

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.1749/Ahd/2019 AND ITA No.189/ahd/2020
Assessment Year : 2015-16 and 2016-17

Rai University 398-400-401 & 403 Village : Saroda Dholka – 382 260 PAN : AABAR 4376 A	Vs	DCIT (Exemption) Cir.1, Ahmedabad.
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ITA No.1758/Ahd/2019
Assessment Year : 2015-16

DCIT (Exemption) Cir.1, Ahmedabad.	Vs	Rai University 398-400-401 & 403 Village : Saroda Dholka – 382 260 PAN : AABAR 4376 A
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(Applicant)		(Responent)
Assessee by :		Shri Sanjay R. Shah, AR
Revenue by :		Smt.M.M. Garg, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/04/2022
घोषणा की तारीख /Date of Pronouncement: 31/05/2022

आदेश/ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

These are three appeals; two by the assessee against orders dated 18.9.2019 and 23.1.2020 relating to the Asst.Years 2015-16 and 2016-17; one cross appeal by the Revenue against order dated 18.9.2019 for the Asst.Year 2015-16 passed by the Commissioner of

Income-tax (Appeals)-9, Ahmedabad. All these appeals are disposed of by this common order.

2. First we take up appeal of the assessee in ITA No.1749/Ahd/2019 for the Asst.Year 2015-16. In this appeal, the assessee has raised the following grounds:

“1. The Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of Rs. 15,92,293/-(Rs.3,78,830 + Rs.13,463 + 12,00,000) as expenditure not for the purpose of educational activity of the Appellant though the Appellant was entitled to deduction of the same under the provisions of section 10(23C)(vi) of the I.T. Act, 1961.

2. Your Appellant prays to reserve the right to add, alter, amend and/or withdraw any of the above grounds of appeal.”

3. During the course of assessment proceedings, the AO noticed that the assessee has debited huge expenditure of Rs.12,00,000/- and Rs.7,50,868/- towards consultancy charges and travelling and promotional expenses. The assessee was required to furnish complete details of this expenditure, which is in contravention of section 13(3) of the Income Tax Act, 1961 ("the Act" for short). The assessee replied that provision of section 13(1)(c)(ii) of the Act are not applicable in the case of the assessee-university, as no payments have been made or expenditure has been incurred which may be considered as direct or indirect benefit to the persons specified in section 13(3) of the Act. The assessee claimed that Dr.Harbeen Arora is President of the Board of Governor of the University; she is holding Master's degree from Kings College, London University and Ph.D from Sorbonne Nouvelle University and as such she is qualified educationalist. She also engaged in various educational, social activities and was Global chairman of in Girls Child Education, ASSOCEM Ladies League and also Chairperson of Women

Economic Forum working for women empowerment through education and as such she is also taken keen interest in Gifted Girls Scholarship Scheme of the University. She has also other authored several books on education and creative living and she is permanently residing at Delhi. However, due to various educational and social engagements, she is frequently travelling throughout India and visiting various educational institutions. She being the President of the University, her travelling and education promotional expenditure are borne by the University. Accordingly, during this Asst.Year 2015-16, the assessee has incurred travelling expenditure of Rs.3,18,682/- and promotional expenses of Rs.41,884/- . The expenditure are actual travelling expenditure incurred and no part thereof can be considered payment for any direct or indirect personal benefit to Dr.Harbeen Arora. Further, the assessee has made payment of Rs.12 lakhs as consultation fee in the nature of honorarium of Rs.1,50,000/- per month which cannot be considered as excessive in the nature by any standard. Particularly when the professors of the assessee-university are being paid remuneration of Rs.2.40 lakhs per month, and the Registrar is paid remuneration of Rs.1,00,000/- per month, and Director of the University is paid of Rs.1.04 lakh per month for the services rendered by them to the assessee. However, the above explanation was not accepted by the AO and made addition in the hands of the assessee.

4. Aggrieved against the same, the assessee filed an appeal before the Id.CIT(A). The Id.CIT(A) held that the AO had discussed the disallowance of Rs.3,76,839/- on account of domestic travelling and promotional expenditure of Rs.13,463/- as per the details produced in the assessment orders and also along with the issue of payment of Rs.12 lakhs being the payment of Rs.1,50,000/- per month for eight months paid to Dr.Harbeen Arora, a person covered under the

definition of 'specified person' as defined under section 13(1)(c) of the Act. The assessee had explained the purpose for carrying out tours and making payments towards consultation charges to Dr.Arora. However, the AO did not accept and consider this expenditure as incurred on the persons falling under section 13(3) of the Act. According to the AO, on perusal of section 13(1)(c)(ii) revealed that the same are applicable to the charitable trust and thus covered under provisions of section 11 and 12 of the Act. Nevertheless, third proviso to section 10(23C) of the Act specifically provides the application of income only and exclusively for the purpose of objects of the trust for which it has been established. Since incurrence of expenditure for the benefit of interested person who have been associated with other institutions or organizations, cannot be termed as wholly and exclusively for the purpose of object of the assessee-Trust. Therefore, maintaining consistency of the decision of ld.CIT(A)-4, Ahmedabad while deciding the appeal for the Asst.Year 2014-15 and directed for disallowing the expenses of similar nature, the disallowance of all three amounts viz. Rs.3,78,830/- incurred on domestic tours of the interested persons of the assessee-University, Rs.13,463/- for promotional expenses and consultancy charges of Rs.12,00,000/- though merged in the computation of total income were confirmed. Respectfully following the direction issued by my predecessor for the Asst.Year 2014-15, the AO is directed to compute the income of the assessee accordingly.

5. Aggrieved against the same, the assessee is in appeal before us with the grounds raised above.

6. At the time of hearing, the ld.counsel for the assessee brought to our notice recent decision of the Co-ordinate Bench of the Tribunal in the assessee's own case for the Asst.Year 2014-15 in ITA

No.386/Ahd/2019 dated 22.02.2022. Relevant findings of the Tribunal read as follows:

“9. In the assessee's appeal, the solitary issue involved relates to the disallowance of Rs.37,46,289/- as confirmed by the learned CIT(A) out of expenses incurred by the assessee under the head "Advertisement and Promotion Expenses" and "Travelling and Conveyance Expenses". In this regard, the learned Counsel for the assessee has submitted that this expenditure was considered by the Assessing Officer from the angle of [Section 13\(1\)\(c\)](#) of the Act and as the same was allegedly found by him as incurred for the benefit of persons specified in [Section 13\(3\)](#) of the Act, the claim of the assessee for exemption under [Section 11](#) of the Act was disallowed by him. The learned Counsel for the assessee has contended that since the assessment made by the Assessing Officer with reference to [Section 11](#) r.w.s. 13 is found to be unsustainable and the income of the assessee is finally assessed with reference to [Section 10\(23C\)\(vi\)](#) of the Act, [Section 13](#) is no more relevant and the learned CIT(A) was not justified in confirming the disallowance of expenditure which was made by the Assessing Officer with reference to [Section 13](#) of the Act. She has contended that what is relevant for [Section 10\(23C\)\(vi\)](#) of the Act is that the income should be applied fully and exclusively by the assessee-trust to the objects for which it is established. She has contended that the assessee is in a position to support and substantiate its case on evidence and the matter may be restored to the file of the Assessing Officer for allowing the assessee an opportunity to do so. Although the learned DR has contended that the expenditure in question was disallowed by the learned CIT(A) vide his impugned order after having found that the same was not incurred for the purpose of educational activity of the assessee, we find that no opportunity was specifically given to the assessee to establish its case on evidence as per clause (a) of third proviso to [Section 10\(23C\)\(vi\)](#) of the Act that the expenditure in question was incurred wholly and exclusively for the objects for which it is established in order to avail the benefit of exemption provided in [Section 10\(23C\)\(vi\)](#) of the Act. We, therefore, consider it fair and proper, and in the interest of justice, to restore this issue to the file of the Assessing Officer for deciding the same in accordance with law after giving the assessee an opportunity of being heard.”

7. Per contra, the ld.DR appearing for the Revenue has no objection for remitting the matter back to the file of the AO.

8. Respectfully following the Co-ordinate Bench's decision in assessee's own case for the A.Y.2014-15, we deem it fit to restore this issue to the file of the AO for deciding the same in accordance with law, after providing the assessee an opportunity of being heard.

Thus, the appeal filed by the assessee is treated as allowed for statistical purpose.

9. ITA No.1758/Ahd/2019 (Revenue's appeal). The grounds raised by the Revenue are as follow:

"1. The Id. CIT(A) has erred in law and on facts in holding that assessee was eligible for claim of exemptions under section 10(23C)(vi) of the Income tax Act, though the same claim was not part of the original adjudication before the Assessing Officer nor the same was raised by the appellant during the appellate proceedings.

2. On the facts and circumstances of the case, the Id. CIT(Appeals) ought to have upheld the order of the Assessing Officer in denying the claim of exemptions under section 11 & 12 of the Income tax Act, 1961.

3. On the facts and circumstances of the cases, the Id. CIT(Appeals) ought to have upheld findings of the Assessing Officer that assessee has violated the provisions of section 13(1)(c) and therefore not eligible for claim of exemptions under section 11 & 12 of the Income tax Act, 1961.

4. The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arises."

10. The Id.DR appearing for the Revenue fairly conceded that this issue is covered against the Revenue by above order of the Tribunal dated 22.2.2022 in the appeal filed by the Revenue in ITA No.553/Ahd/2019, wherein Hon'ble Tribunal held as follows:

"8. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that even though the assessment under Section 143(3) of the Act was completed by the Assessing Officer with reference to Sections 11 to 13 of the Act, disallowing the claim of the assessee for exemption under Section 10(23C)(vi) in violation of Section 13 of the Act, the application filed by the assessee for grant of approval under Section 10(23C)(vi) was pending at the relevant time inasmuch as the appeal filed by the assessee before the ITAT against the rejection of such approval by the CIT(A) vide order dated 16.10.2015 was pending and the same came to be disposed of by the ITAT only on 23.03.2018, i.e. after the

passing of order by the Assessing Officer under Section 143(3) of the Act on 28.12.2016. As per the order of the ITAT dated 23.03.2018, the concerned CIT(Exemptions), Ahmedabad also passed an order on 18.06.2018 granting approval to the assessee under Section 10(23C)(vi) of the Act for the year under consideration, i.e. AY 2014-15, as well as the subsequent years. Relying on this development, the assessee made an alternative claim of exemption under Section 10(23C)(vi) of the Act during the course of appellate proceedings before the learned CIT(A) and the same was entertained by the learned CIT(A) and quite rightly so by relying on certain judicial pronouncements referred to and relied upon by him in the impugned order. He also sought comments from the Assessing Officer on this new alternative claim made by the assessee for exemption Section 10(23C)(vi) of the Act and after taking into consideration the comments of the Assessing Officer, submissions of the assessee and the entire material available on record, including the approval granted by the learned CIT(Exemptions), Ahmedabad to the assessee under Section 10(23C)(vi) of the Act, the learned CIT(A) allowed the alternative claim of the assessee for exemption under Section 10(23C)(vi) of the Act by passing a well discussed and well reasoned order; the relevant portion of which is already extracted hereinabove. We, therefore, find no infirmity in the order of the learned CIT(A) allowing the alternative claim of the assessee for exemption under Section 10(23C)(vi) of the Act and even the learned DR has not raised any material contention to rebut or controvert this position. The impugned order of the learned CIT(A) on this issue is, therefore, upheld and the appeal of the Revenue is dismissed.

11. Respectfully following this decision of the Co-ordinate Bench of the Tribunal, we hereby dismiss the appeal filed by the Revenue.

12. ITA No.189/Ahd/2020. The assessee has raised the following grounds:

“1. The Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad has erred in law and on facts of the case in confirming the action of the learned Assessing Officer of passing ex-parte assessment order u/s.144 of the I.T. Act, 1961 though the notices were not served on the Appellant.

2. The Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad has erred in law and on facts of the case by not holding that entire gross income of Rs. 12,17,01,608/- is exempt u/s.10 (23C)(vi) of the I.T. Act, 1961, as claimed in the return of income filed by the Appellant.

3. The Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad has erred in law and on facts of the case by confirming the disallowance of Rs.17,10,064/-(Rs. 16,07,158 + Rs. 1,02,906) as expenditure not for the purpose of educational activity of the Appellant though the Appellant was

entitled to deduction of the same under the provisions of section 10(23C)(vi) of the I.T. Act, 1961.

4. The Appellant, therefore, prays that entire gross income of Rs.12,17,01,608/- of the appellant be held as fully exempt us.10(23C)(vi) of the IT Act 1961 as per return of income filed by the appellant.”

13. During the course of hearing, the ld.counsel for the assessee has not pressed ground no.1 and 2 and the same are dismissed has not pressed. Remaining effective ground No.3, that is disallowance of Rs.17,10,064/- being the travelling, promotional expenditure and remuneration incurred for Dr.Arora and Shri Vinay Rai.

14. This issue has already been dealt by us in the ITA No.1758/Ahd/2019 and remitted to the file of the AO for reconsideration. Following the same, we remit this appeal for the Asst.Year 2016-17 to the file of the AO for verification and pass appropriate order. Thus, the appeal of the assessee is allowed for statistical purpose.

15. In the result, ITA No.1749/Ahd/2019 is allowed for statistical purpose; ITA No.1758/Ahd/2019 of the Revenue is dismissed; and ITA No.189/Ahd/2020 is partly allowed for statistical purpose.

Order pronounced in the Court on 31st May, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 31/05/2022

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