IN THE INCOME TAX APPELLATE TRIBUNAL
Camp Bench at Jalandhar

Before Shri N.K. Saini, Vice President
and Shri Ravish Sood, Judicial Member

ITA No. 562/Asr./2016
(Assessment Year: 2011-12)

Shaheed Udham Singh Educational Society, 171/6, Shaheed Bhagat Singh Colony Basti Gobindgarh, Moga.	Vs.	Income Tax Officer (Exemptions), Ward Jalandhar, Jalandhar.

PAN – AAITS0997C

(Appellant) **(Respondent)**

Appellant by: Shri Sudhir Sehgal, A.R.
Respondent by: Shri Bhawani Shankar, D.R

Date of Hearing: 07.01.2019
Date of Pronouncement: 05.04.2019

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee society for A.Y. 2011-12 is directed against the order passed by the CIT(A)-4, Ludhiana, dated 31.08.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'IT Act'), dated 03.03.2015. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

> *"1. The order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-4, Ludhiana is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer in restricting the claim with regard to donations to 50% of the gross total income*

> 2. *That the Ld. CIT(A) was not justified to uphold the action of the Ld. Assessing Officer in coming to the conclusion that the appellant had not been granted exemption u/s 80G."*

Further, the assessee has also raised before us the following Additional Ground of appeal:

> *"1. That the Ld. Assessing Officer having not made any addition on account of the facts as stated in the reasons so recorded for the purpose of issuing notice u/s 148 of the Income Tax act, 1961 and therefore, the Assessing Officer could not have the jurisdiction to make other additions, having not made the addition on the basis of which, the reopening had been done. Hence the assessment as framed by the Ld. Assessing Officer is bad in law."*

As the assessee has assailed the validity of the assessment by way of raising the aforementioned additional ground of appeal, which involves purely a legal issue based on the facts available on record, therefore, the same is being admitted.

2. Briefly stated, the assessee society which is stated to be running an educational institution had filed its return of income for A.Y. 2011-12 on 30.09.2011, declaring nil income. The return of income filed by the assessee was processed as such under Sec. 143(1) of the IT Act. Subsequently, on the basis of information received that the assessee society had made a cash deposit of Rs. 34,64,975/- in its bank account during the year under consideration, its case was reopened under Sec. 147 of the IT Act.

3. During the course of the assessment proceedings the assessee in reply to the query raised by the A.O as regards the source of the cash deposits in its bank account, submitted that the same was the fees deposited by the students. It was observed by the A.O that the assessee which was an educational institution had filed its return of income claiming its income as exempt as per the provisions of Sec. 10(23C)(iiiad) of the IT Act. On the basis of necessary verifications, it was gathered by the A.O that the assessee during the year had claimed to have received a gross amount of Rs. 22,11,779/- from

Punjab Technical University (for short 'PTU') and other miscellaneous receipts of Rs. 19,218/-. It was noticed by the A.O that the assessee had claimed the surplus/excess of income of Rs. 12,36,369/- as exempt under Sec. 10(23C)(iiiad). On a perusal of the details pertaining to the amount received by the assessee from PTU, it was discernible from the Form 16A that the same was in the nature of payments towards commission or brokerage which had been subjected to deduction of tax at source under Sec. 194H. In the backdrop of the aforesaid facts, the A.O was of the view that though the assessee society was engaged in imparting education as a learning centre of PTU, however, the commission receipts which had been subjected to TDS in its hands under Sec. 194H were in the nature of business, trade and commerce and were not eligible for exemption under Sec. 10(23C)(iiiad). Apart there from, the A.O held a conviction that even otherwise the objects of the assessee society did not render it eligible for the exemption under Sec. 10(23C)(iiiad). In fact, the A.O was of the view that as a perusal of the 'Memorandum of Association' of the assessee society and its aims and objectives clearly revealed that the assessee society was not existing solely for educational purposes, therefore, it was not eligible for claim of exemption under Sec. 10(23C)(iiiad). In order to fortify his aforesaid conviction, it was observed by the A.O that as per the aims and objects of the assessee society it was proposed to carry out other activities other than education, therefore, it could safely be concluded that it was not existing solely for education purposes which was the basic requirement for claim of exemption under Sec. 10(23C)(iiiad). On the basis of his aforesaid deliberations the A.O was of the view that the activities of the assessee were in the nature of 'business' with a profit motive and not for a charitable purpose as defined in Sec. 2(15) of the IT Act. In the backdrop of his aforesaid observations the A.O declined

to allow the claim of exemption raised by the assessee under Sec. 10(23C)(iiiad) and brought the amount of surplus of Rs. 12,66,771/- to tax as its 'business income'.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating at length on the contentions advanced by the assessee as regards its entitlement towards claim of exemption under Sec. 10(23C)(iiiad), was however not persuaded to accept the same. The CIT(A) observed that the assessee society which was not running its own educational institution but was running a learning centre on behalf of PTU was engaged in trade, commerce or business on commission basis. In fact, the CIT(A) was of the view that the working of the assessee society was more or less as that of an educational visa consultancy firm for earning maximum profits. On the basis of his aforesaid observations the CIT(A) upheld the view taken by the A.O and concluded that the latter had rightly declined the claim of exemption of Rs. 12,66,771/- raised by the assessee under Sec. 10(23C)(iiiad) and brought the same to tax in its hands.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Ld. Authorized Representative (for short 'A.R) for the assessee submitted that the assessee is an educational institution which has been in operation since the year 2009. It was submitted by the Ld. A.R that the assessee which was involved in the sole purpose of imparting education as per the guidelines of the PTU distance education programme, had been claiming exemption under Sec. 10(23C)(iiiad) in the preceding years. Further, it was submitted by the Ld. A.R that the assessee had been granted registration under Sec. 12A of the IT Act, vide order dated 30.06.2011. It was averred by the Ld. A.R that now when the CIT (Exemptions) had himself granted the registration to the assessee

society under Sec. 12A, therefore, the objects of the assessee society could not be held to be not charitable in nature. The Ld. A.R explaining the modus operandi of the working of the assessee which was one of the 2100 learning centres of PTU spread all over the country, submitted that the assessee society as a learning centre had provided for the infrastructure and faculty as specified by the university. It was further averred by the Ld. A.R that the assessee as a learning centre would design presentations, projects, assignments and conduct internal exams and provide internal assessment. It was the contention of the Ld. A.R that the assessee as a learning centre was responsible for education delivery and would conduct seminars, open house discussions from time to time, as well as follow guidelines, formats and instructions issued by PTU. In order to buttress his aforesaid contention that the assessee as a learning centre was providing education, the Ld. A.R drew our attention to the infrastructure details which was essentially to be provided by every learning centre as per the requirement of PTU. The Ld. A.R submitted that all semester and exam fee were to be collected from the students only in the name of Registrar, PTU payable at Jalandhar, except for the library fee of Rs. 1,000/- (refundable security). The ld. A.R submitted that from the semester fee collected PTU would pay 45% towards the share of the learning centre after separating the exam fee. Apart there from, it was submitted by the Ld. A.R that the lab charges for the applied technology courses could be charged by the learning centre from the students provided the same was approved by the university. In sum and substance, it was the contention of the Ld. A.R that the assessee as a learning centre of PTU was running a distance learning education programme, and had provided for the specified infrastructure as per the requirements of the university, as well as was responsible for the education delivery to the students by

appointing a faculty as specified by the university; design presentations, projects, assignments and conduct internal exams and provide internal assessments; conduct seminars and open house discussions etc. It was the contention of the Ld. A.R that as per the contract of the assessee as a learning centre with the university i.e. PTU there was an arrangement for sharing of the semester fees that would be collected by the university. On the basis of the aforesaid arrangement 45% of the semester fees would fall to the share of the assessee in its status as that of a learning centre. The Ld. A.R in order to fortify his aforesaid contention took us through Page 62 of the assesses paper book (for short 'APB'), wherein the aforesaid sharing of the semester fee between the university and the learning centre was clearly provided. It was the contention of the Ld. A.R that the fact that PTU had deducted TDS under Sec. 194H would not conclusively supersede the aforesaid revenue sharing arrangement between the assessee and the PTU. In support of his contention that distance education programme provided by the assessee falls within the definition of "education" as envisaged in Sec. 2(15) of the IT Act, the Ld. A.R relied on the following judicial pronouncements :

(i) Venu Charitable Society and Anr. Vs. DIT
(2017) 393 ITR 63 (Del)

(ii) Soorya Educational Trust Vs. ITO
[ITA No. 579 (Mds) of 2012; dated 31.05.2012] (ITAT, Chennai)

6. Per contra, the Ld. Departmental Representative (for short 'D.R') submitted that as the assessee was not running its own educational institution, therefore, the lower authorities had rightly concluded that it was not entitled for claim of exemption under Sec. 10(23C)(iiiad) of the IT Act. It was the submitted by the Ld. D.R that as the lower

authorities had rightly declined to allow the claim of exemption raised by the assessee under Sec. 10(23C)(iiiad), therefore, the appeal of the assessee was devoid of any merits and was liable to be dismissed.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee is an authorized learning centre of PTU under the distance education programme. As per the module of operation, the assessee as a learning centre affiliated with PTU is obligated to carry out educational programmes as prescribed by the university and make necessary provisions viz. (i) infrastructure as specified by the university; (ii) faculty as specified by the university; (iii) local marketing for promotion of courses as specified by the regional centre; (iv) timely course completion; (v) maintenance of records of students and MIS; (vi) designing of presentations, projects, assignments and exams; (vii) conducting internal exams and providing internal assessment; (viii) conducting seminars and open house discussions from time to time; (ix) follow guidelines, format and instruction issued by PTU and regional centre from time to time; (x) maintain the viability of PTU project at the learning centre; and (xi) responsibility for education delivery. The assessee society being an authorized learning centre has to honour the obligations set out by PTU for providing education to enrolled students and has to employ teachers for taking classes of enrolled students. In fact, the assessee which is an educational institution is imparting education through distance learning route in the society by running a learning centre affiliated to PTU. We have given a thoughtful consideration to the issue before us and are unable to persuade ourselves to subscribe the observations of the lower authorities that the distance learning provided by the assessee to the students in its capacity as a learning

centre of PTU would not fall within the realm of the definition of the term 'education' as envisaged in Sec. 2(15) of the IT Act. As per the literal meaning "education" is a process for facilitating learning or the acquisition of knowledge, skills, values and habits. Insofar the activities of the assessee society in its status as that of a learning centre are concerned, we find that the assessee in order to facilitate delivery of education provides the infrastructure along with the faculty as specified by the university; carries out timely completion of the courses; maintains records of the students; designs presentations, projects, assignments; conducts internal exams and provide internal assessment; conduct seminars and open house discussions from time to time and does all necessary acts as required by the university, therein rendering it responsible for delivery of education to the students. We are unable to comprehend as to why the aforementioned activities of the assessee society would not fall within the realm of rendering of education. Insofar the observations of the lower authorities that as PTU by deducting TDS under Sec. 194H on the amount paid to the assessee society had characterized the same as payment towards commission or brokerage, therefore, the same would be in the nature of business receipts of the assessee, we are afraid does not find favour with us. In fact, a perusal of Section 8.1 of the PTU distance education programme (Page 62 of APB) clearly reveals that as per the arrangement between PTU and the assessee learning centre, the semester fee collected by the university i.e. PTU is to be shared with the assessee learning centre after separating the exam fee. It is clearly mentioned in the said arrangement that the assessee would be entitled to a share of 45% of the semester fee (after separating exam fee). Admittedly, PTU while making the payment to the assessee in its status as that of learning centre had deducted tax at source under Sec. 194H, which at the first blush would give an

impression that the same is in the nature of commission or brokerage paid by PTU to the assessee learning centre. However, we are of the considered view that now when as per the PTU distance education programme/arrangement between PTU and the assessee learning centre, it has been specifically stated that the assessee would be entitled to the share of 45% of the semester fee collected by the university (after separating exam fee), therefore, the mere fact that PTU had deducted TDS under Sec. 194H while making the said payment to the assessee would in no way lead to recharacterization of the said amount in the hands of the assessee. In sum and substance, the nature of receipt/amount in the hands of the assessee learning centre would continue to be governed and regulated as per its arrangement with the university, and not by the nomenclature given by the university i.e. PTU while making the said payment. We may herein observe that a similar issue was involved in the case before a coordinate bench of the Tribunal i.e. ITAT, Chennai Bench "B" in Soorya Educational Trust Vs. ITO [ITA No. 579 (Mds) of 2012; dated 31.05.2012]. As in the case before us, in the aforementioned case also the assessee was entitled for a share of fees collected by the university i.e. Annamalai University. The assessee in the said case would be imparting oral education to the students by the teachers who would be employed by the assessee. Apart there from, the assessee was maintaining the attendance of the students in order to render them eligible to write the examination. Further, the curriculam and conduct of programmes as in the case before us was the responsibility of the assessee in the aforementioned case. Interestingly, in the aforementioned case also the university i.e. Annamalai University had in the TDS certificates mentioned that fees paid to the assessee was for professional and technical services. The Tribunal after deliberating at length on the aforesaid facts observed that the lower authorities

had erred in concluding that the services rendered by the assessee were to be equated with that of a coaching institute. In fact, it was observed by the Tribunal that as the assessee was rendering formal education, therefore, it clearly fell within the realm of charitable activities as defined under Sec. 2(15) of the IT Act.

8. We thus in terms of our aforesaid observations are of the considered view that as the assessee in the case before us was providing formal education, therefore, the lower authorities had erred in taking a contrary view and had wrongly concluded that the surplus of Rs. 12,66,771/- shown by the assessee was not eligible for exemption under Sec. 10(23C)(iiiad) of the IT Act. We thus in terms of our aforesaid observations set aside the order of the CIT(A) and delete the addition of Rs. 12,66,771/- made in the hands of the assessee.

9. The appeal of the assessee is allowed.

Order pronounced in the open court on 05/04/2019

Sd/-	Sd/-
(N.K. Saini)	(Ravish Sood)
VICE PRESIDENT	JUDICIAL MEMBER

Place : Chandigarh; Dated 05.04.2019
Ps. Rohit

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

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent.
3. **आयकर आयुक्त(अपील)** / The CIT(A)-
4. **आयकर आयुक्त** / CIT
5. DR, ITAT, Camp Bench, Jalandhar
6. **गार्ड फाईल** / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण/ITAT, Camp. Bench, Jalandhar