

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.09/Alld./2021 & 10/Alld/2021
Assessment Year: 2011-12 & 2013-14

Jagdish Bahadur Educational Society, 25/1, Jairampur Patpar, Rajrooppur, Subedarganj, Allahabad-211011, U.P.	v.	Income Tax Officer (Exemption) Allahabad. U.P.
PAN:AABAJ1650K		
(Appellant)		(Respondent)

Appellant by:	Shri Parveen Godbole, CA
Respondent by:	Shri A.K. Singh, Sr.D.R.
Date of hearing:	15.07.2022
Date of pronouncement:	02.08.2022

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

These two appeals, filed by Assessee, being ITA No.09/Alld./2021 & 10/Alld/2021 for assessment year's 2011-12 and 2013-14 respectively , are directed against two separate appellate orders both dated 30.06.2021 in Appeal No(s). CIT(A), Allahabad/10098/2017-18 and CIT(A), Allahabad/10099/2017-18 respectively, both passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre(NFAC), Delhi (hereinafter called "the CIT(A)"),for ay's:2011-12 and 2013-14 respectively, the appellate proceedings had arisen before learned CIT(A)from two separate rectification orders both 22.09.2017 passed by learned Assessing Officer (hereinafter called "the AO") under Section 154 of the Income-tax Act,1961(hereinafter called " the Act") .We have heard both

the parties through physical hearing mode in Open Court proceedings. Since , both these appeals involves common issues , both the appeals were taken up together and disposed off by this common order.

2. First , we shall take up assessee's appeal in ITA no. 09/Alld/2011 for ay: 2011-12. The grounds of appeal raised by Assessee in ITA No. 09/Alld./2021 for ay:2011-12, in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad Bench , Allahabad(hereinafter called " the tribunal") , reads as under:-

"1. That in any view of the matter order passed under section 154 of the Act dated 22.09.2017 is bad both on the facts and in law and the assessing officer was wrong in denying genuine claim of the society.

2. That in any view of the matter the assessee society is engaged in carrying out educational activities as per rule and by-laws of the society and runs educational institution and claim exemption under section 10(23C)(iiiad) of the Act but both the two lower authorities failed to consider the genuine claim of the society which is highly unjustified.

3. That in any view of the matter the entire receipt of the assessee society were from fees collection which was duly accepted and no contrary view was taken by the department but allegation was about claim of expenditure which was as per by-laws of the society hence both the two lower authority failed to considered the fact that once receipts are accepted as genuine then there is no question of doubting expenditure claim which are part of the educational activity.

4. That in the any view of the matter both the two lower authorities failed to considered the genuine activities of the society and the department also granted registration under Section 12A of the Act but all these facts were altogether ignored both the two lower authorities which is highly unjustified.

5. That in any view of the matter the appellant reserves the right to take any fresh ground before hearing of the appeal."

3. The brief facts of the case are that the assessee filed its return of income for assessment year 2011-12 , on 31st March, 2013 declaring its income at Rs. Nil. The case was processed under Section 143(1) of the Act, on 13th September, 2013, whereby a demand of Rs. 8,36,900/- was raised against the assessee. The assessee filed an rectification application under Section 154 of the 1961 Act before the AO, in which it was stated by assessee as under:

“The Society has got recognition from Dr. Ram Manohar Lohia Avadh University, Faizabad to run University and conduct examination of B.A. & B. Com. Therefore, all receipts of the society is exempt from tax u/s 10(23C)(iiiad) of the Act.”

The AO rejected contentions of the assessee, wherein AO observed from assessee's income and expenditure account that the assessee has income only from member's fees and donation and no fee from educational activity has been credited in its accounts. The AO further observed that the assessee has not submitted any proof in support of its claim. The AO observed that it is wrong to say that the assessee society is engaged in educational activities. From perusal of its income and expenditure accounts, the AO observed that it shows that the assessee has debited in its account many expenses like Children Development Program, Education Awareness Program, Tree Plantation Program and Women Welfare Program. Thus, the AO concluded that it cannot be said that the assessee is existing solely for the educational purposes as required under Section 10(23C)(iiiad) of the 1961 Act. The AO, thus, held that the assessee is not entitled to exemption u/s 10(23)(C)(iiiad) of the 1961 Act. The AO rejected the rectification application filed by the assessee under Section 154 of the 1961 Act, vide orders dated 22.09.2017 passed u/s 154 of the 1961 Act.

4. Aggrieved by an order dated 22.09.2017 passed by AO u/s 154 of the 1961 Act, the assessee filed first appeal before Ld. CIT(A), who dismissed the appeal of the assessee by observing that as per provisions of Section 10(23C)(iiiad) of the 1961 Act, income of any university or other educational institution existing solely for educational purposes is exempt from income-tax. The Ld. CIT(A) observed that the assessee has incurred expenses towards Tree Plantation Programme and Women Welfare Programme which are not for educational purposes. The Ld. CIT(A) held that the society is not existing solely for educational purposes as is required u/s 10(23C)(iiiad). The Ld. CIT(A) observed that the assessee should run /establish educational institution for claiming

exemption. Further, the ld. CIT(A) observed that as per income and expenditure account, the excess of income over expenditure was shown to the tune of Rs. 16,38,510/- as against, the total receipts of Rs. 22,48,800/- which clearly indicates that the assessee is profit making entity. The Ld. CIT(A) observed that Section 10(23C)(iiiad) of the 1961 Act provides exemption from income-tax to any university or other educational institution existing solely for educational purposes and not for purposes of profit , for claiming exemption under Section 10(23C)(iiiad) of the Act, and hence the appeal of the assessee was dismissed by Ld. CIT(A), vide appellate order dated 30.06.2021.

5. Aggrieved by appellate order dated 30.06.2021 passed by ld. CIT(A), the assessee filed second appeal before the tribunal. The Ld. Counsel for the assessee submitted that the assessee is a registered society registered under Societies Registration Act, which is running school. It was submitted that registration under Section 12AA of the Act was granted to the assessee w.e.f. 5th January, 2016 effective from 01st April, 2015(PB/page 9-10). It was submitted by ld. Counsel for the assessee that recognition from Dr. Ram Manohar Lohia Avadh University was granted (PB/pag12). On being asked by the Bench, the ld. Counsel for the assessee submitted that the said recognition was granted w.e.f. 01.07.2012 for a period of three years to Dayashankar Jagdish Bahadur Mahila Vishwavidalaya, Lohangi, Pratapgarh, U.P. and not to the assessee society . It was submitted that the receipts of the assessee were below 1,00,00,000/-. It was submitted that exemption claimed by the assessee under Section 10(23C)(iiiad) of the Act were denied to the assessee while processing return of income under Section 143(1) of the 1961 Act and hence, the assessee preferred rectification application under Section 154 of the 1961 Act, which was wrongly rejected by the AO. Our attention was drawn to Para 5.2 of the ld. CIT(A) appellate order. Our attention was also drawn to Page No. 41/paper book wherein an assessment order passed by the AO

u/s 143(3) of the 1961 Act, dated 29.09.2016 for ay: 2014-15 is placed and the assessee was granted exemption u/s 11 and 12 of the 1961 Act for ay:2014-15. It was submitted that rectification order under Section 154 of the Act, was passed on 22.09.2017. It was submitted that the registration u/s 12A was granted to the assessee on 05th January, 2016. (pb/pag9-10) . The ld. Counsel for the assessee relied upon decision of Hon'ble Allahabad High Court in the case of Manas Sewa Samiti v. CCIT, reported in (2016) 236 taxmann 546(All.) . The ld. Counsel for the assessee submitted that the assessee also go recognition from Professor Rajinder Singh(Rajju Bhaiya) University, Prayagraj, U.P. . The ld. Counsel for the assessee also relied upon the decision of Chandigarh-tribunal in the case of ITO v. Shri Balaji Prem Ashram & Nikhil Vidyalaya, reported in (2016)156 ITD 479(Chd-trib.) . The ld. Counsel for the assessee also relied upon decision of Indore-tribunal in the case of Rajiv Gandhi Proudyogiki Vishwavidalaya v. DCIT, CPC, Bengaluru. On being asked by the Bench that for ay: 2011-12, there are no educational fee being credited in Income and Expenditure Account and while staff salary for the entire year is meager Rs. 72,000/- , it was submitted by ld. Counsel for the assessee that the educational institution was not started during this period and was under construction , and was on verge of starting the educational activities which infact were started in subsequent years, but it was claimed that the assessee society was existing for educational purposes, and hence the assessee is entitled for grant of deduction u/s 10(23C)(iiiad) of the 1961 Act. It was submitted that neither intimation u/s 143(1) was a speaking order, nor rectification order passed u/s 154 was a speaking order.

6. The ld. Sr. DR submitted that the Department has filed written submissions/paper book containing 46 pages, which should be taken on record. The said paper book is placed on record in file. The Learned Sr.DR submitted that the assessee never claimed exemption under Section 10(23C)(iiiad) of the Act in

its return of income filed with the Department, on 31.03.2013, rather the assessee claimed exemption under Section 11 and 12 of the 1961 Act, which was rightly denied by the Department while processing return of income u/s 143(1) as the assessee never held registration u/s 12A of the 1961 Act at that point of time, as the assessee was granted registration under Section 12A of the Act only on 5th January, 2016 effective from 01.04.2015. It was submitted that although the assessee claimed exemption u/s 11 and 12 in the return of income, but no details of holding registration u/s 12A was filled up by the assessee in column meant for the same in income -tax return, so the assessee was rightly denied the exemption under Section 11 & 12 of the Act while processing return of income u/s 143(1) of the 1961 Act. Our attention was drawn by ld. Sr. DR to the ITR filed by the assessee with the Department, which is placed in paper book. It was submitted that no exemption u/s 10 was claimed by the assessee, rather exemption u/s 11 and 12 was claimed (paper book/department/page 3 and 11). The ld. SR DR submitted that the demand of Rs. 8,36,900/- was raised against the assessee, vide return being processed u/s 143(1) of the 1961 Act, vide orders dated 13.09.2013 (pb/deptt/page 26-28), as the claim set up by assessee for grant of deduction u/s 11 and 12 could not have been allowed as the assessee never held registration u/s 12A. The ld. Sr. DR submitted that the assessee filed rectification application dated 08th March, 2017 under Section 154 of the 1961 Act, rather the assessee should have filed the revised return of income. The ld. SR. DR submitted without prejudice to above contentions, that if at all the exemption u/s 10(23C)(iiiad) is to be allowed, it is to be allowed on the educational income received by the assessee, and not on the total income of the assessee

7. The ld. Counsel for the assessee in rejoinder submitted that the matter can be set aside and restored to the file of AO, for framing assessment, and the assessee will produce books of accounts and other details before the AO.

8. We have considered rival contentions and perused the material on record. The assessee has claimed itself to be a society registered under the Societies Registration Act. The assessee has claimed that it is engaged in educational activities. It filed its return of income for ay: 2011-12 on 31.03.2013 declaring Nil Income. The assessee claimed in the return of income filed with Department, that it is eligible for deduction u/s 11 and 12 of the 1961 Act. However, no particulars of Registration held by the assessee u/s 12A was furnished in the return of income filed with the department. This return filed by assessee itself is a belated return , which was not filed within due time as is prescribed u/s 139(4A) read with Section 139(1) of the 1961 Act. The assessee did not claim any exemption u/s 10(23C)(iiiad) of the 1961 Act, while filing its return of income with department for ay: 2011-12. The return of income was processed by Revenue u/s 143(1) , vide orders dated 13.09.2013, wherein exemption claimed u/s 11 and 12 of the 1961 Act was denied to the assessee, since no particulars of registration u/s 12A held by the assessee was furnished . In-fact, registration u/s 12A was granted by the Department , vide orders dated 05th January , 2016 effective from 01st April 2015. No assessment for ay: 2011-12 was pending as on the date of grant of registration u/s 12A of the 1961 Act. The assessee filed rectification application u/s 154 of the 1961 Act , on 08th March, 2017 , wherein claim for exemption u/s 10(23C)(iiiad) was set up by assessee for the first time, on the grounds that it holds recognition from Dr. Ram Manohar Lohia Avadh University , Faizabad to run University and conduct examination of B.A. and B.Com, and hence all the receipts of society were claimed by assessee to be exempt from tax u/s 10(23C)(iiiad) of the 1961 Act. The department rejected this rectification application u/s 154 of the 1961 Act, vide orders dated 22.09.2017 , and the appeal filed by assessee with Id. CIT(A) also stood dismissed , on the grounds that the assessee is not engaged in educational activities as is emanating from its income and expenditure account. Firstly, We

have observed that the recognition granted Dr Ram Manohar Lohia Avadh University , Faizabad is effective from 01.07.2012 for next three years to 'Dayashankar Jagdish Bahadur Mahila University , Lohangi, Pratapgarh, U.P.' , and presently we are concerned with ay: 2011-12(previous year 2010-11) , thus for the year under consideration , the assessee was not holding any recognition from Dr Ram Manohar Lohia Avadh University , Faizabad and wrong contentions were raised by assessee . Further, there is no evidence on record which could establish that The Dayashankar Jagdish Bahadur Mahila University , Lohangi, Pratapgarh, U.P. is the University run by the assessee, rather in the Form No. 35 it is mentioned that the assessee is engaged in running school in the name of Jagdish Bahadur Educational Society. Further, it is observed from the Income and Expenditure account, the assessee has not received any amount towards fee from students and only receipts credited to Income and Expenditure Account are donations and membership fee/contribution. It is also pertinent to mention that the assessee never claimed exemption u/s 10(23C)(iiiad) in its return of income filed with the Department, rather it claimed exemption 11 and 12 of the 1961 Act, despite the fact that it never held registration u/s 12A at the relevant point of time. The assessee duly filed Audit Report signed by Mr. Ashok Kumar Singh(Partner-M.No.406806), Chartered Accountant , Partner in Sandeep Prakash & Co. 11/6,Taskand Marg, Opp Patrika Press , Civil Line, Allahabad, in Form No. 10B as prescribed under Rule 17B of the Income-tax Rules,1962 , which is required under clause (b) of Section 12A, for availing exemption u/s 11 and 12 of the 1961 Act. The assessee did not file revised return of income to claim exemption u/s 10(23C)(iiiad) , rather originally the assessee filed belated return of income which infact could not have been revised u/s 139(5). The assessee set up claim for the first time for grant of exemption u/s 10(23C)(iiiad) by filing rectification application u/s 154 of the 1961 Act. The Hon'ble Apex Court has held in Pr. CIT v.

Wipro , reported in (2022) 140 taxmann.com 223(SC) , that scope in filing revised return is to only correct omissions and errors , rather than bringing an altogether new claim in revised return of income. In the instant case before us, the assessee has not even filed revised return of income claiming exemption u/s 10(23C)(iiiad) which infact the assessee could not have filed as originally the assessee filed belated return of income, rather this new claim of exemption u/s 10(23C)(iiiad) was set up for the first time by assessee through rectification application u/s 154. The scope of Section 154 of the 1961 Act is very narrow and restricted to only correcting mistakes apparent from record, and in case if the claim of the assessee requires long drawn deliberations and reasoning , it cannot be covered u/s 154 of the 1961 Act. Thus, in our considered view , setting up of a new claim of exemption u/s 10(23C)(iiiad) for the first time through a rectification application u/s 154 of the 1961 Act is itself not permissible keeping in view the limited and narrow mandate of Section 154 of the 1961 Act. Also that now withdrawing the exemption claim u/s 11 and 12 by filing rectification application u/s 154 , will falsify the accountants report u/s 12A(b) filed along with the return of income . Further, in the recent judgment and order of Hon'ble Supreme Court in the case of Pr. CIT v. Wipro , reported in (2022) 140 taxmann.com 223(SC) the Hon'ble Apex Court held that an altogether new claim cannot be set up even by filing revised return of income , as the scope in filing revised return of income is to correct omissions and errors , rather than brining altogether new claim in revised return of income. The relevant observations of Hon'ble Supreme Court are as under:

“9.....The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under Section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or setoff of any loss. Filing a revised return under Section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act.

10. Even the submission on behalf of the assessee that it was not necessary to exercise the option under section 10B (8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B (8) can be said to be co-terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B (5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B (5). Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report under section 10B (5) would become falsified and would stand to be nullified."

Thus, Judged from any angle, the appeal of the assessee lacks merit , and is hereby dismissed. We order accordingly.

9. In the result appeal filed by the assessee in ITA no. 09/Alld/2021 for ay: 2011-12 stands dismissed.

10. Now, we shall take up appeal filed by assessee in ITA No. 10/Alld/2021 for ay: 2013-14 with tribunal. The grounds of appeal raised by assessee in Memo of Appeal filed with tribunal, reads as under:

"1. That in any view of the matter order passed under section 154 of the Act dated 22.09.2017 is bad both on the facts and in law and the assessing officer was wrong in denying genuine claim of the society.

2. That in any view of the matter the assessee society is engaged in carrying out educational activities as per rule and by-laws of the society and runs educational institution and claim exemption under section 10(23C)(iiiad) of the Act but both the two lower authorities failed to consider the genuine claim of the society which is highly unjustified.

3. That in any view of the matter the entire receipt of the assessee society were from fees collection which was duly accepted and no contrary view was taken by the department but allegation was about claim of expenditure which was as per by-laws of the society hence both the two lower authority failed to consider the fact that once receipts are accepted as genuine then there is no question of doubting expenditure claim which are part of the educational activity.

4. That in the any view of the matter both the two lower authorities failed to consider the genuine activities of the society and the department also granted registration under Section 12A of the Act but all these facts were altogether ignored both the two lower authorities which is highly unjustified.

5. That in any view of the matter the appellant reserves the right to take any fresh ground before hearing of the appeal."

11. Both the parties before us, agree that for ay: 2013-14 , identical facts are there, except that in this year fee of Rs. 3,15,400/- was received. The Id. Counsel for the assessee submitted that the construction of educational institution is going on in this year. Thus, keeping in view that the facts are identical in this assessment year 2013-14 vis-à-vis ay: 2011-12 except stated above which in our considered view does have any bearing on the decision , our decision for ay: 2011-12 shall apply mutatis mutandis to ay: 2013-14. We order accordingly.

12. In the result, appeal filed by the assessee in ITA no. 10/Alld/2021 for ay: 2013-14 stands dismissed

13. In the result, both the appeals filed by the assessee in ITA no. 09 & 10/Alld/2021 for ay: 2011-12 and 2013-14 respectively stands dismissed

Order pronounced in Open Court on 02/08/2022 at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 02/08/2022

Kd Azmi

Copy forwarded to:

1. Appellant – Jagdish Bahadur Educational Society, 25/1, Jairampur Patpar, Rajrooppur, Subedarganj, Allahabad-211011, U.P.
2. Respondent – Income Tax Officer (Exemption), Allahabad. U.P.
3. CIT(A) –AayakarBhawan, 38, M G Road, Civil Lines, Allahabad, U.P.

4. CIT, AayakarBhawan, 38, M G Road, Civil Lines ,Allahabad, U.P.
5. The Id. Sr. DR. ITAT, AayakarBhawan, 38, M G Road, Civil Lines Allahabad, U.P.

By Order
Assistant Registrar

*ITA No.09& 10/ALLD/2021
Assessment Year: 2011-12 and 2013-14
Jagdish Bahadur Educational Society, Subedarganj,
Allahabad-211011, U.P.*