IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No.76/Asr/2022
Assessment Year: 2017-18

Saint Mahapragya Educational Society, Rajkot Road, Jagraon. [PAN: AADAS0870Q] **(Appellant)**	**Vs.**	Pr. CIT, (Exemptions), Chandigarh. **(Respondent)**

I.T.A. No.77/Asr/2022
Assessment Year: 2017-18

Roop Vatika, Near Shani Mandir, Gaushala Road. [PAN: AABAR8285L] **(Appellant)**	**Vs.**	Pr. CIT, (Exemptions), Chandigarh. **(Respondent)**

Appellant by	**Sh. Sudhir Sehgal, Adv.**
Respondent by	**Sh. Rohit Mehra, CIT. DR**

Date of Hearing	**19.10.2022**
Date of Pronouncement	**11.11.2022**

ORDER

Per: Bench:

Both instant appeals of the different assessee-society are directed against the order of the ld. Commissioner of Income Tax(Exemptions),Chandigarh, [in brevity the CIT(E)], the order passed u/s 263of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2017-18.The impugned orders were emanated from the order of the ld. Income Tax Officer, Ward, Jalandhar, (in brevity the AO) order passed u/s 143(3)of the Act both orders are passed on dated10.12.2019.

2. Both the appeals are under the same factual backdrop. Both appeals are taken together and as per the consent of both the parties. ITA No. 76/Asr/2022 is taken as a lead case. The ground of the appeal is as below:

> *"1. That the Ld. Commissioner of Income Tax (Exemptions), Chandigarh, has erred in assuming the jurisdiction U/s 263 of the Act and holding the assessment as erroneous and prejudicial to the interest of revenue and setting aside the order as passed after due application of mind by the Ld. Assessing Officer.*
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> *2. That the Ld. Commissioner of Income Tax (Exemptions), Chandigarh has failed to appreciate the fact that the original assessment was framed by the Assessing Officer after due application of mind and on that basis and after consideration of all the facts and*

circumstances of the case, has allowed the exemption u/s 10(23) (iiiad) of the Act.

3. That the Ld. Commissioner of Income Tax (Exemptions), Chandigarh has failed to appreciate that the assessment had been completed after due consideration of various replies before the Assessing Officer during the course of assessment proceedings and the Assessing Officer having taken a possible view and, therefore, the assumption of jurisdiction u/s 263 was not called for by the Ld. Commissioner of Income Tax (Exemptions), Chandigarh.

4. That the Ld. Commissioner of Income Tax (Exemptions), Chandigarh has failed to appreciate that the appellant has specifically filed the student-wise and class wise details of the fees received in advance amounting to Rs. 40,36,700/- during the course of original assessment proceedings and the Ld. AO has duly accepted the same as the current liability of the assessee instead of the gross receipt as alleged by the Ld. Commissioner of Income Tax (Exemptions), Chandigarh and, as such, the assumption of jurisdiction by the Ld. Commissioner of Income Tax (Exemptions), Chandigarh is bad in law.

5. That without prejudice to the above, even otherwise also the Ld. Commissioner of Income Tax (Exemptions), Chandigarh has erred in holding that the appellant is not entitled for exemption U/s 10(23C)

(iiiad) of the Act and has also erred in holding that fees and funds etc. received in advance for next academic session forms part of annual receipts / aggregate annual receipts as per provisions of section U/s 10(23C) (iiiad) of the Act..

6. That without prejudice to the above, even otherwise also the directions given by the Ld. Commissioner of Income Tax (Exemptions), Chandigarh to the Id. Assessing Officer for the purpose of framing assessment a fresh by the Ld. Assessing Officer are against the law and facts and accordingly the same are liable to be quashed.

7. That the replies submitted to the Ld. Commissioner of Income Tax (Exemptions), Chandigarh have not been considered properly and the finding of the Ld. Commissioner of Income Tax (Exemptions) are not in accordance with the law and facts of the case and the same are arbitrary in nature.

8. That the Appellant craves leave to add, amend, alter, substitute, modify, rectify, or delete the grounds of appeal before the appeal is finally heard or disposed off."

3. Brief fact of the case is that the assessment was completed u/s 143(3). The assessee is an educational society claimed exemption u/s 10(23C) (iiiac) of the Act

by satisfying the criteria that the turnover is below Rs.1 crore. During the year the assessee has booked the amount Rs. 40,36,700/- in the account "loan and advance" in its financial statement. Considering the factual & financial declaration of assessee, the ld. assessing authority had completed the assessment & had passed the order. The notice u/s 263 was issued with multiple findings. All other issues are dropped by the ld. CIT(A), only the issue related to advance fee amount of Rs. 40,36,700/- was in question u/s 263. The assessee has a gross turnover Rs.99,26,655/- during the financial year.The ld. CIT(E) has added back the advance gross receipt and the interest which is worked out total amount of Rs.1,39,66,313/- (Rs.99,26,655/- (+) Rs.2958/- (+) Rs.40,36,700/-). As the gross receipts during the financial year is enhanced more than Rs. 1 Crore. Accordingly, the assessee is contravening section 10(23C) (iiiad) r.w.s. 2(15) of the Act & was not eligible for statutory deduction. The revisional authority has come to conclusion that the assessee was not investigated by the ld. AO during the assessment proceeding. So, the assessment order is erroneous and prejudicial to the interest of the revenue. Accordingly, the order of the ld. AO was setting aside for a fresh assessment in the light of observation of the ld. CIT(E). Being aggrieved

assessee filed an appeal before us by challenging the order passed U/s 263 of the Act.

4. The ld. Counsel had filed the written submission with brief note before the Bench which are kept in record. Ld. Counsel placed specific paragraph of the order of u/s 263. The relevant paragraphs 4& 5 of the impugned order are extracted as below:

> *"4. Upon perusal of your Income & Expenditure A/c for the year ended on 31.03.2017 and Balance Sheet as on 31.03.2017, it is gathered that you being the assessee society has received Annual Receipts under the head 'Gross Receipts from Fees & Funds etc.' of Rs. 99,26,655/-, 'Interest Received' of Rs. 2958/-, and 'Fees in advance' of Rs. 40,36,700/-. Therefore, the total 'Annual Receipts' computes to Rs. 1,39,66,313/- (9926655 + 2958 + 4036700). All these amounts have been actually received by you. Under the extant and applicable principles of accountancy when considered alongside the definition of "Income" of an exempt institution under the Act, these amounts will need to be held as receipts that are to be characterized as your "Income". This would be the correct position u/s 10(23C)(iiiad) r.w.s. 2(15) r.w.s. 11 r.w.s. 2(24) of the Act. In*

view of the same and the provisions of the Act as mentioned above, you are ineligible for claiming exemption u/s 10(23C)(iiiad) of the Act, since total receipts being "Income" exceeds Rs. 1 Crore. It is also pertinent to mention here that mercantile system of accounting (Viz. which applies to trade/commerce/business) is not applicable in the computing of total income/total receipts of exempt institutions under the Income Tax Act, 1961.

5. In view of the facts stated above, it appears that the assessment framed u/s 143(3) of the Act on 10.12.2019 is erroneous as well as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015. You are, therefore, requested to show cause as to why order u/s. 263 of the Act should not be passed enhancing or modifying the assessment or cancelling the assessment in your case."

4.1 In detailed argument the ld. Counsel placed that during assessment the issue was agitated related to collection of advance fees from the students. The advance fees was received for the financial year 2017-18 and the relevant financial year for

appeal is related to 2016-17. So, the collection of fees related to financial year 2017-18 is partly come under the 2016-17 and partly come under the 2017-18. The fees from the students which are not utilized during the financial year 2016-17 &was booked in the head as advance fee in the year of appeal. This particular advance fee Rs.40,36,700/- is already exhausted and is booked in the turnover for the next financial year i.e. F.Y. 2017-18. Accordingly, the assessment was completed in that financial year 2017-18 relevant to the assessment year 2018-19. The copy of the assessment order was placed order dated 10.03.2021 bearing DIN ITBA/AST/S/143(3)/2019-20/10313748931. The assessing authority had accepted the advance fees of earlier years as a turnover in a next year.

4.2 The issue was already considered by the ld. Assessing Authority in his order. The paragraph 2 page no. 2 of the assessment order is extracted as below:

> *"2. The assessee trust/society has claimed exemption under sub clause (iiiad) of clause (23C) of section 10 of the Income Tax Act, 1961. The assessee society is pursuing charitable activity viz. education an institute under name and style of "Saint Mahapragya Educational Society". The trust/society has declared total income/receipts of Rs. 99,29,613/- against which*

amount applied for charitable purposes on account of revenue expenditure stands at Rs. 86,31,144/-. The case was analyzed with respect to information/ documents and books of account furnished electronically during the course of assessment proceedings. On perusal of the record/books of account, returned income of the assessee is accepted.

4.3 The ld. Counsel further argued that the auditor has specifically mentioned the accounting policy of the assessee is mercantile. The copy of the audit report, balance sheet and P & L a/c as annexed in **APB page nos. 1 to 8 and page no. 7.**The declaration in Audit Report by the designated Chartered Accountant related significant accounting policy followed by assessee is duly annexed and the system of accounting policy is confirmed in **page no. 7 of APB**. During the assessment proceeding the details query was made by the ld. AO and the details advance fee was produced before the ld. AO in a letter dated 10.12.2019. The specific letters with the lists are annexed from **page nos. 9 to 21of APB**. After accepting the details of the advance fees the assessing authority had completed assessment accordingly. The assessing authority had not found any lacuna in the process of

accounting and the fees as advance was not in a dispute in the assessment proceeding.

4.4 During revision the proceeding, initiated u/s 263, the notice was issued and the same issue was duly replied by the assessee before the authority by a letter dated 17.01.2021 which was also annexed in **page nos. 26 to 38 APB**. The ld. Counsel for the assessee clearly depicted the explanation in section 10(23C) related to aggregate annual receipts and the analysis of the annual receipts and the total receipts.

4.5 According to the ld. Counsel analyse the issue during the hearing. Assessee's synopsis para 17, 18 and 19 is reproduced as under:

> *"17. The wording is only 'annual receipts', annual receipts clearly mean the receipts for the particular financial year and whether the assessee, like in the present case is running only one educational institution, then whatever, annual receipts, the same would be the 'Aggregate annual receipts'. The advance fee receipt for the next financial year as in the present case, cannot be considered as annual receipts or an 'aggregate annual receipts' for the year under consideration on the basis of method of accounting followed by the assessee.*

18. Further, your goodself's attention is invited on the provisions of section10(23C)(iiiab) and section 10(23C)(iiiac) read with Rule 2BBB of the Income Tax Rules, 1962, which are reproduced as under"-

"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; or

"iiiac) 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, and which is wholly or substantially financed by the Government. "

Explanation. For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, shall be considered as being

substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year; or"

Further in this regard rule 2BBB of Income Tax Rules, 1962 provides as under:

"Percentage of Government grant for considering university, hospital etc. as substantially financed by the Government for the purposes of clause (23C) of section 2BBB. For the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty per cent of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year. ”

19. Thus on perusal of the aforesaid provisions of the law, your good self will find that the legislature has specifically used the word "Total Receipts" whereas in the provisions of section 10(23C)(iiiad) and section 10(23C)(iiiac) of the Act, the legislature has specifically used the word "Annual Receipts". The words "total" receipts" and "annual receipts" are not one and the same thing."

5. The ld. CIT DR vehemently argued and relied on the order of ld. CIT(E). The ld. CIT DR had not able to produce any contrary fact or explanation against the asssessee's submission.

6. We heard the rival submission relied on the documents available in the record. During the year of appeal, the assessee received the fees from students. The assessee during accounting treatment divide fees in two ways 1) The 'annual receipts' which is related to financial year and taken directly in the revenue income. The receipts from students which are not related or utilized for this financial year under appeal as booked as advance under current liability in the balance sheet. These advance fees are taken as annual receipt in the revenue

income in next financial year in which year it is related. 2) This is a circular process in each and every year. The ld. Counsel had pointed out that next year the issue was accepted, and the turnover was assessed by the ld. AO without making any addition in the assessment u/s 143(3). The ld. Counsel relied on the order of the Hon'ble Karnataka High Court in the case of **CIT vs. Children Education Society', (2013) 34 Taxmann.com 285 (Kar)** in relevant para 17 is annexed as below:

> *"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.]"

Further relied on the case **Commissioner of Income Tax vs. Anil Kumar Sharma', 335 ITR 83 (Del. HC)**. The relevant para is extracted as below:

"7. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under Section 263 would fell into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this Court. That being the position, the present case would not be one of „lack of inquiry" and, even if the inquiry was termed as inadequate, following the decision in M/s Sunbeam Auto Ltd (supra), "that would not by itself give occasion to the Commissioner to pass orders under Section 263 of the said Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration. Consequently, the appeal is dismissed."

6.1 The advance fees when it is taken as an annual receipt of the assessee, the annual turnover is going up above Rs.1 crore and the assessee was unable to utilize the benefit for contravening section 10(23C). The entire issue is discernible in order of the ld. assessing authority. Further, the same issue was explained before the ld. revisional authority. There are two plausible views related advance fees from student. The revisional authority is treating it as turn over during the year of receipt. But the ld. AO is accepting the advance fees as current liability& allowed to consider it next financial year in annual turnover. This particular issue is prejudicial to the interest of revenue as the ld. revisional authority.

What is prejudicial to the interest of the Revenue is explained in the judgment of the Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd v CIT[2000] 109 Taxman 66/243 ITR 83 (SC)**(paragraph 5):

"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the

courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

The principle which has been laid down in Malabar Industrial Co. Ltd (supra) has been followed and explained in a subsequent judgment of the Supreme Court in **CIT v. Max India Ltd. [2008] 166 Taxman 188/[2007] 295 ITR 282**.

6.2. In assessee's case while interpreting the treatment of advance fees as current liability or revenue receipt. The AO has taken one view in allowing the current liability on the submissions of the assessee of various judicial pronouncements rendered in the context, whereas the CIT is not in agreement with the view of the ld. AO. The decision of the AO to allow / accept the advance fees as current liability cannot be stated as unsustainable in law as he has taken a possible view based on application of mind. The ld. CIT(E) has not brought any material on record to show that the view taken is contrary to law. In the light of these discussions and placing respectful reliance on the decisions of Hon'ble Supreme Court, Hon’ble High Court of Delhi & Hon’ble High Court of Karnataka, cited

supra, we are of the considered view that the CIT is not justified in setting aside the order of the ld. AO. Accordingly, the directions of the PCIT are quashed.

7. In the result, both the appeals bearing **I.T.A. Nos.76 & 77/Asr/2022**are allowed.

Order pronounced in the open court on 11.11.2022

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**Judicial Member**

AKV
Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By Order