

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.905/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Deccan Education Society,
Fergusson College Campus,
F.C. Road, Deccan Gymkhana,
Shivaji Nagar, Pune.

PAN : AAATD3141F

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle- 1(2),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Pathak
Revenue by : Smt. Amrita Misra, CIT

सुनवाई की तारीख / Date of Hearing : 02.01.2019

घोषणा की तारीख / Date of Pronouncement : 09.01.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-10,
Pune dated 15.01.2016 for the Assessment Year 2010-11.

2. The grounds raised by the assessee are as under :-

"1] The learned CIT(A) erred in holding that the exemption u/s 10(23C)(iiiab) should be granted only on the profits of the institutions which are fully and substantially aided by the Govt. and this exemption should be denied in regard to the non aided institutions whose turnover exceeded Rs.1 Cr and statutory approval from the competent authority has not been obtained.

2] The learned CIT(A) grossly erred in not following the order of the ITAT in the appellant's case for A.Y. 2008-09 wherein the Hon'ble Tribunal has clearly held that the exemption u/s 10(23C)(iiiab) is available to the appellant society as a whole and not to the individual institutions of the appellant society.

3] *The learned CIT(A) failed to appreciate that the decision of ITAT in appellant's case was binding upon him in view of Bombay H.C. decision in the case of Bank of Baroda [256 ITR 385] and accordingly, the entire income of the society ought to have been exemption u/s 10(23C)(iiiab).*

4] *The learned CIT(A) erred in applying the provisions of section 11 to 13 of the Act for denying the exemption on the entire income of the appellant society without appreciating that the appellant had not claimed the exemption u/s 11 at all.*

5] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."*

3. From the above grounds, the issue for adjudication relates to the allowability of the claim of exemption u/s 10(23C)(iiiab) of the Act when the some of the institutions of the assessee are not substantially financed by the Government on individual basis. Otherwise, the assessee is substantially financed by the Government and as per the provisions of section 10(23C)(iiiab) of the Act.

4. Briefly, the relevant facts include that the assessee is a society and registered u/s 12A of the Act. The assessee filed its return of income on 15.10.2010 declaring income at Nil. In the said return of income, the assessee declared an amount of Rs.79,33,93,564/- under the head 'income from other sources. The assessee claimed the exemption on the said amount u/s 10(23C)(iiiab) of the Act. In the assessment, there was an issue of substantial financing by the government. The Assessing Officer noted that the assessee runs many institutions and some of the individual institution is not substantially financed by the Government. In this regard, the assessee filed the various details and submissions in support of its case. At the end of the assessment order on this issue of substantial financing, the Assessing Officer did not satisfy with the

submissions furnished by the assessee before him and determined the total income of the assessee at Rs.19,88,02,440/- against the returned income.

5. Aggrieved with the said action of the Assessing Officer, the assessee carried the matter before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. Aggrieved further with the order of the CIT(A), the assessee is in appeal before us with above extracted grounds of appeal.

7. Before us, ld. Counsel for the assessee submitted that this issue was the subject-matter of adjudication before the Jurisdictional High Court in assessee's own case for assessment year 2008-09 vide Income Tax Appeal (IT) No.400 of 2016, order dated 26.11.2018. In this year, the financing by the Government is 50%. Further, bringing our attention to the provisions of section 10(23C)(iiiab) of the Act, the ld. AR submitted that *"any income received by any person on behalf of 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"* is exempt.

8. Elaborating on the expression "**substantially financed**", the ld. Counsel submitted that 20% financing by the Government will satisfy the meaning of this expression and in this regard, Ld. AR relied on the provisions of section 2(22)(e) of the Act. Mentioning that the assessee

recorded 49% of the finances funded by the Government for assessment year 2009-10 and 47% of the funds financed by the Government for the year under consideration, Ld. AR submitted that other percentage of financing amounts to substantial financing by the Government. Relying on the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Indian Institute of Management (2010) 78 CCH 0683 (Kar.-HC), ld. Counsel submitted that with 36.42% of the finance by the Government, the same is held to be substantially financed by the Government in that case. Further, Ld. AR argued that the percentage of financing by the Government is not institution – specific and the same is the person – specific only. Thus, the assessee qualifies all the conditions provided in section 10(23C)(iiiab) of the Act and is entitled for deduction under the said provisions.

9. With the aforesaid argument of the ld. AR and after considering the ld. DR's submission and also perused the judgement of the Jurisdictional High Court in assessee's own case (supra), we find the paragraphs 1, 4 and 5 are relevant to extract on this issue and for the sake of completeness the same are extracted hereunder :-

"1. This appeal is filed by the Revenue challenging the judgment of the Income Tax Appellate Tribunal, Pune ("the Tribunal" for short) dated 13.7.2015. The appeal relates to the Assessment Year 2008-09. The Revenue has presented the following question for our consideration :

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that exemption u/S. 10(23C)(iiiab) is available to the society as a whole, when in fact some of the institutions under the assessee trust are unaided and fall outside the purview of Section 10(23C)(iiiab) of the Act?"

4. Having heard the learned counsel for the Revenue and having perused the material on record, in our opinion, the central question is

*whether the exemption under Section 10(23C)(iiiab) is specific to the assessee trust or whether such exemption can be examined by further bifurcating the position of different institutions which are run by the assessee trust. The Revenue's ground that the assessee trust did not exist solely for the purpose of educational activity, needs to be recorded for rejection. It is by now well settled through various series of judgments of the Supreme Court that an educational institution is not precluded from generating reasonable surplus. **Merely because, in the process of running an educational institution, the surplus funds are generated, would not disqualify the institution from being an institution existing solely for the educational purpose. In fact, this was a view taken by the Supreme Court in the case of Aditanar Educational Institution (supra).***

5. Section 10(23C)(iiiab) grants exemption in relation to any income received by any person on behalf of 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. This provision, thus, exempts the income received by a person on behalf of the institutions specifying the requirements of the said clause. The exemption is not relatable to the individual institution run under the common umbrella of a Trust. Therefore, if the assessee trust satisfies the statutory requirement noted above, the exemption provision would apply, irrespective of the fact that in isolated cases of a few institutions runs by such Trust, the requirement may not be seen to have been fulfilled. From the above, it is very clear that it is the trust or the society that has to apply for registration and claim exemption. Had it been the intention of the legislature to grant exemption only to the institutions individually or independently and not to the society as a whole, the language would have been different. **The society or trust may run more than one institutions. Therefore, the argument of the Revenue that it should be institution specific and not the society as a whole in our opinion is not correct.**"

10. From the above, it is clear that the Revenue raised the similar question of law before the Jurisdictional High Court in assessee's own case (supra) and the same is answered in para 4 and 5 of the said judgement (supra) in favour of the assessee. For the year under consideration, there is no dispute about the substantially financed by the Government to the assessee. Thus, the extent of financing by the Government has to be seen at the level of the person as a whole. Therefore, in our view, the ratio laid down in the said judgement of the Jurisdictional High Court (supra) applies to the facts of the present case.

Accordingly, grounds raised by the assessee have to be allowed on legal issue.

11. In the result, the appeal of the assessee is allowed.

Order pronounced on 09th day of January, 2019.

Sd/-	Sd/-
(विकास अवस्थी / VIKAS AWASTHY)	(डी. करुणाकरा राव/ D. KARUNAKARA RAO)
न्यायिक सदस्य/ JUDICIAL MEMBER	लेखा सदस्य/ ACCOUNTANT MEMBER
पुणे / Pune; दिनांक / Dated : 09 th January, 2019.	
Sujeet	

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-10, Pune.
4. The Pr. CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.