

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.224/Ind/2021
(Assessment Year: 2012-13)

Mahila Avam Bal Kalyan Samiti, C/o Sarasvati Vidhya Mandir, 13, Shivaji Path, Badnavar Road, Barnagar-456771	Vs.	CIT(A) NFAC National Faceless Appeal Centre, Delhi
PAN No.AACAM3998C		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by :	Shri Aditya Shukla, DR

Date of Hearing	23.06.2022
Date of Pronouncement	29.06.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 23.09.2021 passed by the Ld. CIT(A), National Faceless Appeal Centre, Delhi arising out of the order dated 23.12.2019 passed by the ITO-2(1), Ujjain under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2012-13.

2. At the time of hearing of the instant appeal none appeared on behalf of the assessee. It further appears that previously the matter was fixed for hearing on 06.04.2022 and again 24.05.2022. In both the occasions none appeared on behalf of the assessee. The assessee has, however, filed a written notes of

submission in support of his case before the Ld. CIT(A). Having no other alternative we have decided to dispose of the appeal ex-parte.

4. We have heard the Ld. D.R. who has relied upon the order passed by the Ld. CIT(A) and perused the relevant materials available on record.

5. The brief facts leading to the case is this that the assessee deposited cash amount of Rs. 95,61,380/- in the saving bank account maintained by the assessee society during the year under consideration. A letter dated 31.01.2019 was issued to the assessee for furnishing information regarding the said deposit but without result. Notice under Section 148 dated 29.03.2019 was issued and served upon the assessee recording reason and upon obtaining approval from the competent authority. Subsequently, notices under Section 142(1) dated 13.11.2019, 03.12.2019 were served in response whereof return of income of Rs. NIL was filed. Further notice under Section 143(2) dated 21.12.2019 was issued. It appears from the Audit Report / submission of the assessee that the assessee is a society engaged wholly and exclusively in providing education to all sections and running several educational institutions under name and style of 'Saraswati Shishu Mandir (Prathmik)', 'Saraswati Vidya Mandir (Madhyamik)' and 'Saraswati Vidya Mandir (Uchchar Madhyamik Vidhyalaya)' etc. The same society is registered with the Registrar of Society, Ujjain by and under Registration No. 8003 dated 18.06.1979. From the perusal of the Audit Report of the assessee society the following fact revealed:

<i>Name of institution</i>	<i>Gross receipt</i>	<i>Revenue and capital Expenditure</i>	<i>Net surplus/deficit</i>
<i>Mahila avam kalyan</i>	<i>Bal Rs. 4430213</i>	<i>Rs. 4063568</i>	<i>Rs. 366645</i>

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samiti

Saraswati Shishu Rs. 1138386 Rs. 1391405 Rs.(-)253019

Mandir

Saraswati Vidhya Rs. 3303073 Rs. 3074921 Rs. 228152

Mandir

Saraswati Vidhya Rs. 5430961 Rs. 4887378 Rs. 543583

Mandir Uchchtar

Madhyamik

Rs. 14302633 Rs. 13417271 Rs. 885362

In response to the explanation asked for as to why over all net surplus of the society should not be taken for taxation and reason for non-filing of ITR for the year under consideration, the assessee submitted the following:

“3.1 The assessee submit that – “the assessee is an educational institution and receipt of every institution is below 1 crore and as per section 10(23C)(iiiad) of the act income of such type of institution is exempt from tax and for this return we have not filed our income return. Further net income of all the institution (including society) is Rs. 8,85,361/- before claiming depreciation benefits and institutions and institutions have also made capital investments of Rs. 30,04,705/- during the financial year. No profit remain unutilized after claiming depreciation as per I.T.Rules and loss is not liable for tax so for this reason also we have not file dour income tax return. We are enclosing our income tax return filed u/s 148 alongwith this reply and also we have conducted audit of our society and all of the institution which is also enclosed.””

6. The submissions of the assessee was not found acceptable by the Ld. AO and overall surplus of income over expenditure of Rs. 8,85,362/- has been added to the total income of the assessee by the Ld. AO with the following observation:

“-The assessee contended that after claiming depreciation, no profit remains. As the assessee has claimed capital expenditure and net surplus of Rs, 8,85,362/- remains after claiming capital expenditure, the assessee society is not entitled for claiming depreciation being double deduction.

-The assessee has claimed that after claiming capital investment of Rs. 30,04,705/-, no profit remain unutilized. As assessee has already claimed capital expenditure and net surplus of Rs. 8,85,362/- remains after claiming capital expenditure, therefore, claim of the assessee is not acceptable.

-The assessee has claimed that income of the assessee is exempt u/s 10(23C)(iiiad) and income of institutions is exempt from tax. As assessee has not filed ITR u/s 139 of I.T.Act and have not claimed exemption, claim of the assessee is not acceptable. Moreover, receipt of the assessee society is more than one crore, therefore, provisions of section 10(23C)(iiiad) is not applicable and society is not found registered u/s 10(23C)(vi) of I.T.Act, 1961."

7. It appears from the orders passed by the authorities below that the total gross receipt of the appellant charitable society including three educational institutions during the year under consideration since one more than 1 crore as per assessment order the exemption claimed under Section 10(23C)(iiiad) of the Act has been rejected.

8. On this aspect we have carefully considered the relevant provision of the Act wherein it has been clearly specified that the aggregate annual receipt of each of the educational institution must not be more than 1 crore. The question of clubbing of annual receipt of all educational institution, therefore, does not arise at all. In that event the assessee is has rightly claimed benefit under Section 10(23C)(iiiad) of the Act. We have further carefully considered judgments passed by the different judicial forum we find that in the case of CIT vs. Chindrens Education Society the Hon'ble Karnataka High Court at Bangalore has dealt with the identical situation and found the assessee is entitled to the claim made under Section 10(23C)(iiiad) of the Act considering the statutory provision made therein at that material point of time. While dealing with the issue the Hon'ble Court was pleased to observe as follows:

"17. Rule 2BC of the Income Tax Rules prescribes the amount of annual receipts for the purposes of sub-clauses

(iii)(ad) and (iii)(ae) of clause (23C) of section 10, which reads as under:

"2BC (1) For the purposes of sub-clause (iii)(ad) of clause (23C) of section 10, the amount of annual receipts on or after the 1st day of April, 1998, of any university or other educational institution, existing solely for educational purposes and not for purposes of profit, shall be one crore rupees.

(2) For the purposes of sub-clause (iii)(ae) of clause (23C) of section 10, the amount of annual receipts on or after the 1st day of April, 1998, of any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, shall be one crore rupees.]”

18. Therefore, one crore of rupees is the aggregate annual receipts which is prescribed under the Rules. In other words, if the aggregate annual receipts of an educational institution is less than one crore, the income from such educational institution in the hands of the assessee, is not taken into consideration in computing the total income of the assessee.

19. Sub-clause (vi) provides that any University or other educational institution existing for educational purpose and not for the purpose of profit other than those mentioned in sub-clause (iii)(ab) and sub-clause (iii)(ad) and which may be approved by the prescribed Authority, they are also entitled to the said benefit. In other words, sub-clause

(iii)(ab), sub-clause (iii)(ad) and clause (vi) applies to three categories of institutions.

20. Now, we are concerned with the meaning to be attached to the word "aggregate annual receipt". The argument is, other educational institution referred to in the said sub-clause refers to all educational institutions run by the assessee and aggregate annual receipts of such other educational institutions means the aggregate of annual receipts of all such educational institutions put together.

Otherwise, the use of the word "aggregate" loses its meaning. We find it difficult to accept the said argument.

21. Firstly, if the word "aggregate annual receipts" of other educational institution is to be understood as clubbing of annual receipts of all educational institutions run by an assessee society, then it will also include the annual receipts of an educational institution which is wholly or substantially financed by the Government. If that was intention of the Legislature, they would not have introduced separate sub- clauses as (iii)(ab) and (iii)(ad). If such interpretation is placed, sub-clause (iii)(ab) becomes otiose. Therefore, it is not possible to place such an interpretation. If an assessee society is running several educational institutions, if some of them are wholly or substantially financed by the Government in terms of sub-clause (iii)(ab), the income on behalf of such educational institution received by the assessee is exempted from being computed the total income of the assessee. If the assessee is running other educational institutions which are not wholly or substantially financed by the Government, then the benefit of that exemption is also extended to the income derived from such educational institutions and received by the assessee under sub-clause (iii)(ad) reading with sub-clause (iii)(ad) along with Rule 2BC. It was contended, the Legislature used the word "aggregate annual receipt" and "amount of

annual receipts" and therefore, the provisions are not one and the same. The word "aggregate" has been defined in Chambers 21st Century Dictionary as under:

"aggregate - noun = a collection of separate units brought together, a total taken altogether, bring together."

In Wharton's Law Lexicon, it is defined as thus:

"a collocation of individuals, units or things in order to form a whole"

22. Similarly relying on the judgment of the Apex Court in the case of ADITANAR EDUCATIONAL INSTITUTION vs. ADDITIONAL COMMISSIONER OF INCOME-TAX, it was contended the word "other educational institution" refers to the assessee society and not to the individual educational institution. If the intention of the Legislature was to club the annual receipts of all educational institutions run by the assessee society, they could have said so in clear terms. On contrary what is stated in the said Section is the aggregate annual receipts of such University or such educational institution referring to other educational institution. Other educational institution is to be understood with the context of the first word i.e., the University. Both in the University and any educational institutions, education is imparted. The University is a statutory body. But there are a number of educational institutions which are not run by a statutory authority which are imparting education, the word "other educational institution" has to be understood in the context of other than any University. If so understood, all that it means is every educational institution existing solely for educational purpose and not for the purpose of profit, if the aggregate annual receipts of such educational institution exceeds Rs.1 crore, then the income from such educational institution received by the assessee is excluded from his total income. In an educational institution the amount are calculated periodically. It may be calculated under different heads. All such amount received constituted receipts and those receipts may be received throughout the year. Therefore, the word "annual" has been inserted. But to be eligible for exemption, aggregate of annual receipts should not exceed Rs.1 crore i.e. the total annual receipts of a year if it does not exceed Rs.1 crore, then the income derived from such educational institution in the hands of the assessee cannot be taken into consideration to compute the income of the assessee.

23. No doubt, education has become a business, a very profitable business also. But it requires huge investment. It is the duty of the Government to provide education to all its citizens, as the Government is not able to shoulder the responsibility completely. Therefore, the field of education is now thrown open to private organizations. But for throwing open the field to the private operators, probably, the country would not have achieved in the field of education what it has achieved. Therefore, lot of funds are invested in running these educational institutions, either by creating a Society or a Trust. In course of time, they have expanded their activity providing course in various subjects at various levels and for that purpose they have established more than one educational institution. Each educational institution is a separate entity controlled under various statutes for various purposes. May be the Management of these educational institutions would be in the hands of the Societies

or the Trust, but for all other purposes they are different, independent entities. That is the reason why Section 10 (23)(c) is worded as under:

"Any income received by any person on behalf of..."

Here "any person" refers to the assessee and "on behalf of" refers to such institutions. It may be an University, it may be an educational institution, it may be a hospital or other institutions of similar nature. As all such institutions are independent entity and they generate income and when that income is received by the assessee, it becomes the income in the hand of the assessee and it is such income which is sought to be excluded while computing the total income of the assessee under Section 10. The test prescribed under the aforesaid provision is not the income of the educational education. It is the aggregate annual receipts of such educational institution that is prescribed at Rs.1 crore. Therefore, irrespective of the expenditure incurred by those institutions, the exemption is based on the total receipts. Even if the word "aggregate" has to be understood as suggested by the Revenue as the annual receipts of such educational institutions put together, probably, the said provision regarding exemption would be of no use at all. Especially, if the society is running a medial college or any engineering college or other professional courses, then the annual receipt of each institution would run to few crores and therefore, the very object of granting exemption to such genuine institution would be lost. Therefore, the word "aggregate annual receipt" has to be understood with the context in which it is used and the purpose for which the said provision was inserted, keeping in mind, the Scheme of the Act. Therefore, if an assessee is running several educational institutions, if any of them is wholly or substantially financed by the Government, then the income from such educational institution received by the assessee is not included while computing his total income. Similarly, income from each educational institution if they are not receiving any aid from the Government wholly or substantially in respect of which the aggregate annual receipt do not exceed Rs.1 crore received by the assessee, is also not included while computing annual total income of the assessee.

24. Clause (vi) makes it clear that if educational institution do not fall under either of those two categories and still such educational institutions are also entitled to the exemption, provided such institutions are approved by the prescribed authority. Therefore all these three provisions apply under three differed spheres. Otherwise, there was no necessity for the Legislature to introduce these three provisions. In that view of the matter, the finding recorded by the Tribunal that aggregate annual receipt of other educational institution means, total annual receipt of each educational institution, is correct and it does not call for any interference. Therefore the substantial questions of law No.2 and 3 is answered in favour of the assessee and against the revenue."

Thus, having regard to the facts and circumstances of the case and particularly the judgment passed by the Hon'ble Karnataka High Court on the identical issue, we find that the annual receipt of each institution of the

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assessee three in total since less than 1 crore, the assessee is entitled to the claim of exemption made under Section 10(23C)(iiiad) of the Act. The order passed by the authorities below is, therefore, found to be not in terms of the statutory provision and therefore, liable to be quashed. With this aforesaid observation we allow the appeal preferred by the assessee finding it entitle for exemption as per provision of Section 10(23C)(iiiad) of the Act. Thus, assessee's appeal is, therefore allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 29/06/2022 by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

This Order pronounced in Open Court on 29/06/2022

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER
Ahmedabad; Dated 29/06/2022
TANMAY, Sr. PS

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Indore

1. Date of dictation 23.06.2022
2. Date on which the typed draft is placed before the Dictating Member 23.06.2022
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S .06.2022
5. Date on which the fair order is placed before the Dictating Member for pronouncement .06.2022
6. Date on which the fair order comes back to the Sr.P.S./P.S .06.2022
7. Date on which the file goes to the Bench Clerk .06.2022
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....