

**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.173/Asr/2017: A.Y.2012-13
I.T.A. No.608 to 610/Asr/2019: A.Y.2010-11 to 2012-13**

Guru Nanak Dev Health & Education Society, V.P.O. Jarg, Tehsil Payal, 141416, District Ludhiana, (Punjab) [PAN: AAAAG7216R] (Appellant)	Vs.	Income Tax Officer, (Exemption), Ward- Jalandhar. (Respondent)
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Appellant by	None.
Respondent by	Sh. Rajeev Wadhara, Sr. DR

Date of Hearing	09.02.2023
Date of Pronouncement	24.02.2023

ORDER

Per: Bench:

The batch of appeals of the assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals)-4, Ludhiana,[in brevity the ‘CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2010-11 to 2012-13.The impugned order was emanated from the order of the Id.

Income Tax Officer, (Exemption)- Jalandhar the order passed u/s 143(3)& 271(1)(c) of the Act.

2. In the outset, we advert that the assessee has filed multiple appeals bearing ITA No. 173/Asr/2017, ITA 608/Asr/2019 and 609/Asr/2019 are common issue related to exemption u/s 10(23C) (iiiad) of the Act and only ITA No. 610/Asr/2019 is related to section 271(1)(c) of the Act for A.Y. 2012-13. Considering the all three appeals are being adjudicated together. Therefore, we are taking **ITA No. 173/Asr/2017** is a lead case. The assessee has taken the following grounds: -

“1. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the null and void assessment order passed on basis of invalid service of notice u/s 143(2) of the Act. Where admittedly as per record available with Ld ITO (Exemption), Ward Jalandhar, there is no proof of service of notice on appellant.

2. That on the facts and in the circumstances of the case and in law, learned CIT-A grossly erred in upholding Ld AO's action of denial of exemption claimed by the appellant under section 10(23C)(iiiad) of the Act by following the assessment order of assessment year 2010-2011, which was framed on the ground that appellant does not exist solely for education purpose and making

addition of Rs. 23,83,252/- which represents excess of income over expenditure.

3. That on the facts and in the circumstances of case and in law, the learned CIT-A grossly erred in ignoring the well settled law of "every assessment year has its separate assessment".

4. That on the facts and in the circumstances of case and in law, the learned CIT-A grossly failed to appreciate that there is no evidences and material on records, which support the allegation made by Ld AO in its order, which has resulted in erroneous order and untenable conclusion. The onus which lies on the department has not been discharged and denial of giving benefit of section 10(23C)(iiiad) of the Act has been made arbitrarily.

5. That on the facts and in the circumstances of case and in law, the learned CIT-A grossly erred in upholding the addition of disallowing of interest Rs. 60,000/- without appreciating that section 40(a)(ia) does not apply on the income of school, as the income of school does not assessee under sections 28 to 44 of the Act.

That the appellant craves leave to add, to, amend, modify, rescind, supplement or alter any of the grounds

stated herein above, either before or at the time of hearing of this appeal.”

3. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is no application for seeking adjournment either. On perusal of record, we find that the hearing is scheduled on 09/02/2023. Previously the dates were fixed number of times. We find from the record that on the Id. Counsel of the assessee had filed the Paper Book. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learned DR and on the basis of material available on the record.

4. Brief fact of the case is that the assessee is a trust registered u/s 12A. The claim of the assessee for exemption of income u/s 10 (23C) (iiiad) of the Act as the assessee is an educational society. The revenue has objected the activities of the trust and claim that the assessee had multiple activities so it not able to exempt u/s 10 (23C) (iiiad) for educational purpose. Accordingly, the exemption was denied, and the net profit was taken as a taxable income of the assessee. The addition was made Rs. 60,500/- for violation of section 40(a)(ia). But the assessee has claimed that the payment of interest Rs.60,500/- is not attracted section 40(a)(ia). The entire balance of the income of expenditure account Rs.23,83,252/- was added

back with the total income of the assessee. Accordingly, the assessee filed an appeal before the Id. CIT(A) by challenging the order of the Id. AO but was unsuccessful. Being dissatisfied the order of the Id. CIT(A) assessee filed an appeal before us.

5. We heard the submission of the revenue, perused the submission of assessee and considered the orders of the revenue authorities. The issue was already taken care by the Id. CIT(A). The relevant para 2 of the CIT(A) order is reproduced as below:

“The assessee is running an educational and has claimed the whole of the income as exempt as per provisions of section 10(23C)(iiiad) of the IT Act, 1961. From the perusal of information provided by the assessee through its counsels it has been noticed that during the year under consideration the assessee school had a gross receipt of Rs. 98,41,244/- and has declared excess of income over expenditure amounting to Rs 23,83,252/-.

From the perusal of MOA of the assessee society it was found that all the objects are related to multiple activities and not solely for imparting of education. Society's activities as per objectives include non-educational purposes also. However, As per section 10(23C)(iiiad) of the IT Act under which assessee society has claimed exemption it must have its main objective to exist solely for education and within prescribed monetary limit.

As per I.T Act, 1961 the relevant sections are produced as under:

10(23C) (iiiad) “Any university or other educational institute existing solely for educational purposes and not for purposes of profit, if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed.”

6. The ld. counsel for the assessee through the written submission prayed that the issue was already decided by the coordinate bench of Chandigarh in assessee’s own case in **ITA No. 605 and 606/Chd/2017 date of order 01.08.2019**. The same issue was duly set aside to the ld. CIT(A). The relevant para no. 6 is reproduced from the Order of ITA No. 605 & 606/Chd/2017:

“6. It has been claimed that the assessee society is registered u/s 12A of the Act also and further that the assessee society has also been granted exemption by the Ld. CIT(A) u/s 10(23C)(iiiad) for assessment year 2013-14. It is also the claim of the assessee that the donation was given for charitable purposes only to a society registered u/s 12A of the Act and that the funds so donated has been used for charitable purposes. Considering the above submissions, in my opinion, the matter needs to be examined afresh by the Ld. CIT(A) for the assessment years under consideration in the light of the

findings given by the Ld. CIT(A) for the assessment year 2013-14. The Ld. Counsel has also submitted that the assessee society will furnish the PAN numbers of its members and will also furnish the PAN number of the recipient society to whom the donation of Rs. 50,200/- was made. In view of this, the matter in both the appeals is restored to the file of the CIT(A) for adjudication afresh. It is also directed that if the assessee society, under the circumstances, is found to exist not solely for educational purposes, the Ld. CIT(A) will also consider the claim of the assessee for grant of exemption u/s 12A of the Act, if the assessee society is otherwise found eligible for this as per the relevant provisions.”

7. We find that the multiple objection was taken by the revenue related to claim of section 10(23C)(iiiad). The ld. Sr. DR vehemently argued and fully relied on the order of the revenue authorities related to non-deduction of TDS Rs.60,500/- for violation of section 40(a)(ia) the nature of the interest is also in question related to payment Rs.60,500/-. We fully relied on the order of the Coordinate Bench & the entire ground of the assessee is remitted back to the ld. CIT(A) for further adjudication *denovo*. Needless to say, the assessee should get a reasonable opportunity of hearing in setting aside proceeding before the ld. CIT(A).

8. In the result, the appeal of the assessee is allowed for statistical purposes. The ITA No. 173/Asr/2017 is mutatis mutandis applicable on the ITA No.608 to 610/Asr/2019 and will be followed accordingly.

9. ITA No. 610/Asr/2019 the issue is related to levy of penalty u/s 271(1)(c). The penalty is consequential in nature and would be determined after the quantum determination. So, the penalty is set aside to the Id. CIT(A) for determination the issue after adjudication of quantum of appeal. The assessee should get reasonable opportunity in set aside proceeding.

10. In the result, all the appeals of the assessee bearing **ITA No. 173/Asr/2017 and ITA No.608 to 610/Asr/2019** are allowed for statistical purposes.

Order pronounced in the open court on 24.02.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
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