

**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. 190/Asr/2023  
Assessment Year: 2009-10**

Sher-e-Kashmir College of Education, (Unit of) Pir Panchal Education Trust, Ajit Nagar, Gadi Garh, Jammu. [PAN: -AAATP5947R] <b>(Appellant)</b>	Vs.	Income Tax Officer, Ward-1(3), Jammu.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Munish Arora, ITP.
<b>Respondent by</b>	Sh. Ravinder Mittal, Sr.DR.

<b>Date of Hearing</b>	24.08.2023
<b>Date of Pronouncement</b>	25.08.2023

**ORDER**

**Per: Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), Jammu, [in brevity ‘the CIT (A)’] order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2009-10. The impugned order was emanated from the order of the Id. ITO, Ward 1(3), Jammu, (in brevity the Id. AO) order passed u/s 143(3) of the Act.

2. The appeal of the assessee was filed with delay of 3080 days. The assessee filed the petition for condonation of delay with the affidavit. The assessee also relied on the order of the ITAT, Amritsar Bench in the case of **M.K. Hotels & Resorts Ltd. vs. ACIT, In ITA No. 57/Asr/2021** date of order **01.03.2023** in which 9 years delay was condoned. He further relied on the ITAT, Amritsar Bench in the case of **Smt. Rajinder Kaur vs. ITO in ITA No. 171/Asr/2022, order dated 22.03.2023.**

2.1 The assessee further informed that the assessee is duly covered two years with an order of the **Hon'ble Supreme Court in Suo Motu Writ Petition (C) NO. 3 Of 2020 date of order 10/01/2022** considering the Covid Pandemic. Accordingly, the delay was extended till 28.02.2022 by the order of Hon'ble Apex Court.

2.2. The assessee explained that all the records of the college were in custody of the office of the Superintendent and during the period, health of the Chairperson/Secretary of the college had considerably fallen and he had to undergo cardiac treatment in Super Speciality Hospital at Jammu. The assessee prayed for condonation of delay. The ld. AR further argued that the grounds of appeal of the assessee were covered in its favour in assessee's own case by the order of ITAT-Amritsar Bench. The ld. DR had not made any strong objection against the assessee's submission. Accordingly, the delay for 3080 days is condoned.

3. The assessee has taken the following ground:

*“1. That the order of the Assessing Officer as well as the order of Learned CIT(A) are both against the facts of the case and are untenable in law.*

*2. That the worthy CIT(A) has not appreciated the facts of the case and merely relied on order of the AO and without any rhyme & reason, the Ld. CIT(A) has confirmed the addition. As such order of the CIT(A) is liable to be cancelled.*

*3. That the Ld. CIT(A) did not appreciate that exemption u/s 10(23C)(iiiad) as claimed should have, been allowed as the total receipts were less than Rs.1 Crore. As such' the exemption claimed u/s 10(23C)(iiiad) should have been allowed and the addition made at Rs.8,36,120/- should have been deleted. The CIT(A) did not appreciate that there was no violation of section 13/13C of the IT Act, 1961.*

*4. That the worthy CIT(A) did not appreciate that under the same and similar circumstances, the IT AT, Amritsar Bench has already decided this issue in favour of the appellant and has granted registration.*

*5. That again the CIT(A) did not appreciate that this was educational trust and the turnover is below Rs.1 Crore. As such the assessee is clearly for the exemption u/s 10(23C)(iiiad). As such there was no justification for making the addition of Rs.8,36,120/- and the addition made may kindly be deleted which is not called for.*

*6. That there was no justification in confirming the addition of Rs.1,31,400/- on account 1/5th of the disallowance of expenses. The disallowance made is not at all called for and the same may be deleted. Alternatively the addition made at Rs.1,31,400/- is very high and excessive.*

*7. That no interest should have been charged u/s 234B of the IT Act, 1961 at Rs.64,425/-. No reasonable and proper opportunity of being heard was allowed before charging interest. As such the interest charged is very high and excessive. Alternatively, the interest charged is very high & excessive.*

*8. That any other ground of appeal which may be argued at the time of hearing of the appeal.”*

4. Brief fact of the case is that the assessee is an educational trust and claimed exemption u/s 10(23C) (iiiad). During assessment the Id. AO on perusal of the balance sheet revealed that the trust has made advanced of Rs.26 lacs each to Sh. Syeed Ahmed Bhukhari and Sh. Charanjit Singh, totalling of Rs. 52 lacs. The advance to the trustee is violation of section 13(1) (c)(ii) and section 13(d) (i) r.w.s. 13(2) and 13(3) of the Act. So, the exemption available u/s 11 is denied and the excess income over the expenditure which was claimed u/s 11 was taken as taxable income amount of Rs.8,36,820/-. Further the Id. AO disallowed the expenses amount to Rs.6,57,010/- in different heads and 1/5 of this expenses amount to Rs. 1,31,400/- was added back with the total income. Aggrieved assessee filed as appeal before the Id. CIT(A). The Id. CIT(A) upheld

the order of the Id. AO. Being dissatisfied with the order of the Id. CIT(A) the assessee filed an appeal before us.

5. The Id. AR filed a written submission which is kept in the record. The Id. AR first argued that the assessee's turnover was less than Rs.1 crore so eligible for the deduction u/s 10(23C) (iiiad). The Id. AR invited our attention to **APB page 48** where the total turnover is showing Rs.43,32,657/- out of this from tuition fee Rs.40,86,660/-. So, the assessee is eligible for exemption u/s 11 of the Act. But the observation of the Id. AO related to violation of section 13, the Id. AR argued that the issue was squarely covered by assessee's own case by order of the ITAT, Amritsar Bench in the case of **ITA No. 555 to 558/Asr/2011 dated of order 13.06.2022** the relevant paragraphs are duly extracted as below:

*“13. In the present case, the AO while rejecting the exemption claimed by the trust u/s 10(23C) (iiiad) has invoked the provisions of sections 13(1)(c), 13(2)(a), 13(2)(b), 13(2)(d) and 13(2)(g) of the Act. In this connection it is pertinent mention that section 13 starts with the words, ‘Nothing contained in section 11 or section 12 shall operate as to.....’. This shows and makes it clear that the provisions contained in section 13 govern section 11 and section 12 of the Act and not section 10. These provisions are contradictory to each other. Section 13(1)(c) applies to application of income and property to specified persons. Sections 13(2)(a), 13(2)(b), 13(2)(d) and 13(2)(g) govern the provisions of lending, property made available for use, any service is made available and if any*

*income is diverted respectively. The AO and the Ld. CIT(A) has not come to any conclusive finding as to what particular clause has been violated and as to how the same has been violated. In the absence of any such*

*findings by the AO, the withdrawing of exemption was not in accordance with law*

*14. In the above view, we hold that the Ld. CIT (Appeals), was not justified, in confirming the finding of the AO against law, regarding rejecting the exemption claimed of the Assessee Trust under section u/s 10(23C) (iiiad) of the Income-Tax Act, 1961. Accordingly, the order of the CIT (A) is set aside and consequently, the additions made in I.T.A. Nos. 555 to 558/Asr/2011 in respect of the Assessment Years: 2005-06 to 2008-09 are hereby deleted.*

*15. In the result, the captioned four appeals of the Assessee Trust are allowed.”*

6. The Id. DR vehemently argued and relied on the order of the revenue authority. The Id. DR invited our attention in appeal order page 3 para 4 is reproduced as below:

*“4. Determination*

*Ground No. 1 & 7 are general in nature and not required to be adjudicated. Ground No.2 relates to not providing opportunity of being heard. I find from the assessment order that the appellant was provided several opportunities of being heard in*

*person as-well-as through questionnaire. Therefore, this contention is in- correct and liable to be dismissed.*

*Ground No. 3,4 & 5 relate to addition of Rs. 8,36,820/-. The appellant in the grounds of appeal has stated that the Institution's object is to impart education and the Institution is following that objective. Therefore, any addition made by withdrawing the exemption is incorrect, un-justified and un-called for.*

*The secretary of the appellant Institution Sh. Gурpal Singh appeared before me and stated that he does not have anything to add beyond the grounds of appeal. No written submission was made. After considering the findings of the Assessing Officer in the assessment order, I am of the view that the Assessing officer has rightly withdrawn the exemption of the appellant Institution. The Institution had excess of income over expenditure of 8,36,820/- which had been claimed exempt u/s. 10(23C) ( iiiad) of the Act . It is seen from the balance sheet that the trust Institution has advanced a sum of Rs. 26,00,000/- each in the past to the trustees namely Sh. Syeed Ahmed Bhukhari and Sh. Charanjit Singh. This is a clear violation of Section 13 (i)(c )( ii) and 13(d) (i) read with section 13 ( 2)and 13(3) of the Income tax Act . In view of this violation exemption u/s. 11 is liable to be denied. I am in agreement with the findings of the AO and thus upheld the addition.”*

7. We heard the rival submission and consider the documents available in records. The assessee placed the financial statement before the revenue authorities and before us. Form evidence it reveals that the torn over of assessee

during impugned assessment year is within the limit specified U/s 10(23C)(iiiad). So, the assessee eligible for deduction U/s 11/12 of the Act. The second issue is related to the advance to the trustee which is a violation of section 13(1) (c)(ii) and section 13(d) (i) r.w.s. 13(2) and 13(3) of the Act. The issue is squarely covered by the assessee's own case in **ITA No. 555 to 558/Asr/2011 dated of order 13.06.2022** by the order of ITAT-Amritsar Bench. The assessment order is quashed, and the addition is deleted. The exemption claimed by the assessee is restored.

8. In the result, the appeal of the assessee bearing **ITA No. 190/Asr/2023** is allowed.

**Order pronounced in the open court on 25.08.2023**

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