computation of total income submitted along with return indicates that claim for bad debt s has been made by relying upon the decision of Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala (supra).

11. However, the Assessing Officer ignored the note made by the applicant in its computation of return, indicating that the basis of claim for bad debts is the decision in Gujarat High Court in Vithaldas H.Dhanjibhai Bardanwala (surpa). In the above case, even a provision debited to the profit and loss account was allowed as bad debts, where corresponding credit entries are posted in the

M/s.Rajiv Gandhi Proudtyogiki Vishwavidyalaya,Bhopal.

bad debts reserve account. It held that it was not necessary to post credit entries in the ledger account of the concerned parties. It was on the basis of the aforesaid decision of the Gujarat High Court that the claim in respect of the provision for bad debts was made by the applicant assessee. Once, reliance is placed upon a decision of a Court and / or Tribunal to make a claim, then even if the Assessing Officer has a different view and does not accept the view, yet the claim itself becomes debatable. This is so laid down in Instruction No.1814 dated 4th April, 1989 issued by the CBDT in respect of the scope of prima facie disallowance under Section 143(1)(a) of the Act. In fact, paragraph no.9 thereof provides that where a claim for deduction has been

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

made on the basis of a decision of a High Court / Tribunal, then, even if there is contrary view expressed by another High Court and / or Tribunal or an appellate Authority, the issue itself becomes debatable. In such cases, no adjustment under Section 143 (1) (a) of the Act is permissible. Thus, disallowance of a claim can be made only after hearing the assessee who has made the claim.

12. Further, our Court in Khatau Junkar Ltd. (supra) had while dealing with the word "prima facie inadmissible" in clause (iii) of Section 143 (1) (a) of the Act has held that the word "prima facie" means on the face of it the claim is not admissible. It means the claim does not require any further inquiry before disallowing the claim. The Court observed that

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

where a claim has been made which requires further inquiry, it cannot be disallowed without hearing the parties and / or giving the party an opportunity to submit proof in support of its claim: In the absence of Section 143(1)(a) of the Act the above manner i.e. debatable issues cannot be adjusted by way of being read in intimation under Section 143 (1) (a) of the Act, would lead to arbitrary and unreasonable intimations being issued leading to chaos.

13. In the present facts, it is undisputed that the decision of Gujarat High Court was referred to in the computation of income. Thus, the Assessing Officer could not have disallowed the claim on a prima facie view that the same is inadmissible. In fact, there

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

can be no dispute that even according to the Assessing Officer, the issue was debatable. This is evident from the fact when the applicant assessee had filed an application under section 154 of the Act for deletion of the adjustment made of provision of bad debts by intimation under Section 143(1)(a) of the Act, it was disallowed on the ground that it is a debatable issue. This itself would indicate that whether the claim of a provision for bad debts is deductible under Section 36(1) (vii) of the Act or not is debatable. Further, the above claim for deductions as made by the applicant was by following the decision of the Gujarat High Court in Vithaldas H.Dhanjibhai Bardanwala (Supra). Thus, a debatable issue. Therefore, the same could not have been disallowed by

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

way of an intimation under section 143(1)(a) of the Act.

14. We are conscious of the fact that Section 36(1)(vii) of the Act was amended by the Finance act, 2001 by insertion of Explanation to Section 36(1)(vii) of the Act w.e.f. 1st April, 1989. We are also conscious of the fact that while disposing of a Reference under Section 256(1) of the Act, the question proposed for our opinion shall be answered taking into account the subsequent amendment to the law with retrospective effect, as they are clarificatory in nature.

15. In the aforesaid background, we find that the insertion done by Explanation to Section 36(1)(vii) of the Act (w.e.f. 1989) would arise for consideration while answering the

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

proposed question in respect of Assessment Year 1993-94. The above amendment by addition of Explanation to Section 36(1) (vii) of the Act was a subject matter of consideration by the Supreme Court in Vijaya Bank (supra). In the above decision, the Court while applying the amended law, held that mere debit of a provision to the profit and loss account will not by itself be sufficient to constitute bad debts (write off). This must be accompanied by simultaneously also reducing the loans and advances from the asset side of the Balance Sheet. This would ensure that the amount shown as loans and advances (debtors) is net of the provisions made for bad debts.

16. Therefore, in the present facts, while mere making of provision for bad debts will not by

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

itself (on application of amended law) entitle the party to deduction, yet it would be a matter where the assessee should be given an opportunity to establish its claim. This by producing its evidence of the manner in which it treated the provision of bad debts written off in accounts as well as in its Balance Sheet. Therefore, the disallowance cannot be made by intimation under section 143(1)(a) of the Act, as it requires that a party be given an opportunity to establish its claim before disallowing it. It would have been a completely different matter if the Apex Court had ruled that in no case can provision for bad debts be allowed as a bad debt under section 36(1) (vii) of the Act. The allowance of the claim of provision for bad debt is entirely dependent

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

upon how it is reflected in the Balance Sheet and its accounts. Therefore, for the above purpose it is necessary that the party to be given an opportunity to establish its claim. Therefore, in the present facts, adjustment by way of disallowing deduction by intimation under section 143(1)(a) of the Act is not proper."

13. The Revenue has not rebutted the fact that the assessee had made claim u/s 10 as well as under section 10 in column no.13 in the return of income and also made the claim u/s 10(23C)(iiiad) as per column 15 of the return. It is the contention of the assessee that no column is provided separately for claiming exemption u/s 10(23C)(iiiab). Therefore, the Assessing Authority ought to, have accepted the claim as made in column no. 13 of the return. After considering the totality of the facts, we are of

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

the view that the issue of claim of exemption by the assessee whether it falls under the category u/s 10(23C)(iiiab) or under section 10(23C)(iiiad) is debatable. As per Section 10(23C)(iiiab), exemption is available if any university or other educational institution existing solely for educational purposes and not for the purpose of profit and which is wholly or substantially financed by the Government. It is not in dispute that the assessee University is established by the Government of Madhya Pradesh. Nothing is on record suggesting that the assessee is not existing for educational purposes. The issue whether contention of the assessee that it is solely existing for educational purpose and the Government has financed it requires verification by conducting detailed enquiry and this can be done by mere stating adjustments u/s 143(1) of the Act, which, thus, can be done only by way of scrutiny assessment. We, therefore, respectfully following the

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

decision of Hon'ble Jurisdictional High Court in the case of M/s. Bharat Oman Refineries Limited, Mumbai vs. ITO, Bhopal in I.T.A.No. 16/2001 (M.P.), hold that the issue being debatable, authorities below ought to have made the detailed scrutiny as provided u/s 143(3) of the Act. Accordingly, the ground nos. 1 to 5 of the assessee's appeal are allowed. However, it is made clear that the Revenue would be at liberty to make scrutiny assessment as per law.

14. Since we have allowed ground nos. 1 to 5 in favour of the assessee, Ground No. 6 becomes of academic nature, which needs no adjudication.

15. In the result, the appeal of the assessee in I.T.A.No. 324/Ind/2018 is allowed.

I.T.A.No. 325/Ind/2018 – A. Y. 2015-16:

16. In this appeal of the assessee, the grounds taken are identical as taken in I.T.A.No.324/Ind/2018. Since facts

M/s.Rajiv Gandhi Proudhyogiki Vishwavidyalaya,Bhopal.

are common, the decision taken in appeal for assessment year 2014-15, in view of observations made in foregoing paragraphs nos. 8 to 13 will be, mutatis mutandis, binding on this appeal also.

17. In the result, the appeal in I.T.A.No. 325/Ind/2018 is allowed.

18. Consequently, both the appeals of the assessee in I.T.A.Nos. 324 & 325/Ind/2018 for assessment years 2014-15 and 2015-16 respectively are allowed.

The order pronounced in the open court on 29.05.2018.

Sd/-

(मनीष बोरड)

लेखा सदस्य

(MANISH BORAD)

ACCOUNTANT MEMBER

Sd/-

(कुल भारत)

न्यायिक सदस्य

(KUL BHARAT)

JUDICIAL MEMBER

Indore; दिनांक Dated : 29/05/2018

CPU/SPS*

M/s.Rajiv Gandhi Proudyogiki Vishwavidyalaya,Bhopal.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore