IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBERAND

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.6922/Mum./2016
(Assessment Year : 2012–13)

ITA no.6111/Mum./2016
(Assessment Year : 2011–12)

Institute of Chemical Technology
Nathalal Parikh Marg, Matunga
Mumbai 400 019 PAN:AAATI4951J ……. Appellant

v/s

Income Tax Officer
Ward–16(2)(4) ……. Respondent

Assessee by : Shri Nishant Thakkar a/w
Ms. Jasmine Amalsadwala
Revenue by : Shri Kumar Padmapani Bora

Date of Hearing – 17.12.2019	Date of Order – 15.01.2020

O R D E R

PER SAKTIJIT DEY. J.M.

Aforesaid appeals by the same assessee are directed against two separate orders passed by the learned Commissioner of Income Tax (Appeals)–1, Mumbai, pertaining to the assessment years 2011–12 and 2012–13,

2. The common grounds raised by the assessee in both the appeals are in relation to disallowance of claim of exemption under section 11 of the Income Tax Act, 1961 (for short *"the Act"*) in respect of

consultancy fee received. Of course, the assessee has also raised alternative ground claiming exemption u/s 10(23C) of the Act.

2. Brief facts are, the assessee was established as a department of chemical technology on 1st October 1933, by the University of Mumbai. The assessee institution is basically undertaking research in the field of chemical engineering and providing training. With passage of time assessee was granted autonomy under University Grant Commission (UGC) regulations by the University of Mumbai and converted into an independent institution on 26th January 2002. Subsequently, on the recommendation of Government of Maharashtra and University of Mumbai, the assessee was granted deemed University status by the Ministry of Human Resources Development on 12th September 2008, with all the provisions of UGC for funding and support as a State owned deemed University. When the assessee was a part of Mumbai University, the income earned by it formed part of income of Mumbai University, and was exempt under section 10(23C) of the Act. For the impugned assessment years, the assessee filed its return of income under section 139 of the Act declared nil income after claiming exemption under section 11 of the Act. The Assessing Officer, in the course of assessment proceedings, noticed that during the year under consideration the assessee received consultancy fee. Noticing this, the Assessing Officer called upon the assessee to explain why the

consultancy fee received should not be treated as business income and brought to tax. In reply, it was submitted that certain projects were undertaken with a view to carry out research and help the students/fellows of the Institution to gain actual working experience in live projects in the subject during the course of their studies. The training session helps in imparting the results of the research to the Industry, hence, serves as a practical experience and at the same time it helps the Institute in giving research in new projects. It was submitted, out of the total fee received from such projects, only 1/3rd is taken by the assessee and the balance amount is paid to the faculty who undertakes the research project. It was submitted, the Institution's share is mainly to cover the cost of infrastructure / laboratory facilities provided by the Institution for undertaking the research and administrative expenditure. Thus, it was submitted, the activities undertaken by the assessee is not in the nature of business but only for research and training purpose and therefore is part of its main activity of imparting education on the latest technical development in the field of chemical technology being a leading training Institution. The Assessing Officer, however, did not find merit in the submissions of the assessee. He observed, nowhere in the objects of the Institution the assessee is required to provide consultancy service. Further, he observed, while making payment of consultancy fee major companies have deducted tax under section

194C and 194J of the Act. He also observed, out of the receipt of consultancy fee the assessee has shown payment to two professors which indicates that professionals were engaged in the activity of consultancy under the roof of the Institution and there is no major role of students for education purpose. He observed, from the aforesaid facts it becomes clear that the intention of the assessee is to make profit which is further strengthened from the fact that the assessee is not maintaining any separate accounts as envisaged under section 11(4) and (4A) of the Act. Thus, the Assessing Officer concluded that the revenue earned on such consultancy activity cannot be regarded as charitable in view of the provisions of section 2(15) r/w section 11 and 12 of the Act. On the aforesaid reasoning, the Assessing Officer disallowed assessee's claim of exemption only with regard to its share in consultancy fee received, though, he allowed assessee's claim of exemption under section 11 of the Act in respect of balance income in both the assessment years. Against the aforesaid decision of the Assessing Officer, the assessee preferred appeals before the first appellate authority.

3. However, relying upon the decision of the Tribunal in assessee's own case for the assessment year 2010–11, learned Commissioner (Appeals) upheld the disallowance/addition made by the Assessing Officer.

4. The learned Authorised Representative, reiterating the stand taken before the Revenue authorities, submitted that the assessee is a purely educational institution and is a deemed university. He submitted, assessee is not only granted deemed university status by the Ministry of Human Resources Development, but it received grant from the Government under UGC regulations. He submitted, the assessee is also approved as an educational Institution for providing chemical engineering course by AICTE which is the competent authority to grant approval to technical institutions. The learned Authorised Representative submitted, the aforesaid facts clearly establish that the assessee is an Institution created for providing education, hence, is covered under the definition of charitable purpose as per section 2(15) of the Act. He submitted, the consultancy service provided for different projects is part of its research and educational activity involving the faculty and students, therefore, ancillary and incidental to its main object of providing education. That being the case, the consultancy activity cannot be considered as a separate activity distinct from its main object of providing education. He submitted, assessee's 1/3rd share in the consultancy fee received by the faculty is in the nature of honorarium and approved by the UGC. He submitted, since the assessee is providing education, the proviso to section 2(15) of the Act would not be applicable as it is only applicable

to the last category of activity provided under the definition of charitable purposes under section 2(15) of the Act viz. *"advancement of any other object of general public utility"*. Therefore, even though the assessee had received a share in the consultancy fee, the same was received in furtherance of its object of educational activity, hence, cannot be treated as an activity in the nature of trade, commerce or business to treat it as non–charitable purpose. Thus, he submitted, assessee is eligible for exemption under section 11 of the Act in respect of the consultancy fee received. At this stage, the learned Authorised Representative fairly submitted that while deciding identical issue of exemption claimed under section 11 of the Act in respect of consultancy fee, the Tribunal in assessment year 2010–11 has decided the issue against the assessee. However, he submitted, the aforesaid decision of the Tribunal is distinguishable on fact as the Tribunal had no occasion to consider assessee's argument that the proviso to section 2(15) of the Act is not applicable to an assessee engaged in educational activity. Without prejudice, the learned Authorised Representative submitted, assessee is a deemed university engaged in the activity of providing education. He submitted, assessee also received substantial grant from the Government which is more than 60% of the total fund received during the year under consideration. Therefore, it is entitled to claim exemption under section 10(23C)(iiiab) of the Act. He submitted, in the year 2009, though, the

assessee had applied for approval for claiming exemption under section 10(23C)(vi) of the Act, however, vide order dated 21st December 2009, learned Chief Commissioner of Income Tax, Mumbai, had refused to grant approval under section 10(23C)(vi) of the Act on the reasoning that assessee's case falls under section 10(23C)(iiiab) of the Act. Thus, he submitted, the Department itself recognizes the assessee as a university or other educational institution existing solely for education purpose and not for the purpose of profit. He submitted, subsequently, learned Chief Commissioner of Income Tax, Mumbai, has granted approval under section 10(23C)(vi) of the Act to the assessee for the assessment year 2014–15, thereby, recognising the assessee as a university/other educational institution existing solely for the purpose of education and not for the purpose of profit. To support the aforesaid submissions, the learned Authorised Representative sought permission of the Bench to furnish the relevant orders of learned Chief Commissioner of Income Tax, Mumbai, and few more documents as additional evidences. Thus, he submitted, assessee is otherwise eligible for exemption either under section 10(23C)(iiiab) or under section 10(23C)(vi) of the Act as not only it is a University/other educational institution existing solely for the purpose of education and not for profit but has received substantial fund from the Government. He submitted, assessee's alternative claim of exemption under section 10(23C)(iiiab) or under section

10(23C)(vi) of the Act, though, was raised before the Assessing Officer and learned Commissioner (Appeals), however, they have not at all dealt with the issue. He submitted, the aforesaid claim/contention of the assessee was also never considered by the Tribunal in assessment year 2010–11. Thus, he submitted, the issue has to be restored back to the Assessing Officer for fresh examination.

5. The learned Departmental Representative submitted, as far as assessee's claim of exemption u/s 11 of the Act is concerned, the issue is covered by the decision of the Tribunal in assessee's own case in assessment year 2010–11. With regard to the alternative claim of exemption under section 10(23C) of the Act, the learned Departmental Representative submitted, the issue was never raised before the Revenue authorities and has been raised for the first time before this forum.

6. We have considered rival submissions and perused the material on record. As regards the assessee's claim of exemption under section 11 of the Act, in respect of 1/3rd share received from consultation fee, we must observe that while deciding identical issue in its own case in assessment year 2010–11, the Tribunal has upheld the decision of the Departmental Authorities in disallowing assessee's claim of exemption under section 11 of the Act in respect of consultancy fee. On a perusal of the aforesaid order of the Tribunal passed in ITA no.3808/Mum./

2015, dated 28thOctober 2015, for the assessment year 2010–11, it is observed that the Tribunal has mainly proceeded on the basis that the consultancy fee received by the assessee is an activity in the nature of trade, commerce or business or an activity of rendering any service in relation to any trade, commerce or business for a fee, hence, is covered under the proviso to section 2(15) r/w section 11(4) and 11(4A) of the Act. To overcome the effect of the aforesaid decision the contention of the assessee is, the proviso to section 2(15) of the Act is not applicable to the activity of education. It is relevant to observe, in the course of hearing before us, the assessee has filed certain additional evidences, such as, approval of AIECTE, approval of Government as deemed university, order passed by the learned Chief Commissioner of Income Tax under section 10(23C)(vi) of the Act etc. In our opinion, the additional evidences filed by the assessee will have a crucial bearing on the issue, hence, we are inclined to admit them. On a perusal of the additional evidences filed before us, prima facie, we are of the view that the assessee has been recognized as a deemed university, hence, falls within the category of university/other educational institution covered under section 10(23C)(iiib) or 10(23C)(vi) of the Act. Further, it has been recognized as an educational institution by competent authorities of the Government. Now it is fairly well settled that the proviso to section 2(15) of the Act applies only to the activity of "the advancement of any other object of

general public utility" as per the definition of charitable purpose under section 2(15) of the Act. It is the contention of the assessee that since it is engaged in the activity of providing education, the proviso to section 2(15) of the Act is not applicable. The aforesaid aspect has not been examined or dealt with by the Tribunal in assessment year 2010–11 probably because no pleading to that effect was taken by the assessee. Be that as it may, in our considered opinion, the contention of the assessee regarding applicability of the proviso to section 2(15) of the Act requires examination keeping in view the decision of the Hon'ble Jurisdictional High Court in DIT (E.) v/s Lala Lajpatrai, [2016] 383 ITR 345 (Bom.), wherein, the Hon'ble Jurisdictional High Court has held that the test to determine as to what would be a charitable purpose within the meaning of section 2(15) of the Act is to ascertain what is the dominant object/activity. The Court has observed that if the dominant object is the activity of providing education, it will be charitable purpose under section 2(15) of the Act, even though, some profit arises from such activity. Therefore, assessee's contention regarding applicability of proviso to section 2(15) of the Act requires examination. Further, assessee's claim of exemption u/ 10(23C)(iiiab) or 10(23C)(vi) of the Act also requires examination keeping in view the orders passed by the learned Chief Commissioner of Income Tax, Mumbai, under section 10(23C)(vi) of the Act and also considering the fact that the assessee has been recognized as a deemed university

and receiving substantial grant from the Government. Since the aforesaid claim of the assessee has not at all been examined by the Departmental Authorities, we are inclined to restore the issue to the file of the Assessing Officer for re–examination and direct him to adjudicate the issue keeping in view the additional evidences filed by the assessee and the decisions to be cited before him. We make it clear that the Assessing Officer must consider all the contentions of the assessee with regard to the applicability of the proviso to section 2(15) of the Act as well as the claim of exemption under section 10(23C)(iiiab) or under section 10(23C)(vi) of the Act. Needless to mention, the Assessing Officer must provide reasonable opportunity of being heard to the assessee before deciding the issue through a speaking order. Grounds are allowed for statistical purposes.

7. In the result, assessee's appeals are allowed for statistical purposes.

Order pronounced in the open Court on 15.01.2020

Sd/-	**Sd/-**
S. RIFAUR RAHMAN	**SAKTIJIT DEY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 15.01.2020

<u>Copy of the order forwarded to</u>:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Mumbai City concerned;

(5) The DR, ITAT, Mumbai;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai