

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.510/Ind/2014**  
**Assessment Year 2007-08**

Sidhi Vinayak Education Society, Near Jila Shiksha Adhikari Officer, Bhopal Naka, Sehore (M.P)	Vs.	ACIT, Circle 2(1), Bhopal
(Appellant)		(Respondent )
<b>PAN No.AAALS0356F</b>		

Revenue by	Shri Rajeeb Jain, Sr.D.R
Assessee by	S/Shri Ashish Goyal & N.D. Patwa, Advocates
Date of Hearing	06.02.2019
Date of Pronouncement	12.02.2019

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2007-08 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Bhopal dated 23.05.2014 which is arising out of the order u/s 147 r.w.s. 143(3) of the Income Tax Act 1961(In short the 'Act') dated 28.03.2013 framed by ACIT-2(1), Bhopal.

2. Briefly stated facts as culled out from the records are that the assessee is a registered society engaged in running a college at Sehore namely Swami Vivekanand College of Professional Studies. Return of income for Assessment Year 2007-08 filed declaring NIL income after claiming exemption u/s 10(23C)(iiiad) of the Act. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 20.02.2013. A notice u/s 142(1) of the Act with a detailed questionnaire was also served upon the assessee on 25.02.2013. Ld. Assessing Officer (In short Ld. A.O) after considering the submissions of the assessee adopted a view that the assessee is not eligible for exemption u/s 10(23C)(iiiad) of the Act as it is not existing solely for the educational purposes because in the objects of the society as contained in the bye-laws, apart from object of imparting education various other objects relating to population control, environmental protection, plantation, blood donation etc. have been mentioned. Ld.A.O accordingly added the cash surplus of the society of previous year at Rs.42,30,732/- to the income and assessed it. Appeal of the assessee before Ld.CIT(A) went in vein and now the assessee is in appeal before the Tribunal taking following grounds;

*“1. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals-I), Bhopal is not justified in holding that the action u/s 147 / 148 and the resultant assessment is justified when the action u/s 147 / 148 of the income tax Act, 1961 is contrary to the facts on record, against the provisions of the Income Tax Act, 1961, unjust, unwarranted and bad-in-law and deserves to be quashed.*

*2. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals-I), Bhopal is not justified in holding that the income of the appellant was not exempt u/s 10 (23C) (iiiad) of the Income Tax Act, 1961, and thereby giving the finding that this income amounting to Rs. 42,30,730 is taxable to income tax.*

*3. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals-I), Bhopal is not justified in holding that the appellant had multifarious objects when the appellant's activities, were confined to education purposes only.*

*4. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals-I), Bhopal is not justified in holding that the appellant society did not satisfy the condition that the appellant should have existed for education purposes only and not for profits.*

*5. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals-I), Bhopal is not justified in not quashing the finding of charging interests u/s 234A and 234B of the Income Tax Act, 1961.*

*6. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals-I), Bhopal is not justified in not quashing the direction of Id.AO to start / initiate penalty u/s 271 (1) (c) of the Income Tax Act, 1961.*

*The appellant craves leave to amend, alter, add any ground of appeal and / or raise any other ground of appeal. “*

3. Assessee further raised following additional grounds on 28.1.2019;

*“1. That without prejudice, since the appellant society had been granted registration u/s 12AA subsequently, the income of the appellant society*

*would be exempt u/s 11-12 for the current year also”*

4. At the outset Ld. Counsel for the assessee referring to the additional ground submitted that the society is purely engaged in the educational activity. It is true that various other objects were also enumerated in the bye-laws but only the object of imparting education has been carried out without any profit motive. He further submitted that the assessee has been granted certificate u/s 12AA(1)(b)(i) w.e.f. 1.4.2013 and as the objects of the assessee remains the same the benefit of the provisions under section 11 & 12 should be provided retrospectively in respect of income derived from carrying educational activities in preceding years including the year under appeal.

5. Per contra Ld. Departmental Representative supported the orders of lower authorities.

6. We have heard rival contentions and perused the records placed before us. The assessee is in appeal taking following three issues;

(i) Challenging the re-opening of the assessment as well as

framing order u/s 143(3) r.w.s. 147 of the Act:- This ground has not been pressed by the Ld. Counsel for the assessee and the same is dismissed as not pressed.

(ii) Second issue raised in Ground No. 2 to 6 challenges the findings of Ld. CIT(A) of not providing the benefit of exemption u/s 10(23C)(iiiad) of the Act. Along with this issue the assessee has also raised the third alternative issue by taking an additional ground submitting that the appellant society has been granted registration u/s 12AA of the Act subsequently w.e.f. 1.4.2013 and the income of the appellant society would be exempt u/s 11 & 12 for the preceding years also including the year under appeal i.e. Assessment Year 2007-08 also.

7. From perusal of Form No.35 filed by the assessee before Ld. CIT(A) we observe that the additional ground raised before us has not been raised before Ld. CIT(A). The reason for not raising this additional ground is that the assessee was granted registration u/s 12AA of the Act on 11.7.2014 effective from 1.4.2013 whereas the appellate order framed by Ld.CIT(A) is dated 23.5.2014, therefore

Ld. CIT(A) had no occasion to adjudicate this issue as it did not arise till the time of finalisation of appellate order.

8. Before us the revenue has not disputed the objects of the society as mentioned in the bye-laws placed at page 3 to 6 which remain unchanged since its inception. Registration u/s 12AA of the Act have been granted by Ld.CIT, Bhopal on the basis of the objects mentioned in the bye-laws.

9. We therefore following the judgment of jurisdictional High Court in the case of CIT V/s Tolaram Somal 298 ITR 92 are bound to hold that the additional legal ground which has been taken before us for the first time and which goes to the root of the matter needs to be set aside to the file of Ld. CIT(A) for adjudication in the light of various judgments referred by Ld. Counsel for the assessee as well as the provisions of law and decide accordingly as to whether the assessee in view of being registered u/s 12AA of the Act is eligible for benefit of Section 11 & Section 12 of the Act from retrospective effect. We accordingly set aside the additional ground as well as Ground No.2 to 6 relating to denial of exemption u/s 10(23C)(iiiad) of the Act to the file of Ld. CIT(A) for afresh

adjudication. Needless to mention that proper opportunity should be give to the assessee to present the case.

10. In the result the appeal of the assessee is partly allowed for statistical purposes.

*The order pronounced in the open Court on 12.02.2019.*

*Sd/-*

**( KUL BHARAT )  
JUDICIAL MEMBER**

*Sd/-*

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

दिनांक /Dated : 12 February, 2019

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore