

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'B' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),  
and Ravish Sood (Judicial Member)]**

ITA No. 8015/Mum/2019  
Assessment year: 2010-11

**National Centre for Performing Arts** .....**Appellant**  
through Kalyaniwalla & Mitsry, Esplanade House, 2<sup>nd</sup> floor,  
29 Hazarimal Somani Marg, Mumbai 400 001 [PAN: AAATN2491G]

**Vs.**

**Joint Director of Income Tax**  
**Exemption- II, Mumbai** .....**Respondent**

*Calling into question correctness of the order dated 14<sup>th</sup> October 2019 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2010-11*

**Appearances by:**

**J D Mistri, Sr Advocate, along with Sonali Godbole, CA, for the appellant**  
**Rahul Raman, Commissioner (DR) for the respondent**

Date of concluding the hearing : 28/09/2021  
Date of pronouncing the order : 03/12/2021

**O R D E R**

**Per bench:**

1. This order was scheduled for pronouncement earlier as well and even immediately upon conclusion of the hearing, it was pronounced in the open court that the appeal is to be allowed. However, in view of our long deliberations on the precise reasons for which this appeal is to be allowed and to come to a common ground for the same, the finalization of the order has taken some time.

2. The appeal before us, filed by the assessee, is directed against the order dated 14<sup>th</sup> October 2019 passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2010-11.

3. While learned senior counsel has addressed us at length on the questions as to what are the connotations of expression 'education' under Section 2 (15) of the Income Tax Act, 1961, and as to what is the point of time when a charitable institution loses its character as a

charitable institution by being engaged in the carrying out “**an activity in the nature of trade, commerce or business, or any activity in the nature of service to trade, commerce or business**”, and while learned senior counsel has urged us to decide this basic issue, we are of the considered view that this appeal can be decided on a much narrower ground i.e. whether once an exemption under section 10(23C)(iv) is granted by the Chief Commissioner of Income Tax, vide notification no. F No Mum/CC/HQ/Tech/10/(23C)(iv)/143/2010-11/956 dated 24<sup>th</sup> March 2011, can it still be open to the Assessing Officer to examine as to whether or not activities of the institution can be held to be not “charitable” in nature and on that basis decline to give effect to an exemption notification. We must, therefore, remain confined to this issue, on which as well we have heard both the parties, and leave the larger issue raised by the learned senior counsel for adjudication at a later stage, as and when necessary. To adjudicate on this issue, we have to take note only of some basic facts of the case. The assessee before us is registered as a charitable trust registered under section 12A of the Income Tax Act 1961, and has also been granted an exemption under section 10(23C)(iv) by the Chief Commissioner of Income Tax vide notification no. F No Mum/ CC/ HQ/ Tech/ 10/(23C)(iv)/ 143/2010-11/956 dated 24<sup>th</sup> March 2011. On 29<sup>th</sup> September 2010, the assessee filed a NIL return of income, claiming exemption under section 10(23C)(iv). An alternative claim of exemption under section 11 was also made later. The Assessing Officer, however, proceeded to decline the exemption under section 10(23C) by holding that the provisions of proviso to Section 2(15) are violated in this case, and that, therefore, even if the tax exemption is granted by the Chief Commissioner under section 10(23C), the benefit of exemption cannot be granted. It was observed that “even after granting the approval under section 10(23C)(iv), Assessing Officer is required to verify and scrutinize the real and actual activities for the year under consideration and whether same are complying with the provisions of the Act or not”. The Assessing Officer also declined an alternative claim of exemption under section 11. Aggrieved, the assessee carried the matter in appeal before the learned Commissioner (Appeals) but without any success. The assessee is not satisfied and is in further appeal before us.

4. We have heard the rival contentions at length, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We find that Section 10(23C)(iv) provides that in computing the total income of any person for any previous year, inter alia, the following shall not be included, namely “**any income received by any person on behalf of... ‘any other fund or institution established for charitable purposes, which may be approved by the prescribed authority, having regard to the objects of fund or institution and its importance throughout India or throughout any State or States’**”. Once an approval is granted to the assessee under section 10(23C)(iv), and unless such an approval is withdrawn by that authority (i.e. Chief Commissioner), it cannot be open to the Assessing Officer to decline to give effect to the same- particularly when the issues being raised by the Assessing Officer have already been considered by the Chief Commissioner and decided in favour of the assessee by granting the approval, as in this case. His superior wisdom has to make way for the higher wisdom of the authority which is vested with the power to grant approval under section 10(23C)(iv). If, during the course of the assessment proceedings or otherwise, an Assessing Officer comes across any material in the light of which such an approval is required to be revisited, the Assessing Officer has to take up the matter with the authority granting the approval, rather than proceeding to nullify the approval so granted by the authority. In the present case, learned senior counsel has taken through the records to demonstrate that the issue regarding activities of the assessee being in the nature of imparting

education for music was examined at length by the Chief Commissioner, and accepted as such. Given this situation, the proviso to Section 2(15) does not come into play. Yet, the Assessing Officer has proceeded to disregard the approval granted by the learned Chief Commissioner. Such an approach cannot meet any judicial approval. We, therefore, hold that the Assessing Officer should have granted exemption under section 10(23C)(iv) on the facts of this case. The stand of the authorities below is reversed on this point, and the Assessing Officer is directed to grant exemption under section 10(23C)(iv). The assessee gets the relief accordingly.

6. In view of our deciding the matter in favour of the assessee, on the short legal issue as discussed above, we see no need to deal with, no matter how tempting is it to get into these nuances of the law and how fascinating and innovative the arguments of the learned senior counsel are, these aspects of the matter at this stage.

7. In the result, the appeal is allowed. It was so pronounced in the open court itself immediately upon conclusion of hearing.

*Sd/-*  
**Ravish Sood**  
(Judicial Member)  
**Mumbai, dated the 03<sup>rd</sup> day of December, 2021**

*Sd/-*  
**Pramod Kumar**  
(Vice President)

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order etc*

*Assistant Registrar/ Sr PS*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*