

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH : COCHIN**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.656/Coch/2022
Assessment Year :2012-13

M/s. Laxmi Meghan Educational Trust, KMC W1/1504, Surgicare Centre and Hospital, Kasargode District, Kerala. PAN :AAATL8244M	Vs.	ITO (Exemptions), Kannur – 670 006.
ASSEESSEE		RESPONDENT

Assessee by	:	Shri. Anil D Nair, Advocate
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR.

Date of hearing	:	27.02.2023
Date of Pronouncement	:	08.03.2023

ORDER

Per Padmavathy S, Accountant Member

This appeal by the assessee is against the order of the CIT(A), NFAC, Delhi, dated 26.11.2021 for Assessment Year 2012-13.

2. The assessee raised the following grounds of appeal:

1. The Id. CIT(A) ought to have allowed the exemption of income u/s. 10(23C) (iii ad), as prayed for by the assessee Trust. The Id. CIT(A) has grossly erred in not considering the unprovoked observation of the AO that "The assessee filed its return of income for the assessment year 201213 on 30/03/2019 declaring total income of NIL after claiming deduction u/s.10. The assessee Trust neither registered u/s. 12AA nor u/s.10(23C) (vi)", which is the only reason found by the AO to deny the exemption.

2. The Id. CIT(A) erred in ignoring the above observation. He ought to have held that the assessee has sought exemption u/s. 10(23C) (iii ad) where, there is no reference called for sections 12AA and 10(23C) (vi).
3. The Id. CIT(A) has grievously erred in rejecting the prayer u/s. 10(23C) (iii ad) stating that " There are no documents on record to show that during the financial year under consideration, the assessee trust existed solely for educational propose and not for purposes of profit and that the aggregate annual receipts of the assessee Trust did not exceed the prescribed limit of Rs. One Crore". All the observations of the CIT(A) are only hypothetical and contrary to his own findings. The Id. CIT(A) ought to have allowed the legitimate claim made u/s. 10(23C) (iii ad).
4. The Hon'ble Appellate Tribunal may be pleased to grant exemption u/s. 10 (23C) (iii ad) as prayed for by the assessee Trust.
5. The Id. CIT(A) has erred in making a disallowance of Rs. 1,66,325/-u/s. 40(ia) against advertising payments, without looking into the law and facts of the case. TDS is applicable to payments to contractors, only when the payments are made in pursuance of a contract (Sec. 194C). In the present case, there is no such contract between the assessee Trust and advertising agencies. The advertisements were given to different local news papers and souvenirs mostly out of compulsions. There is no standing contract for advertisement with any party.
6. The Hon'ble Appellate Tribunal may be pleased to delete the unlawful addition of Rs. 1,66,325/-.
7. The Id. CIT(A) has erred in law in dismissing the ground raised by the assessee against the addition of Rs. 23,42,566/-. The Id. CIT(A) has dismissed the ground for the reason that "no submissions have been filed". The AO has made the addition on the basis of alleged differences in the assessee's accounts of sundry creditors with that in the accounts of the creditors. The addition has been made without any basis.
8. The Hon'ble Appellate Tribunal may be pleased to delete the addition of Rs. 23,43,566/-/
9. For these and other grounds that may be raised at the time of hearing, the Hon'ble Appellate Tribunal may set aside the orders of the lower authorities and allow the appeal, accepting the return with NIL income u/s. 10(23C) (iii ad).

3. The assessee is an Educational Trust running a Nursing College in Kanhangad, Kasargod District. The assessee filed a NIL Return claiming exemption u/s. 10(23C)(iiiad) of the Income Tax Act. The aggregate receipts of the assessee in the relevant previous year was Rs. 99,14,087/- and the surplus of Income over expenditure is Rs. 32,80,563/-. The Return for the assessment year 2012-13 was filed on 30/03/2013. The case was selected for scrutiny. In response to notice u/s. 143(2), the assessee produced before the AO all the books of accounts including subsidiary registers. Balance Sheet, and Profit and Loss Account, for examination. The AO held that the details furnished by the assessee are not convincing and that the documents submitted were fabricated. The AO also held that the assessee was not able to give proper clarification to the discrepancies found in the books of accounts and that the receipts are not properly accounted. Therefore, the treated the surplus receipt of Rs. 32,80,563/- as part of the taxable income. The AO also made addition of Rs.1 lakhs u/s.40(a)(ia) for not deducting tax u/s.194C from payments made for advertising and made a further addition of Rs. 23,43,566/- alleging that there is differences in the balance of sundry creditors. Altogether, the AO has completed the assessment u/s. 143(3) on 30/03/2015 determining a total income of Rs. 57,24,130/-.

4. Aggrieved, the assessee filed the appeal before the CIT(A). The CIT(A) dismissed the appeal stating that the assessee did not respond to the various notices issued and based on materials available the assessee is not eligible for deduction u/s.10

(23C)(iiiad). Further the Id. CIT(A) not only confirmed the additions and the assessment, but enhanced the addition made u/s. 40(a)(ia) from Rs. 1 lakh to Rs. 1,66,325/- whereby the income was assessed at Rs. 57,90,455/-.

5. The learned AR submitted that the reason for denying the exemption claimed is that the assessee has not been registered under section 12AA of the Act nor under section 10(23C) of the Act. The lower authorities have also denied the exemption stating that the assessee has not substantiated that it is established solely for the purpose of Education and that the receipts for the year under consideration is less than Rs.1 crore for the purpose of section 10(23)(iiiad) of the Act. The learned AR submitted that the assessee is an Educational Trust running an educational institution i.e., a nursing college and as such is eligible for deduction under section 10(23C)(iiiad) of the Act. Accordingly the revenue held that the assessee in order to be otherwise eligible for claiming deduction under section 10(23C)(iv), need to get registration. It is the contention of the Id AR that assessee's is covered by section 10(23C)(iiad) of the Act under which no registration is required.

6. The learned DR on the other hand drew our attention to Page 4 of the CIT(A)'s order where it is stated that the assessee has not responded to the notices of the CIT(A) and submitted that based on available details the CIT(A) has decided the case on merits. The learned DR therefore supported the order of the lower authorities for

the reason that there has been no compliance on the part of assessee with regard to submitting relevant details.

7. We heard the parties and perused the material on record. Before proceeding, we will look at the provisions of section 10(23C)(iiiad) of the Act:

“10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(23C) any income received by any person on behalf of—

(iiiad) any university or other educational institution 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:

The limits are prescribed in Rule 23BC(1) which reads as under —

Amount of annual receipts for the purposes of sub-clauses (iiiad) and (iiiad) of clause (23C) of section 10.

23BC. (1) For the purposes of sub-clause (iiiad) 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.”

8. From the plain reading of the section, it is clear that the exception under the above section with regard to exemption without registration is available only to those institutions which are established solely for the purpose of education and that the annual receipts are not more than Rs.1 Crore. In assessee's case, we notice that the assessee

has not substantiated the claim under section 10(23C)(iiiad) of the Act with relevant documents as it becomes clear from the order of the lower authorities. It is further noticed that the CIT(A) has decided the case only based on materials that are available and based on grounds raised before him since the assessee has not submitted any details. We also notice that the AO has made various additions on the ground that the assessee has not been able provide clarifications for the discrepancies in the books of accounts. Given these facts, we are of the considered view that the issue should go back to the AO for examination of the issue afresh and decide in accordance with law. The assessee is directed to submit all the required details before the AO and cooperate with the proceedings. It is ordered accordingly.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)
Judicial Member

Sd/-

(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 08.03.2023.
/NS/* /f:Desai S Murthy/

Copy to:

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|-------------|---------------|
| 1. Assessee | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.