

**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. Nos. 60&13/Asr/2017
& ITA No.552 & 553/Asr/2018
Assessment Years: 2012-13 & 2013-14**

M/s Arya Model High School, 2- New Town, Moga. [PAN:-AABTA8424H] (Appellant)	Vs.	ITO (Exemptions) Ward- Jalandhar. (Respondent)
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Appellant by	Sh. B.M. Monga, & Sh. Rohit Kaura, Advs.
Respondent by	Sh. Mohit Kumar Nigam, Sr. DR

Date of Hearing	31.07.2023
Date of Pronouncement	21.08.2023

ORDER

Per:Bench:

A Batch of four appeals of the same assessee were filed against the order of the ld. 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. 2012-13 & 2013-14. The impugned order was emanated from the order of

Income Tax Officer (Exemptions), Jalandhar (in brevity 'the AO') order passed u/s 143(3) and 271(1)(c) of the Act.

2. At the outset, all the appeals are similar in nature and have common factual ground. So, ITA No. 60/Asr/2017 is taken as lead case. Further ITA No. 552/Asr/2018 & 553/Asr/2018 related to penalty u/s 271(1)(c). Both the appeals filed with delay of 18 days. The assessee filed condonation petition before the bench. The ld. DR had not made any objection for condonation of delay of 18 days. Accordingly, the delay of 18 days is condoned.

ITA No. 60/Asr/2017

3. The assessee has taken the following ground:

“1. That the Learned Commissioner of Income Tax(Appeal) has erred in upholding the Order of Assessing Officer, without considering the explanation of the assessee regarding genuineness of activities of the appellant school and its existence solely for the purpose of education only.

2. That the Learned CIT(Appeals) is not justified in upholding the Order of Assessing Officer solely on the basis of order of CCIT, Ludhiana dated 03.09.2013 without application of his independent mind, even which Order now stands set aside by the Hon'ble P&H High Court.

3. *That the Learned CIT (Appeal) has erred in not keeping the appellate proceedings in abeyance despite the fact that Civil Writ Petition no. 2601 of 2014 before the Hon'ble Punjab and Haryana High Court as filed by the appellant was pending on that date which now stand decided in favour of assessee.*

4. *That the learned CIT(A) has erred in upholding the order of AO, without considering that the aggregate annual receipts of the appellant from educational activity is Rs. 69,77,684 which is less than Rs. 1 crore thus entitling the appellant for exemption u/s 10(23C)(iiiad).*

5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard and disposed off.”*

4. Brief facts as culled out from the records are that the assessee is an educational institution. During assessment years the assessee claimed exemption u/s 10(23C) (iiiad) r.w.s. 10(23C) (vi). The assessee has filed writ petition before the Hon'ble Punjab & Haryana High Court against the order of the competent authority which approval u/s 10(23C) (vi) was refused and the issue is still pending before the Court. The assessee claims that the assessee is solely existing for educational purpose and during the impugned assessment year the turnover from

educational activities was below Rs. 1 crore. So, assessee is eligible for the deduction u/s 10(23C) (iiiad). But ld. AO had not accepted the assessee's prayer and disallowed the exemption U/s 11 of the Act. As the result, the total income over expenditure from income and expenditure account amount to Rs.43,80,969/- was accepted as taxable income. Being aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

5. The ld. DR filed a written submission which is kept in the record.

6. The ld. AR for the assessee filed written submissions which are kept in the record. The ld. AR in argument placed that the approval was duly accepted and issued by the ld. CIT(E) Chandigarh u/s 10(23C) (vi) w.e.f. 2014-15. As the assessee was directed to amend the MOA and the direction was followed. The registration was completed on 1.1.2014 after amendment the certificate which was duly issued by the ld. CIT(E). In impugned assessment year the assessee filed an audit report with income and expenditure account. As per the income and expenditure a/c the turnover for A.Y. 2013-14 is showing Rs.1,14,04,310.50 but which is included the bank interest, donation and FDR interest. The grievance of the ld. AR is that the ground no. 4 was not adjudicated by the ld. CIT(A) during

passing the order. He prayed for setting aside the issue before the ld. CIT(A). Considering his submission, the ld. AR invited our attention in appeal order page nos. 18& 19 para nos. 6.2 to 6.3 which are reproduced as below:

“6.2 I have considered the observations of the Assessing Officer as made by him in the assessment order while making impugned additions/disallowances after denial of exemption/deduction claimed by the assessee society under section 10(23C)(iiiad) of the Act as well as in the remand report. I have also considered written submissions filed by the assessee society through its learned AR vide letter dated 07.06.2016 as well as its counter comments on the report of the Assessing Officer on the issue under reference. I have further considered various judicial pronouncements relied upon by the assessee society as well as other material placed by it on record. On careful consideration of the assessment order, it has been noticed that the Assessing Officer has denied exemption/deduction to the appellant trust under section 10(23C)(iiiad) read with section 10(23C)(vi) of the Act on the ground the application filed by the assessee society for the relevant year for approval under section 10(23C)(vi) of the Act was rejected by the competent authority. On the other hand, it has been submitted on behalf of the assessee society that the

assessee society has filed Writ Petition before the Honourable Punjab & Haryana High Court against order of the competent authority vide which approval under section 10(23C)(vi) of the Act was refused and the same is still pending for adjudication before the Honourable jurisdictional High Court. It has also been submitted that the assessee society exists solely for education purposes as no expenses have been incurred by the assessee society on other objects as pointed out by the Assessing Officer. On careful consideration of the rival contentions, I am also of the considered opinion that the assessee society is not entitled for claim of exemption of its income under section 10(23C)(iiiad) of the Act as its application for approval under section 10(23C)(vi) of the Act was rejected by the competent authority and to claim exemption under section 10(23C)(iiiad) of the Act approval of the competent authority is a mandatory condition as receipts of the assessee society for the year under consideration exceeds Rs. 1 crore. Under such circumstances, the action of the Assessing Officer in making addition of Rs.43,80,969/- on account of denial of deduction/exemption to the assessee society on excess of income over expenditure (shown by the assessee society at Rs.43,80,969/-) under section 10(23C)(iiiad) read with section 10(23C)(vi) of the Act cannot be said to be unjustified.

6.3 *In view of the above stated facts and in the circumstances of the case, I am of the opinion that the Assessing Officer is fully justified in making additions of Rs.43,80,9697-in this case on account of denial of deduction/exemption to the assessee society on excess of income over expenses shown by the assessee society at Rs.43,80,969/- under section 10(23C)(iiiad) read with section 10(23C)(vi) of the Act. The addition of Rs.43,80,969/-made by the Assessing Officer in this case on account of denial of deduction/exemption to the assessee society under section 10(23C)(iiiad) read with section 10(23C)(vi) of the Act is, therefore, upheld. In the result, grounds No. 2, 3, 4, 5, 6, 7 and 8 of appeal taken by the assessee society are dismissed.”*

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

8. We heard the rival submission and considered the documents available in the record. The assessee claimed that the turnover which arises out from educational activity is below Rs.1 crore i.e. Rs.69,77,684 which is entitled for exemption u/s 10(23C) (iiiad).

8.1 On perusal of the appeal order, it is found that there is no discussion on this issue by the ld. CIT(A). The ld. DR had not made any strong objection against the submission of the assessee. We remit back the matter to the file of the ld. CIT(A) for passing the speaking order on the ground agitated by the appellant. Needless to say, the assessee should get a reasonable opportunity of hearing.

ITA No.552/Asr/2018

9. In this appeal, the issue is merely related to penalty u/s 271(1)(c) which is duly related with quantum petition. The quantum petition was remitted back to the file of the ld. CIT(A). So, the appeal related to penalty in ITA 552/Asr/2018 is remitted back to the file of the ld. CIT(A) for further adjudication after completing the quantum appeal.

10. In the result, the appeal of assessee in **ITA No.60/Asr/2017** is allowed for statistical purposes. The bench has noticed that the issue raised by the assessee in the above appeal is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in **ITA No. 60/Asr/2017** shall apply *mutatis mutandis* in **ITA Nos.13/Asr/2017**. Same the order of **ITA No.**

552/Asr/2018 shall apply *mutatis mutandis* in **553/Asr/2018** and follows accordingly.

11. In the result, the appeals of the assessee bearing **ITA Nos. 60/Asr/2017, 13/Asr/2017, ITA 552/Asr/2018 and 553/Asr/2018** are allowed for statistical purposes.

Order pronounced in the open court on 21.08.2023

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