

**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. 87/Asr/2022  
Assessment Year: 2012-13**

Swami Ganga Giri Janta Girls College Ludhiana Road, Raikot. [PAN:-[AABTS2185H] <b>(Appellant)</b>	Vs.	CIT-(Exemptions), Chandigarh.  <b>(Respondent)</b>
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**I.T.A. No. 454/Asr/2019  
Assessment Year: 2015-16**

Shri Swami Ganga Giri Janta Girls College Ludhiana Road, Raikot. [PAN:-[AABTS2185H] <b>(Appellant)</b>	Vs.	DCIT-(CPC), Bangalore.  <b>(Respondent)</b>
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**I.T.A. No. 715/Asr/2019  
Assessment Year: 2016-17**

Swami Ganga Giri Janta Girls College Ludhiana Road, Raikot. [PAN:-[AABTS2185H] <b>(Appellant)</b>	Vs.	ITO-(Exemptions), Ward, Jalandhar.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh.Vineet Krishan, Adv.
<b>Respondent by</b>	Sh. Hitendra Bhauraoji Ninawe, CIT. DR & Sh. Pradeep Kumar, Sr. DR

<b>Date of Hearing</b>	14.06.2023
<b>Date of Pronouncement</b>	20.06.2023

## ORDER

### Per Bench:-

The instant appeals of the assessee were filed for three different assessment years A.Y. 2012-13, 2015-16 & 2016-17 against the order of the Id. Commissioner of Income-tax (Exemptions), Chandigarh, [in brevity the CIT(E)] and Id. Commissioner of Income-tax (Appeals)-2, Jalandhar [in brevity the CIT(A)], the order passed U/s 263 & 250(6) of Income Tax Act, 1961(in brevity the Act) respectively. The assessment orders were framed by the Id. CPC & ITO, Exemption, Jalandhar (in brevity the AO).

### ITA 87/ASR/2022

2. The assessee has taken the following grounds:

*“1. That the order dated 29.03.2022 passed under section 263 of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Exemptions) Chandigarh in ITBA/COM/F/17/2021-22/1041932512 (1) is contrary to law and facts of the case.*

*2. That in the facts and circumstances of the case, ld. Commissioner of Income Tax (Exemptions) gravely erred in re-opening the assessment framed under section 143(3) read with section 147 of the Income Tax Act, 1961 dated 21.11.2019 under the provisions of section 263 of the Income Tax Act, 1961.*

3. *That in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Exemptions) gravely erred in re-opening the assessment framed under section 143(3) read with section 147 which was passed by the ld. Assessing Officer after the application of mind to the facts and provisions of law and the order passed by the ld. Assessing Officer is neither erroneous nor prejudicial to the interest of revenue.*

4. *That in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Exemptions) gravely erred in applying the explanation to Section 10(23C)(iiiab) read with Rule 2BBB of the Income Tax Act, 1961 which was effective from 1<sup>st</sup> April, 2015 and as such was not applicable to the relevant Assessment Year 2012-13.*

5. *That in the facts and circumstances of the case, notice issued under section 263 of the Income Tax Act by the ld. Commissioner of Income Tax (Exemptions) is illegal and void abinitio.*

6. *That the appellant craves to add, amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal, Amritsar."*

**Grounds of Appeal in ITA No. 454/ASR/2019:**

*"1. That the order passed under section 250(6) by the ld. Commissioner of Income Tax (Appeals)-2, Jalandhar*

*in Appeal no. 2/10002/18-19/CIT(A)/Jal dated 02.04.2019 is contrary to law and facts of the case.*

2. *That the in the facts and circumstances of the case Learned Commissioner of Income Tax (Appeals)-2, Jalandhar gravely erred in treating Appeal No. 2/10002/18-19/CIT(A)/ Jal dated 02.04.2019 as having appeal filed again on the same facts as order in Appeal no. 2/10014/16-17/CIT(A)/Jal dated 28.03.2018 whereas the appeal no. 2/10002/18-19/CIT(A)/Jal dated 2.04.2019 was against the intimation order dated 17.03.2018 passed under Section 143(1) of the Income TaxAct, 1961 in respect of revised return and the earlier appeal decided was in respect of intimation order dated 30.03.2017 under Section 43(1) regarding original return filed.*

3. *That in the facts and circumstances of the cae Learned Commissioner of Income Tax (Appeals)-2, Jalandhar gravely erred in not appreciating the facts that the ld. Assessing Officer had disallowed the exemption claimed by the appellant under section 10(23C(iiiab) of Rs.4,48,83,790/-.*

4. *That the appellant craves to add, amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal, Amritsar.”*

**Grounds of Appeal in ITA 715/ASR/2019**

“1. That the order passed under section 250(6) by the ld. Commissioner of Income Tax (Appeals)-2, Jalandhar in appeal no. 2/10223/18-19/CIT(A)/Jal dated 24.09.2019 is contrary to law and facts of the case.

2. That in the facts and circumstances of the case Learned Commissioner of Income Tax (Appeals)-2, Jalandhar gravely erred in not allowing the appellant benefit of exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 on the alleged ground that the appellant had failed to file audit report in Form No. 10BB alongwith return of income.

3. That in the facts and circumstances of the case Learned Commissioner of Income Tax (Appeals)-2, Jalandhar gravely erred in sustaining the addition of Rs.59.63.606/- made by the ld. Assessing Officer. Although, the appellant had been granted registration under Section 10(23C)(vi) of the Income Tax Act, 1961.

4. That in the facts and circumstances of the case Learned Commissioner of Income Tax (Appeals)-2, Jalandhar gravely in denying the appellant benefit claimed under section 10(23C)(vi) of the Income Tax Act, 1961, although the appellant had electronically filed the audit report in Form No. 10BB in response to notice section 139(9) on 19.04.2017 and also before the ld. Assessing Officer on 07.09.2018.

5. *That the appellant craves to add, amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal, Amritsar."*

3. The brief fact of the case is that assessee is an educational institute, which is existing solely for the purpose of education. The assessee has been granted exemption u/s. 10(23C)(vi) of the Act by the Id. CIT(E) for assessment year 2012-13. The assessment was completed u/s. 147 of the Act. After assessment, the Id. CIT(E) issued notice u/s. 263 and directing for setting aside the assessment order for AY 12-13. During the assessment the assessee placed details about the receiving of grant amount to Rs.89,19,294/- from the Government. The Id. AO accepted the claim of assessee regarding exemption u/s. 10(23C)(iiiab) of the Act. The Id. CIT(E) claimed that assessee was not eligible for deduction as per Rule 2BBB of the Income-tax Rule, 1962 as during the impugned assessment year, the assessee had received grant amount of Rs.89,19,294/- as against the gross receipt of Trust amount to Rs.2,66,32,390/-, which is 33.5% of the total receipt. Assessment order was duly set aside and revisional authority passed order u/s. 263 and treated the assessment order erroneous and prejudicial to the interest of revenue.

3.1 For A.Y. 2015-16, assessee filed two returns. One original u/s. 139(1) and another revised u/s.139(4) of the Act. The returns were processed and intimations u/s. 143(1) were served. The assessee filed appeal before the Id. CIT(A) by challenging both the intimations passed u/s. 143(1) by the CPC. The Id. CIT(A) without adjudicating the merit of the appeal related to intimation of revised return was duly passed the appeal order. The reason for not adjudicating the merit was that double effect in the filing appeals in same issue.

3.2 For assessment Year 2016-17, the claim u/s. 10(23C)(vi) of the Act was duly rejected by the Id. AO for non-furnishing of the Audit Report in Form No. 10BB within the stipulated time. The assessee duly filed form no. 10BB on 19.04.2017. The claim of exemption was rejected by the Id. AO for delayed submission of Audit Report. The assessee filed appeal before the Id. CIT(A) by challenging the assessment order. The Id. CIT(A) rejected the grounds of appeal of the assessee. Being aggrieved assessee filed appeal before us related to A.Y. 2012-13, 2015-16 & 2016-17 for adjudication.

4. The Id. AR submitted written submissions in all three years which are kept in the record.

**ITA 87/ASR/2022 for Assessment Year 2012-13:**

The Id. AR placed the submission as follows:

*“In the Show Cause Notice, it is alleged that during the A.Y. 2012-13, the Government grant received by the assessee was less than 50% of the total receipts, the exemption under the provisions of Section 10(23C)(iiiab) of the tax Act read with Rule 2BBB of the I.T Rules 1962 was not available and the assessee was not eligible for exemption under the said provisions.*

*In this regard, it is submitted that Rule 2BBB of the I.T. Rules, 1962 was inserted by the Income Tax Rule 2014 was applicable w.e.f. 12.12.2014 and as such reliance placed by your goodself on the provisions of Rule 2BBB of the IT Rules, 1962 is not applicable to the assessee during the relevant assessment year i.e. AY 2012-13. It is reiterated that the Rule 2BBB of the I.T. Rules, 1962 was not applicable to the assessee during the relevant assessment year i.e. AY 2012-13. It is admitted fact that during the relevant assessment year, the assessee has received grant of Rs.89,19,294/- from the Government as against the gross receipt of Rs.2,66,32,390/-. Grant received constitutes 33.5% of the total receipts of the trust and out of the total receipts of Rs.2,66,32,390/-, the trust had incurred expenditure of Rs.2,56,60,780/- solely for the purpose of education. The copies of bank statement for the FY 2016-17 are enclosed herewith.*

*It has been held by the various courts that where the grant received by educational institute from the Government is 20% or more than the gross receipts then that education institution shall be deemed to be substantially financed by the Government during the relevant assessment year and shall be eligible for exemption u/s. 10(23C)(iiiab).”*

5. The Id. DR vehemently argued and relied on the order of the revenue authorities.

6. We heard the rival submissions and considered the documents available in the record. For adjudication for A.Y 2012-13, the Id. CIT(E) had utilised the power beyond jurisdiction. The Rule 2BBB was not applicable during the impugned assessment year. No prospective effect is allowed related to this Rule. The Id. AR of the assessee respectfully relied on the order of **Tolani Education Society v. Deputy Director of Income-tax (Exemptions) - I(2), Mumbai, [2013] 30 taxmann.com 165 (Bombay)**. The relevant paragraph is extracted as below.

*“14. In the circumstances, and for these reasons, we have come to the conclusion that the Chief Commissioner of Income-tax was in error in holding that the Petitioner does not exist solely for the educational purposes or that it exists for profit. The issue pertaining to the claim of the Petitioner for the grant of an exemption under Sub-*

*clause (iiiab) of Section 10(23C) for Assessment Year 2008-09 is now pending in Appeal before the CIT(A). It may also be noted here that the Petitioner has been consistently granted the benefit of the provisions of Section 11, which would postulate that the Petitioner does not exist for the purposes of profit.”*

7. in our considered view the implementation of section 263 is beyond the jurisdiction for the revenue. The Id. CIT(E) has no power to implement the Rule 2BBB against the assessee. We fully relied on the order of the **Tolani Education Society**, supra. The Id. DR had not placed any contrary fact against the assessee. The assessee is eligible for the exemption. The order passed U/s 263 is quashed.

7.1. So, appeal of the assessee for AY 2012-13 is allowed.

8. For A.Y. 2015-16, assessee filed two returns u/s. 139(1) and 139(4)- of the Act. Two different intimations u/s. 143(1) were emanated and the appeals were filed by the assessee against the two intimations for redressal of its grievance. The Id. CIT(A) was erred to reject the appeal without considering the merit of the case. We are, therefore, of the opinion that interest of justice would be subserved if the impugned order is set aside and the matters are remitted back to the Id. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Id.

CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

8.1. So, appeal of the assessee for AY 2015-16 is allowed for statistical purpose.

9. For A.Y. 2016-17, the ld. AR placed **CBDT circular F.No. 197/135/2020-ITA-1, Circular No. 19/2020 dated 3<sup>rd</sup> November 2020**. The relevant paragraph of CBDT Circular is extracted as below:

*“Representations have been received by the Board/field authorities stating that Form No. 10BB could not be filed along with the return of income for A.Y. 2016-17 and A.Y. 2017-18. It has been requested that the delay in filing of Form No. 10BB may be condoned.”*

9.1. CBDT extended time for filing the Form No.10BB. Accordingly delay caused by the assessee for filing the Form No. 10BB for assessment year 2016-17 is duly condoned. We remit back the matter to ld. CIT(A) for considering the issue in the light of the CBDT circular no. 19/2020. The said circular is applicable during impugned assessment year. The issue is first time agitated before the ITAT. The ld. DR had not made any objection against the submission of assessee. We accept the grounds of appeal of the assessee. The matter is remitted back to the ld. CIT(A) for further adjudication. Needless to say,

the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

9.2. So, appeal of the assessee for AY 2016-17 is allowed for statistical purpose.

10. In the result, the appeal of the assessee **ITA No. 87/Asr/202** is allowed. Further, the appeal of the assessee **ITA No. 454/Asr/2019** and **ITA No. 715/ASR/2019** are allowed for statistical purposes.

**Order pronounced in the open court on 20.06.2023**

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