

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-1', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 529/Del/2019 : Asstt. Year : 2015-16**

IMC of ITI Dadri, C/o Government ITI Dadri, Choulas Road, Dadri, G.B. Nagar, U.P.-203207	Vs	ITO (Exemption) Ward, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAAI5190A</b>		

**Assessee by : Sh. Ashwini Goyal, CA**

**Revenue by : Sh. Prakash Dubey, Sr. DR**

**Date of Hearing: 21.01.2021**

**Date of Pronouncement: 10.03.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Ghaziabad dated 17.10.2018.

2. Following grounds have been raised by the assessee:

*"1. That the assessee has not given reasonable opportunity for showing the cause before the learned Assessing Officer and CIT(A).*

*2. That the reasonable opportunity to hearing of the case was not given by the learned Appellate Authority i.e. Commissioner Appeal in the circumstances off the case. The Learned officer have relied the bare language off the Act as written in the Income Tax Act, But a larger view may be taken for granting benefit to the assessee.*

*3. To make concise the appeal and better understanding, the fact of the case which contains the grounds of appeal has not been reproduced here again.*

*4. That the assessee craves indulgence of the appellat authority to urge any further grounds at the time of hearing.*

*5. That it is prayed and requested that the appeal may kindly be entertained for hearing without payment off disputed demand because the assessee has not been given reasonable opportunity of heard."*

3. The Assessee is a registered Society under U.P. Society Registration Act vide Registration No. 638 of 2011-12 dated 29.08.2011 having validity upto 28.08.2016. The society has been granted registration u/s 12AA of the Income Tax Act, 1961.

4. The aims & objectives of the society are as under:

**A. Aims of the Society:**

(i) The main of the Society is to assist in improvement of standard of vocational training and skill development in the country as a whole.

(ii) The Society has been formed with the specific aim of up gradation of the Industrial Training Institute (ITI) Dadri into a centre of excellence in such a way that the training provided in the ITI is improved and becomes demand driven leading to better employability of the passing out graduates.

(iii) In general the society shall function on no profit-no principle. However its affairs shall be managed in such a way

that it becomes self supporting in due course and is able to meet all its expenses and liabilities on its own.

**B. The main objects to be pursued by the Society are:**

(i) To manage affairs of the ITI Dadri according to the terms and conditions set out in a Memorandum of Agreement to be signed among the Central Government, State Government and Industry Partner. The representative of the Industry Partner shall sign this Memorandum of Agreement on behalf of the society also as its chairman.

(ii) To development an Institute Development Plan (IDP) for the ITI Dadri. The IDP shall, interlaid, define long-term goals of the institute, the issues and challenges facing the institute and the strategies for dealing with them. It shall set targets for institutional improvement, key performance indicators, and detail the infrastructural & financial requirement with year wise break up to meet the needs.

(iii) To assess emerging skill requirement in the region and suggest changes in the training courses being run in the ITI.

(iv) To obtain short term, medium term and long term requirement of skilled work force and take steps to produce graduates in the ITI accordingly.

(v) To identify short-term training courses, which can be offered in the ITI, develop infrastructure for the same, organize and run the courses and charge suitable fees for the same.

(vi) To review training needs of instructors and administrative/office staff of the ITI and arrange for their training program.

(vii) To plan & establish such production/service centers in the ITI which help the trainees develop/learn their skills and also generate funds for the Society to be used in the task of up gradation.

(viii) To adopt innovative measures like providing consultancy/ advisory services to the industry so as to generate revenue which can be utilized for development of training activities in the ITI.

(ix) To appoint contract faculty as per need as per rules regulations of the Society.

(x) To assess the requirement of funds for the ITI and make recommendations to the State Government on the funds provided by it to the ITI out of its Annual Budget.

xi) To make expenditure out of the funds of the Society, including interest free loan received from the Central Government under the scheme 'Up gradation of 1396 Government ITIs through public Private Partnership', as per prescribed terms and conditions.

(xii) To set up Placement Cell in the ITI to guide/help the graduates in employment/self employment.

(xiii) To network, interact, establish and maintain working relations with institutes within and outside vocation Training

system and participate in related activities so as to increase awareness in trainees and trainers in the area of vocational training.

(xiv) To network and interact with local industry chambers, other industry associations, employment exchanges, lead banks, other Government department and undertake measures, like job fairs, so as to increase the employability of ITI graduates.

(xv) To undertake measures to achieve target Key Performance Indicators set out the Tripartite Memorandum of Agreement as referred in the Para (i) above.

(xvi) To organize skill completions in the ITI, 'take part in other skill competitions including State/National/World Skill competitions.

(xvii) To undertake publicity and other measures, like organizing seminars in schools for potential candidates for ITIs, to increase awareness about vocational training and also to create a better image of vocational training courses.

(xviii) To promote measures so as to increase the capacity ITI by organizing second & third shift in the ITI.

(xix) To determine admission in the ITI in the to the extent provided in the Memorandum of Agreement referred to in Para 3B(i) above.

**B. The objects incidental or ancillary to attainment of Main objects of the Society:**

(i) To make provision in the ITI, so that any of the services as mentioned in the main objects may be rendered.

(ii) To set up suitable mechanism of getting information on long term, medium term and short skill requirement in the region and provide the same to the State and Central / Government.

(iii) To institute and award prizes, medal and fellowships, in accordance with the rules and regulations of the Society.

(iv) To award certificates to those having successfully completed their respective training courses other than courses under NCVT & SCVT.

(v) To maintain a fund to which the funds provides by Central Government / State Govt. and any other amount received in the form of aids, grants, and gifts, donations, benefactions, bequeath or transfers, fees, charges will be credited in accordance with the rules and regulations of the Society.

(vi) To ensure implementation of various activities of the Scheme refereed in Para 3B(xi) in time bound manner so as to adhere to the time schedule agreed in the IDP.

(vii) To monitor the progress of implementation of the above Scheme at the institute level and furnish periodical reports to the authorities as per the decided schedule.

(viii) To setup suitable mechanism to obtain regular feedback from trainees and industry about quality of training and using the feedback for improvement in the training delivery.

(ix) To develop suitable sustainable mechanism to trace the careers of the graduates for at least three years after passing out.

(x) To advise State Govt. to create administrative, technical, ministerial and other posts in accordance with the agreed Institute Development Plan.

(xi) To arrange and provide sufficient amount as corpus fund so that the Society may proceed for achieving its aims and objects confidently.

(xii) To solicit, receive and accept funds, aids, grants, services and contributions in kind from individuals, companies, foundations, governmental departments agencies, other agencies and sources and in accordance with the rules and regulations of the Society, in furtherance of the aims and objects of the Society, subject to the applicable laws.

(xiii) To acquire, purchase, heir, take on lease, exchange, construct or acquire in any other manner property movable or immovable which may be necessary or convenient for the objects of the Society.

(xiv) To borrow and raise monies on mortgages, promissory notes or other securities founded or based upon all or any of the properties and assets of the Society or without any

securities provided that prior approval in writing of the State Government is obtained in that behalf.

(xv) To open and operate bank accounts in Public Sector Bank, draw, accept, endorse, discount and negotiate cheques, bills of exchanges, promissory notes and other negotiable instruments.

(xvi) To invest funds of the Society in such manner, as proposed by the Society and in accordance with its rules and regulations.

(xvii) To create depreciation fund, sinking fund, insurance fund, whether for depreciation or for repairing, improving, replacing, renewing, financing, extending, or maintaining any of the properties of the Society or for any other purpose what so ever deemed beneficial to the society and as per rules and regulations of the society.

(xviii) To pay all expenses preliminary or incidental to formation and registration of the Society and for its management and administration out of its fund.

(xix) To pay out of the funds of the Society or out of any particular part of such funds all expenses for carrying out any of the objects of the Society including payments of salaries and payments to persons employed or hired, if any.

(xx) To impose and recover fees and charges for the services rendered by the Society.

(xxi) To meet expenses of the Society out of its funds to buy materials/store that may be required to maintain the services of

the Society as mentioned in the main objects as well as building and equipment belonging to the Society.

(xxii) To negotiate and enter into contract on behalf of the Society and vary or rescind such contracts and sign, execute and deliver such contracts deeds and instruments as may be necessary.

(xxiii) To constitute such committee or committees as it may deem fit for the disposal of any business of the Society and tendering advice in any matter pertaining to the Society.

(xxiv) To delegate any of its powers to the Governing Council of the society any of the committee or committees constituted by it.

(xxv) To Promote, support, take-over, affiliate, amalgamate or merge with any other institution or body having object wholly or in part similar to those of the Society, with the prior approval of the State Government.

(xxvi) To make rules and regulations and bye-laws for the conduct of the affairs of the Society and to add, amend, vary or rescind them from time to time.

(xxvii) To print, publish; distribute reports, studies and brochures and other publications pertaining to the activities of the Society.

(xxviii) To Promote or associate with any other person, authority or body whether incorporated or otherwise for

attainment of the objects herein stated and on that behalf also to invest funds of the society.

(xxix) To subscribe money for any national, charitable and benevolent object useful for general public or for any exhibition to any institution, club, Society or fund, but not intended for any political party or class with prior approval of State Government.

(xxx) To institute, conduct, defend or compromise legal proceedings by or against the Society or its officers or employees in respect of any matters affecting the Society directly indirectly.

(xxxi) To do all such other lawful things as are conducive incidental to the attainment of any or all of the above objects and for furthering the purposes and growth of the Society or its resources.

5. The society has received interest free loan of Rs.2.5 crores from the Ministry of Labour & Employment re-payable from the 11<sup>th</sup> year after receipt of the loan. The amount has been kept in the bank in form of FDs and fixed deposit on which the assessee has earned interest income of Rs.23,67,659/-. The assessee has claimed the interest amount exempt from tax u/s 10(23C)(iiiab). The said income has been brought to tax by the Assessing Officer on the grounds that the assessee is not eligible for exemption u/s 10(23C)(iiiab) and also held that the expenses incurred are not for the purpose of the assessee society.

6. The Id. CIT (A) held that as per the bare reading of the provisions of the Act and the affairs of the society, the assessee is not covered under the provisions of Section 10(23C)(iiiab). The Id. CIT (A) held that the assessee is a society engaged in improvement of standard of vocational training under public private partnership scheme but do not fulfill the primary conditions for claim u/s 10(23C)(iiiab).

7. The main argument taken before us by the Id. Counsel that imparting education and word education has to be examined in a broader sense consisting of any improvement in the intellectual and analytical abilities. It was argued that the word 'existing' as 'imparting', the society assists financially the ITI Dadri for the up-gradation process under the Central Government scheme "Up-gradation of 1396 Government ITIs through public private partnership". It was argued that the society existing for the purpose of education and up-gradation of the institutions ITIs has to be allowed the benefit of the provisions of Section 10(23C)(iiiab) of the Act. The Id. AR relied on the submissions made before the authorities below and also on the paper book page nos. 1 to 236. The main arguments of the Id. AR are as under:

*"As per Income Tax Act,*

*Section 10(23C)(iiiab) provides that any income of any income of any university or other educational institution existing solely for educational purposes and not for purposes of profit is eligible for exemption, provided it is wholly or substantially financed by the Government.*

*The above section may be bifurcated into following two conditions, which your goodself has been considered namely,*

- 1. Any university or other educational institution existing solely for educational purposes and not for purpose of profit.*
- 2. It is wholly or substantially financed by Government.*

*The condition 1 which is stated above which your goodself has been interpreted in one word - imparting of education may not be accepted. To further analyze, we further divide the condition one into parts, the two words comes which have very big importance, (i) existing (ii) Educational purpose. The word existing define as in existence or operation at the current time by Google & several dictionaries.*

*The word existing which your goodself has been considered and interpreted as imparting would only lead to a narrow scope to the university or other educational institution as a whole, which may the Parliament not been presumed. If the parliament had thought the exemption to be limited only to the institutes who impart, but not to those which not impart but support or improve the institute, the word existing would not be placed in section but some more suitable work like imparting would be given.*

*Thus in the light of above, the word existing could not be curtailed to just imparting but it means in existence. The word educational purpose, which your goodself has been considered & interpreted as only education may not be accepted. The only word education which your goodself has been considered would defeat the purpose of section. The parliament had thought and covered large scope of institution, it not only cover those which provide education but also to those which exist for purpose of education. So in the light of above, we want to submit that the IMC of ITI fulfills both the*

*conditions of section 10(23C)(iiiab). So requested that exemption may be allowed."*

8. We have gone through the assessment order, order of the Id. CIT (A) and the paper book filed. We have also gone through the balance sheets, income and expenditure, statement of the assessee wherein the income shown is from interest received on savings, fixed deposits and FDs whereas expenditure is on account of expenses viz. Rs.2,00,000/- on account of garden expenses, Rs.4,92,000/- on faculty salary, Rs.3,50,000/- on account of peon and security etc. The expenses are on the similar proportion for the year ending 2016 and 2017. The details furnished by the assessee do not mention anything about the actual work undertaken by the society how and what role has been played by the society in improving the ITIs.

9. In the background of these details, the provisions of the Act are examined vis-à-vis their applicability to the assessee before us.

10. Section 10(23C)(iiiab) of the Income Tax Act reads as under:

**Incomes not included in total income:**

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included.

23C. Any income received by any person on behalf of –  
(iiiab). 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.”

11. a) Whether the assessee is a university – We find that the assessee is not a university recognized /not recognized by the UGC.

b) Whether the assessee is an educational institution – We find that the assessee is not an educational institution.

c) Whether the assessee is wholly or substantially financed by the Government - The assessee has received interest free loan which is repayable after 10 years. The assessee has not received any grant, grant in aid or financial assistance, hence it cannot be said that the assessee is financed substantially by the Government as the facts proved that the assessee has got only repayable loan from the Government.

12. Further, we have gone through the various judgments to examine whether the assessee is an educational institute with regard to the Section 10(23C)(iiiab).

13. The interpretation of the word 'education' by Hon'ble Supreme Court in the case of Sole Trustee, Loka Sikshana Trust v CIT [1975] 101 ITR 234 - "the word 'education' has been used to denote systematic instruction, schooling or training given to the young in preparation for the work of life and it also connotes the whole course of scholastic instruction which a person has received, which led to the understanding that only institutions affiliated to boards and universities providing

schooling which resulted in a degree or diploma. The education also included primary education as such education was a backward integration to normal schooling.

14. The case of Sole Trustee, Loka Sikshana Trust v CIT (supra) has been the yardstick for interpretation of the word 'education'. The ratio basically boils down to (i) institutes affiliated to boards and universities providing schooling which resulted in a degree or diploma. (ii) primary education as was a backward integration to normal schooling.

15. The Hon'ble Gujarat High Court considered identical issue in the case of Saurashtra Education Foundation v. CIT [2005] 273 ITR 139/[2004] 141 Taxman 26 (Guj) and held that all kinds of education would not fall within the meaning of section 2(15) of the Act, unless the training, instruction, etc. results in grant of a diploma or degree by a university or a governmental agency.

16. Various Courts have held that institutions allied to educational institutions which were providing normal schooling were also educational in nature. Institution conducting exams for diploma and degree courses were also treated as educational in nature. It has also been held that additional training or courses shall also be held as education provided such courses are conducting some primary educational activity whereas standalone such courses cannot be treated as education for the purpose of Income Tax Act.

17. We find that the society has not been registered or affiliated to any board or university or any organization

imparting education as defined by the Hon'ble Supreme Court. There is a sweeping difference in according the any assessee to the provisions of Section 12AA and Section 10(23C)(iiiab). The conditions and requirements of registration under Section 12AA and the conditions and prerequisites for the claiming the benefit u/s 10(23C)(iiiab) differs. We also find that the assessee has been granted registration u/s 12AA from the provisions of the Act and on going through the various judgments, we hereby hold that the assessee is not entitled to the benefit of Section 10(23C)(iiiab).

18. In the result, the appeal of the assessee is dismissed.  
Order Pronounced in the Open Court on 10/03/2021.

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 10/03/2021**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**