



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.561/LKW/2018
Assessment Year: 2010-11

Dy. CIT (Exemptions) Lucknow	v.	M/s Indian Institute of Management Lucknow Off Sitapur Road, Prabandh Nagar Lucknow
		TAN/PAN:AAATI2622Q
(Appellant)		(Respondent)

Appellant by:	Shri S. K. Madhuk, CIT (DR)		
Respondent by:	Shri Ashish Kapoor, C.A.		
Date of hearing:	20	08	2019
Date of pronouncement:	22	08	2019

ORDER

PER A. D. JAIN, V.P.:

This is Revenue's appeal against the order of the Id. CIT(A), Lucknow, dated 8/5/2018, for the Assessment Year 2010-11, taking the following grounds of appeal:

1. Ld. Commissioner of Income Tax (A) has erred in law and facts by allowing the appeal of the assessee and deleting the addition of Rs.4,05,76,925/- made on account of the assessee had not maintained separate books of accounts in respect of the business activities, which are not incidental to the objectives of the society.
2. Ld. Commissioner of Income Tax (A) has erred in law and facts by following other year's appellate order and thereby

deleting the addition of Rs.46,83,778/- made by the Assessing Officer.

3. Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition of Rs.6,80,87,395/- made by the AO on account of income received from MDP activity.

4. Ld. Commissioner of Income Tax (A) has erred in law and facts by following other year's appellate order and deleting the addition of Rs.17,50,68,282/- made on account of net income over expenditure.

5. Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition of Rs.4,96,04,841/- made on account of interest & income from other sources.

6. Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition of Rs.56,43,267/- made on account prior period expenses.

2. The Assessing Officer, while denying to the assessee, exemption under section 10(23C)(iv) of the Income Tax Act, 1961, made, inter alia, the following additions, as crystalized by the Id. CIT(A) in para 4, at pages 7 to 9 of the impugned order:

"4. The main issue involved in this appeal pertains to denial of exemption u/s 10(23C)(iv) of the Act. The AO Held as under:-

- Except for activities where IIML is imparting structured training to the students and the motive is not to make profit, all other activities would fall beyond the meaning of 'Education'.*
- The AO noted that IIML is receiving income from activities like placement, CAT, Consultancy, Management Development Programme (MDP) and post Graduate Programme (PGP). Expenses have been claimed against each of these incomes.*

The AO examined each activity of IIML from the point of view of its eligibility for claim of exemption.

- *Placement and Common Admission Test(CAT)*

AO noted that appellant had earned net income of Rs.63,83,158/- from placements and Rs.3,41,93,407/- from CAT. The AO held that neither placements nor CAT is related in any way to systematic imparting of knowledge and is not an educational activity. The AO held that appellant had failed to furnish any explanation that this activity is as per the objects of appellant society. It was held that these are profit generating activities related to education. It was held that appellant has failed to maintain separate books of accounts in respect of such activities, even if, this business is claimed to be incidental to attainment of objectives of appellant society. Thus, the net income of Rs.63,83,518/- from placements and Rs.3,41,93,407/- from conduct of CAT was held as not eligible for exemption. These amounts to taking Rs.4,05,76,925/- was added as Income from other sources in hands of appellant.

- *Consultancy and Professional activities*

AO noted that appellant had received net income of Rs.46,83,778/- by offering consultancy from faculty members to various organizations like Coca Cola Ltd. Planning Commission etc. Total expenses debited are 83.05% of the gross receipts. AO noted that IIM has formulated norms for sharing this income between faculty and IIM. The AO held that appellant society. This activity was held potentially as a profit generating activity related to education. The AO held that appellant has failed to maintain separate books of accounts for this activity even if this activity is held to be incidental to attainment of appellant's objectives. This income of Rs.46,83,778/- was held to be not eligible for exemption u/s 10(23C)(iv) if the Act and was added to total income of the appellant under the head Income from other sources.

- *Management Development Programme(MDP)*

AO noted that this is main income generating activity of the appellant and net income from MDP was shown at Rs.6,80,87,395/-. During the year under consideration 91 MDP

programmes were conducted by appellant out of which 23 programmes were ope programmes and 68 were sponsored programmes. MDP was conducted for executives of various organization from private sector government bodies like Indian Railways, CAG, NTPC, RBI etc. AO noted that for earning the income, the appellant had to incur 44.93% of its revenue earnings. AO noted that IIM is sharing its sharing its profit form MDP with its faculty members.

The AO held that MDP cannot be strictly called an educational activity ad content of every MDP is different from each other depending or requirement of client/customer and appellant is sharing income from MDP with faculty members. In view of these facts the AO held that income from MDP of Rs.6,80,87,395/- does not qualify for exemption u/s 10(23C)(iv) of the Act and same was taxed under the head Income from other sources.

- *Post Graduate Programme(PDP)*

AO noted that PDP consists of five different academic programmes out of which PGPI is the flagship programme. These are for different periods i.e. two years to four years. Net income from this programme was calculated at Rs.17,50,68,282/-. AO disallowed exemption u/s 10(23C)(iv) on the said income for the reason that appellant filed to apply ad invest or deposits its income in accordance with provisions of (a) and (b) of third provision of section 10(23C) of the Act. This income was added to total income of appellant as Income from Other Sources.

- *Interest and Income from Other Sources*

Appellant had shown income of Rs.3,47,58,622/- from interest and income of Rs.1,48,45,979/- as Income from other sources. This income was from banks and fixed deposits in banks. AO held that this income canto be held as generated from educational activities. This amount of Rs.49604841/-, was held as not eligible for exemption as claimed and was taxed in hands of appellant as income from other sources."

3. All these additions, along with that of Rs.56,43,267/-, made on account of prior period expenses, stand deleted by the Id. CIT(A), by virtue of the impugned order. The Id. CIT(A) has held as follows:

"The issues raised by the AO are in fact similar to the Issues raised in appellants own case for AY 2007-08 and 2008-09 in which my predecessors had examined the issue of eligibility of the appellant with reference to the exemption under section 10(23C)(iv) and section 10(23C)(iiiab) of the Act. It was held that the appellant was eligible for exemption u/s 10(23c)(iv) and the activities undertaken by the appellant were in fact integral part of the educational activities of the appellant which have been carried out in accordance with its objects. For the sake of clarity relevant portions of the order is reproduced below:-

The Assessing Officer has tested the appellant's activities in the light of the Supreme Court's decision in the case of sole Trustee, Lokshikshan Trust to come to the conclusion that certain activities undertaken by the appellant were not educational in nature. The decision of the Apex court was rendered in the context of the word education as it appears in the definition of charitable purpose u/s 10(23C)(iv) the concept of education does not have to be given any wide or extended meaning, it would surely encompass systematic dissemination of knowledge and training in specialized subjects. The very fact that benefit of exemption u/s 10(23C)(iv) is sought to be conferred on a university as well itself implies that the expression educational purposes as used in the provisions encompasses education for advance studies in specialized subjects. The AO's perception (as expressed in para 12(c)(iii)) that Management Development Programmer undertaken by the appellant for senior level officers and executives does not amount to an activity educational in nature, is therefore, not found based on logical appreciation of facts.

It is not established by the AO that the activities undertaken by the appellant amounted to any deviation from its objects.

Activities like organizing the Common Admission Test and placements were nothing but allied activities entrusted to it and the y were integral part of its objects which were essentially educational. If the activities, held by the AO to be non educational, resulted in some surplus, it was only incidental to its educational purpose and was a byproduct in the pursuit of that purpose. I am, therefore, not in agreement with the Assessing Officer's conclusion that the appellant institution did not exist solely for educational purposes by holding that some of its activities were non educational in nature.

On the issue of denying the appellant's claim for exemption u/s 10(23C)(iv), holding that the net revenue in conducting CAT was shared equally with sex IIMS and that the receipts from clients in respect of consultancy and professional activities were shared, in a prescribed ratio between the appellant institution and the members of faculty. And on the perception that the distribution of net revenue among IIMS and sharing of professional receipts between the appellant institution and the faculty as distribution of profits. It was held that:-

The sharing of receipts form consultancy and professional activities between the faculty and the IIM, in a prescribed ratio and resultant payment as honorarium claimed as expenditure is before the surplus/profit is computed. The share in receipts is as per the formula prescribed, the legitimate expenditure in the hands of the appellant institution and it is to be incurred inevitably to ensure the standards/quality of services which the IIML has to maintain. Highly specialized faculty can be employed/engaged by the institution only if the salary/remuneration commensurate with their professional qualification/competence is paid to them. It may not be correct to hold this payment or quantum thereof against the appellant institution on a consideration of salary and other monetary incentives given to the faculty members.. The appellant institution will be the sole judge as to whom it should employ/engage as faculty and agree upon the payment in order that best services maybe rendered to its clients. Payments in question neither imply distribution of surplus nor do they result in private enrichment.

The appellate order was challenged by the department before the Hon'ble ITAT, Lucknow who vide their order dated 11.07.2012 restored the file back to the AO for examining the issue of allow ability of exemption u/s 10(23C)(iv) of Act for the Ays under consideration. The AO, after re-examining the case, in both the Ays concluded that the appellant fulfilled the conditions mentioned in the approval granted by the Chief Commissioner of Income Tax Lucknow and hence was eligible for exemption u/s 10(23C)(iv) of the Act.

Copies of the orders were submitted by the appellant and which are part of record now. The appellant has been granted approval u/s 10(23C)(iv) of the Act vide order dated 29.01.2009 of Ld. CCIT Income Tax, Lucknow for the A.Y. 2005-06 to 2010-11 subject to fulfillment for the withdrawal of approval were dropped and this fact was intimated to the appellant vide letter F.No. CC/LKO/B/Vol-20/2007-08 dated 10.06.2001. This implies that the approval granted to the appellant was effective for the A.Y. under consideration. The AO has not brought any violation of the conditions mentioned in the approval, in his assessment order. The AO is bound to allow the benefits of sec. 10(23C)(iv) of the Act to the appellant.

Furthermore, the assessment in the subsequent AYs in the appellants own case have been made by the AO on returned income thereby accepting the claim of exemption u/s 10(23C)(iv) of the Act. A summary of the assessment history in the appellant case is reproduced as under:-

<i>S. No.</i>	<i>Assessment Year</i>	<i>Demand Raised/ Income Assessed At:</i>
<i>1</i>	<i>AY 2006-07</i>	<i>NIL</i>
<i>2</i>	<i>AY 2007-08</i>	<i>NIL</i>
<i>3</i>	<i>AY 2008-09</i>	<i>NIL</i>
<i>4</i>	<i>AY 2009-10</i>	<i>NIL</i>
<i>5</i>	<i>AY 2011-12</i>	<i>NIL</i>
<i>6</i>	<i>AY 2012-13</i>	<i>NIL</i>
<i>7</i>	<i>AY 2013-14</i>	<i>NIL</i>
<i>8</i>	<i>AY 2014-15</i>	<i>NIL</i>

Further the issue of allow-ability of exemption under section 10(23C)(iv) of the Act in the year under appeal to the appellant is squarely covered under the decision of Hon'ble Supreme Court of India in the case of Radhasoami Satsang vs. Commissioner of Income –tax reported in (1992) 193 ITR 321 wherein it has been observed and held as under:-

"9. We are aware of the fact that, strictly speaking, res judicata does not apply to IT proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

One these reasoning's, in the absence of any material change justifying the Revenue to take a different view of the matter – and, if there was no change, it was in support of the assessee – we do not think the question should have been reopened and contrary to what had been decided by the CIT in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under ss. 11 and 12 of the IT Act of 1961. Since the facts and circumstances of the appeal under consideration are exactly the same with that of AY.2007-08 and 2008-09 coupled with the fact that there is no change in the nature of the work and activities of the appellant and the department has accepted the claim of exemption 10(23C)(iv) of the Act in the subsequent years, I do not find any reason to deviate from the findings recorded by my predecessor.

In view of the discussion above I find that the appellant is eligible for exemption u/s 10(23C)(iv) of the Act and accordingly the additions made by the AO are directed to be deleted."

4. Heard. The Id. CIT(A) has followed the first appellate order for assessment years 2007-08 and 2008-09. The Tribunal, on appeal by the Department for assessment years 2007-08 and 2008-09, restored the file to the Assessing Officer to re-examine the issue of exemption under section 10(23C)(iv) of the Act. A copy of this Tribunal order in ITA Nos.366 & 47/LKW/2011 is at APB: 144-150. The relevant portion thereof reads:

"9. Having given a thoughtful consideration to the rival submissions and from a careful perusal of record, we find that if the claim of the assessee is allowed under section 10(23C)(iv) of the Act, there would be no need to examine the claim of the assessee under section 10(23C)(iiiab) of the Act where the assessee is required to exist solely for educational purpose. So far as the action of the Assessing Officer for not entertaining the claim under section 10(23C)(iv) of the Act is concerned, we are of the view that he has followed the judgment of Hon'ble Apex Court in the case of Goetze (India) Ltd. v. CIT (supra) and right in not admitting the claim of the assessee, but considering the fact that during the course of assessment proceedings the assessee was granted approval by the Chief Commissioner of Income-tax vide his order dated 29.1.2009 for exemption under section 10(23C)(iv) of the Act for the impugned assessment year, the claim of the assessee should have been examined in the light of approval granted by the Chief Commissioner of Income-tax. Though the Assessing Officer cannot entertain the aforesaid claim without filing the revised return, but the Tribunal being the appellate authority have the jurisdiction to send the matter back to the Assessing Officer to reconsider the claim of the assessee in the light of approval granted by the Chief Commissioner of Income-tax allowing claim under section 10(23C)(iv) of the Act for the impugned assessment year. Moreover, this approval was

granted subject to certain conditions which are to be examined by the Assessing Officer while allowing the claim under section 10(23C)(iv) of the Act. If the claim of the assessee under section 10(23C)(iv) of the Act is allowed, there would not be no need to examine the claim of the assessee under section 10(23C)(iiiab) of the Act. We, therefore, do not wish to express our views with regard to the claim of exemption 10(23C)(iiiab) of the Act on the issues raised before the lower authorities. We, therefore, set aside the order of the Id. CIT(A) and restore the matter to the file of the Assessing Officer with a direction to examine the claim of the assessee under section 10(23C)(iv) of the Act in the light of the conditions mentioned in the approval granted by the Chief Commissioner of Income-tax vide order dated 29.1.2009.

10. Similar is the position in the appeal in ITA No. 47/LKW/2012. Therefore, in that appeal also we set aside the order of the Id. CIT(A) and restore the matter to the Assessing Officer for re-adjudication in terms indicated above.

11. In the result, both the appeals of the Revenue are allowed for statistical purposes."

5. For both the years, the Assessing Officer, vide orders (APB:151-157 for assessment year 2007-08 and APB-158-164 for assessment year 2008-09), dated 21/3/2014, recorded his finding while computing assessments at Nil income, on remand of the matter by the ITAT, as below:

"On going through to the submission filed by the assessee and after examination of accounts, it is observed that the assessee has fulfilled the conditions mentioned in the approval granted by the Chief Commissioner of Income Tax for claiming exemption vide order dated 29.1.2009."

6. The assessments for assessment years 2006-07 to 2009-10 and 2011-12 to 2014-15 were completed by the Assessing Officer at the returned income, i.e., Nil, accepting the assessee's claim for exemption under section 10(23C)(iv) of the Act for all these years.

7. All these developments have duly been taken into consideration by the Id. CIT(A). The Id. CIT(A) has also followed 'Radhasoami Satsang vs. CIT', 193 ITR 321 (SC), wherein, the rule of consistency has been underlined in cases where there is no change in facts.

8. Before us, the Department has not shown the facts for the year under consideration to have undergone any change whatsoever from those present for all the aforementioned years, where the assessee's claim for exemption under section 10(23C)(iv) of the Act stands consistently accepted. The position further remains the same for assessment years 2015-16 and 2016-17 too. The assessment order for assessment year 2016-17 is at APB: 230-231, where, the Assessing Officer has held:

"3. The assessee society has been constituted on 27.07.1984 and it has been renewed with effect from 27.07.2014 for further five years. The assessee has claimed exemption u/s 10(23C)(iv) of the Income Tax Act, 1961. The society is registered u/s 12AA of the income Tax Act, 1961 vide order dated 08.12.1998 of the Ld. Commissioner of Income Tax, Lucknow. The society is also approved u/s 10(23C)(iv) of the income tax act, 1961 vide order dated 19.01.2009 passed by the Chief Commissioner of income Tax, Lucknow. The copy of registration u/s 12AA of the Income Tax Act, 1961 granted by Ld. Commissioner of Income Tax, Lucknow is placed on file.

4. During the year under consideration, as per computation of income, total receipts have been shown at Rs.1,45,01,55,333/-. Out of these receipts at Rs.99,30,38,710/- has been shown as application of fund, and balance amount of Rs.45,71,16,623/-, is exempt u/s 10(23C)(iv) of the Income Tax Act, 1961. In view of the above discussion, the assessment is completed at returned income."

9. It is not disputed that the activities carried on by the assessee, i.e., educational activities, have remained the same for all these years, including the year under consideration.

10. In view of the above, finding no error therewith, the Id. CIT(A)'s findings on all the issues raised, are confirmed. Ground nos. 1 to 6 are rejected.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 22/08/2019.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:22/08/2019

JJ:2008

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order
Assistant Registrar