

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. Nos. 456/Kol/2022
Assessment Year: 2019-20

Rukmani Birla Educational Society (PAN: AAATR 2852 H)	Vs.	ITO (Exemption), Ward-1(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	25.04.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	25.07.2023
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 14.06.2022 for the AY 2019-20.

2. The common issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the order passed by the AO in allowing the exemption u/s 10(23C)(iiiad) of the Act by not appreciating that the assessee is an educational institution existing solely for the educational purpose and nor for purpose of profit and that its annual receipt is less than 1.00Cr.

3. Facts in brief are that the assessee is a society registered under the West Bengal Societies Registration Act, 1961 and has been established and existing solely for educational purposes and not for the purposes of profit. The assessee filed its return of

income on 23.09.2019 declaring total income of Rs. 51,01,460/- which was processed u/s 143(1) vide order dated 27.05.2020 wherein the claim u/s 10(23C)(iiiad) of the Act was rejected. Prior to the issue of said order u/s 143(1)(a) of the Act, a communication of adjustment u/s 143(1)(a) of the Act dated 21.11.2019 was issued to the assessee where it was stated that the amount entered in Schedule SI was inconsistent with the corresponding amounts entered Schedules CG and OS which were duly replied submitting that the income of the assessee is exempt u/s 10(23C)(iiiad) of the Act. The assessee submitted that there was a problem in filing ITR-7 and the said form does not distinguish between gross receipts from the activity of running educational institute and the income from other sources and therefore dividend income earned by the assessee was claimed as exempt u/s 10(23C)(iiiad) of the Act. In the above said order passed u/s 143(1) of the Act, the AO taxed the dividend income in excess of 10 Lakhs u/s 115BBDA of the Act @ 10%. As a result addition of Rs.1,01,70,999 /- was made to the income of the assessee and demand of Rs. 10,71,125/- was raised. Thereafter the assessee moved a rectification petition u/s 154 of the Act dated 11.9.2020 and also filed an appeal before the First Appellate Authority simultaneously.

4. The Ld. CIT(A) dismissed the appeal of the assessee by justifying the taxing of dividend income in excess of 10 lakhs u/s 115BBDA of the Act as the earning of dividend income is not a activity undertaken for running the educational institution.. However, at the same time, the Ld. CIT(A) gave a finding of fact to this effect that the assessee receipts from running of educational institution is exempt u/s 10(23C)(iiiad) of the Act. So in totality the appeal of the assessee was dismissed by the Ld. CIT(A).

5. After hearing the rival contentions and perusing the material on record, we observe that the assessee is an educational society existing solely for the purpose of education. The assessee has been running a school during the year however no fee was received from the students studying in the school on account of the school being situated in the far flung areas where the people are very poor mainly labour class. The sole motto of not charging fees from the students promote the education so that the

children of the poor people could be educated. The assessee society used to derive income by way of dividend and interest on investments made out corpus funds in the society as appearing in the balance sheet and running and maintenance expenses of the school were being met out of the said income of the trust. We note that the total receipt of the assessee during the year from dividend and interest was to the tune of Rs. 1,52,72,460/-. The AO made addition of Rs. 1,01,17,999/- u/s 115BBDA and levied the tax @ 10%. The assessee also moved a rectification application which was dismissed by the AO. Now the issue before us for adjudication whether the income of the society from a source other than the educational activities is part of the annual receipt for the purpose of determining the claim of exemption u/s 10(23C)(iiiad) of the Act. Undisputedly the income of the society from dividend and interest is from a source other than the educational activities and exceeds 1.00 Cr. After hearing the rival arguments and perusing the case laws as placed before us, we are of the considered view that the same is not the part of annual receipt of the educational institution for purpose of Section 10(23C)(iiiad) of the Act as it clearly talks about the annual receipt from the educational activities which apparently does not include the income of the society from a source other than from the educational activities of the society. We have also noted that the Ld. CIT(A) has unequivocally given a finding in the appellate order that the assessee is eligible to claim exemption u/s 10(23C)(iiiad) of the Act as its annual receipt from the educational activities does not exceed 1.00 Cr however concurrently held that the said exemption can not be extended to other income of the society which has been correctly brought to tax. Therefore considering the facts and circumstances of the case, we are not in concurrence with the conclusion drawn by the Ld. CIT(A) on this issue. We are supported in our conclusion by a series of decisions discussed hereinafter. In the case of CIT vs. Madrasa E-Bakiyath-Us-Salihath Arabic College (2014) 50 taxmann.com 81 (Madras) it was held that the sale proceed of land and bond cannot be equated to annual receipts as stated under section 10(23C) of the Act. The sale is in the nature of conversion of a capital asset from one to another. Similarly the Co-ordinate Bench of Kolkata in the case of Shri Venkateswara Educational Institute vs. ITO in ITA NO.

145/Kol/2022 for AY 2017-18 dated 17.02.2023. The operative part whereof is reproduced as under:

5. After hearing the rival contentions and perusing the material on record, we observe that undisputedly the assessee is engaged in running educational institution. The assessee trust is registered u/s 12A/12AA of the Act and has claimed exemption u/s 10(23C)(iiiad) of the Act. During the year, the assessee has derived gross income of Rs. 1,09,82,810/- by way of dividend, interest income and capital gain on sale of shares on mutual funds. The assessee has not charged any fee from the students who are studying in this school as the school is running in a very remote and backward area and assessee is imparting education to only uplift the educational standard of the students of that area. The assessee is also incurred expenses of Rs. 41,83,984/- for the purpose of running school and has surplus of Rs. 58,92,648/-. The Ld. CIT(E) also observed that the expenses were incurred to the extent of 38% on the educational activities by the trust while the surplus was 53.65% of total receipt and therefore held that society is not existing solely for the purpose of education. We observe from the trust deed of the assessee that the assessee is solely formed for the purpose of establishing schools and educational institutions. We also observe that there is not in dispute that it has engaged in running an educational institution. As a matter of fact that the assessee is engaged in running school in which no fee is being charged from the students due to severe poverty and backwardness and the local resident are not sending their children to schools. We further note that the assessee has also incurred a sum of Rs. 41, 83,982/- on various expenses connected with running and maintenance of the school. Considering these facts, we find merit in the contentions of the Ld. A.R that the assessee is engaged in solely for educational purposes and not for the purpose of profit. The mere fact that the receipt of the assessee from sources other than the educational activities is more than Rs. 1.00 is not relevant and material. We are very clear in our understanding that the case of the assessee is squarely covered by the provisions of Section 10(23C)(iiiad) of the Act which provide that where the university and other educational institution existing solely for educational purposes and not for purposes of profit and if the aggregate annual receipts of such university or educational institution does not exceed Rs. 1 crore, the income would be exempt. In this case also, the receipt from the aggregate annual receipt from educational institution is less than Rs. 1 crore and therefore the provisions of Section 10(23C)(iiiad) of the Act are applicable and consequently the income of the institution is exempt from tax. We note that though the assessee trust has total receipt of Rs. 1,09,82,810/- by way of dividend, interest and capital gain on sale of shares on mutual fund but the funds are being accumulated in order to improve the infrastructure of the school and also to construct the new schools in accordance with the aims and objectives of the assessee trust. The case of the assessee is squarely covered by the decision of Co-ordinate Bench of Kolkata in the case of Swasthya Sewa Sansthan vs. CIT(E), Kolkata in ITA NO. 363/Kol/2020 for AY 2017-18 dated 09.02.2022 wherein the Co-ordinate Bench has held that the income earned by the said trust out of interest income from investments, has been accumulated to the extent of 88% and only 12% were applied for these activities and and further held that the provisions of Section 10(23C)(iiiad) of the Act would be applicable to the said trust as the institution is engaged in running medical dispensary and providing free medical treatment of patients as aggregate annual receipt does not exceed Rs. 1 crore. The operative part is reproduced as under:

4. We have heard the rival contentions of both the parties and gone through the record. Before proceeding further, it will be appropriate to firstly reproduce the relevant provisions of Section 10(23C)(iiiad) of the Act, which reads as under:

"[10. Incomes not included in total income.—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—
 (iii) 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, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed.]”*

4.1. A perusal of the above relevant provision of the Act would show that there is no requirement under the aforesaid provision that the income/receipt of the Trust/Society should come from the charitable/philanthropic activity itself. The only requirement is that the hospital/institution should exist solely for philanthropic purposes and not for purposes of profit and the aggregate annual receipt of such hospital/institution should not exceed the amount of annual receipt as may be prescribed, which is Rs. 1 crore for the relevant assessment year under consideration. Admittedly, the income of the institution for the assessment year under consideration was less than Rs. 1 crore. There was no allegation that the institution/appellant Trust exist for any other purposes. There is no allegation that the institution/appellant Trust is existing for any purpose of profit, or is doing any activity for the purpose of profit. As per the facts on the file, the appellant Trust is running a dispensary wherein the doctors from both Allopathy and Homoeopathy discipline of medicine visit the dispensary and the treatment is free of charge and even medicines are also given free of cost to patients. There is no denial of the fact that the appellant Trust is running the dispensary purely on philanthropic purposes. Since, the aforesaid medical treatment is given free of charge, hence there is no question of earning of any income from such activity. As observed above, there is no requirement of provision Section 10(23C)(iii) of the Act that the income should be earned from such philanthropic activity, rather it is otherwise that the institution/Trust has done such an activity purely for charitable/philanthropic purposes and under such circumstances expectation of income from such activity will be against the spirit of the aforesaid statutory provision. There is no allegation that the institution is doing any activity other than the aforesaid medical dispensary. The annual income of the appellant Trust is out of the interest income from the investment has been made of surplus lying with it. However, there is no allegation that such surplus is applied for any purpose other than the charitable activity. Now, the only allegation is that the appellant Trust has applied only 12% of its receipts and accumulated 88%. We find that under the provision of Section 10(23C)(iii) of the Act, there is no limit prescribed for application of receipts and accumulation of receipts. Therefore, the appellant Trust is within its rights to accumulate the receipts as per its requirement. It had been explained by the assessee Trust to the Ld. CIT(E) that the surplus of investment was being accumulated for spending in future years for the objects and purposes of the Trust like building of hospital, nursing home or any other similar medical institution.

5. In our view, all the conditions as prescribed u/s 10(23C)(iii) of the Act, have been fulfilled by the appellant Trust and there is no allegation that the appellant Trust is involved in any other activity for profit or does not exist for philanthropic purposes. Even in this case, all the facts are on the file, therefore there was no need for any further investigation by the AO as alleged by the Ld. CIT(E).

6. In view of the above discussion, the action of the Ld. CIT(E) in directing the AO to disallow the exemption granted u/s 10(23C)(iii) of the Act was not justified. The impugned order of the Ld. CIT(E) is, therefore quashed.”

In the present case also, the assessee has surplus approximately 53.65% of receipts for the purpose of future application which was accumulated in order to set up schools and educational institutions after applying 38% of the gross receipt in running and maintenance of the educational institution. Under these facts and circumstances, we are of the view that the provisions of Section 10(23C)(iii) are applicable and consequently the income of the institution is exempt as the assessee trust has satisfied all the conditions as prescribed under

the provisions of Section 10(23C)(iiiad) of the Act. Besides there is no allegation by the ld. CIT(E) that the assessee is involved in any other activity for profit and not for educational purposes. Accordingly we set aside the order of Ld. CIT(E) and allow the appeal of the assessee.”

We therefore respectfully following the ratio laid down in the above decision hold that in the case of assessee society , the annual receipt of the assessee from the educational institution is less than 1.00 crore as the interest and dividend received by the assessee trust do not constitute the part of the annual receipt of the school for determining the eligibility for exemption u/s 10(23C)(iiiad) of the Act and therefore the entire income of the educational institution is exempt from tax. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 25th July, 2023

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)
 Vice-President/उपाध्यक्ष

(Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 25th July, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rukmani Birla Educational Society, 78, Syed Amir Ali Avenue, Kolkata-700019
2. Respondent – ITO (Exemption), Ward-1(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata