

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

*(through web-based video conferencing platform)*

**ITA No. 73/Rjt/2021**

**निर्धारणवर्ष/Assessment Year: 2015-16**

Shri Shamjibhai Harjibhai Talavia Charitable Trust, 50 Feet Road, 7-Parsana Society, Rajkot-360002 PAN : AACTS 8845 F	Vs.	The Pr. Commissioner of Income-tax (Exemption), Ahmedabad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Mehul Ranpura, AR
Revenue by :		Shri Shramdeep Sinha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 04.09.2023  
घोषणा की तारीख /Date of Pronouncement: 04.12.2023

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income-tax (Exemptions), Ahmedabad [herein-after referred to as "CIT(Exemptions)"] dated 23.03.2021, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"], for the Assessment Year 2015-16.

2. The assessee has raised following grounds challenging the validity of revisionary jurisdiction exercised by the Id. CIT (Exemptions) in the present case:-

*"1. The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2. The order passed by Pr. Commissioner of Income-tax (Exemption), Ahmedabad [hereinafter referred as to the "Pr. CIT"] is bad and illegal and requires to be quashed.*

3. *Ld. Pr. CIT erred in law and on facts in exercising revisional jurisdiction ignoring the fact that AO made full inquiry and satisfied with the reply/submission of the appellant and accordingly the order passed by Pr. CIT is required to be quashed and may kindly be quashed.*

4. *The ld. Pr. CIT erred on facts as also in law in alleging that the order u/s 143(3) is erroneous and prejudicial to the interest of revenue as the AO had not made proper verification of applicability of approval u/s 10(23C)(vi) to the trust particularly for unit of school of science, which is not included in approval u/s 10(23C)(vi) and thereby setting aside the order passed u/s 143(3) of the Act dated 30.10.2017. The order passed u/s 263 of the Act by the learned Pr. CIT is totally unjustified on facts as also in law therefore the same may kindly be quashed.*

5. *The ld. Pr. CIT failed to point out as to how the order is erroneous and prejudicial to the revenue. As per the material on record, considering the provisions of Section 11, 12 and 13 and more specifically in view of approval granted u/s 12A, income of the trust is exempt and therefore there is no question of being prejudicial to the interest of revenue. On this ground alone the order passed is bad in law and requires to be quashed. "*

3. As transpires from the order of ld. CIT(Exemptions), the error noted by him in the assessment framed in the present case under Section 143(3) of the Act was allowing exemption to income of an institution of the assessee-trust u/s 10(23C)(vi) of the Act, which institution had not been granted approval for the said purpose. The ld. CIT(Exemptions) noted that in the certificate granting approval to the assessee-trust u/s 10(23C)(vi) of the Act, the Institute of School of Science run by the assessee-trust was not included; but, the assessee had claimed exemption of the income earned by the said institution u/s 10(23C)(vi) of the Act and was allowed by the Assessing Officer also. Accordingly, a show-cause notice was issued to the assessee u/s 263 of the Act asking as to why the assessment order was not erroneous for not subjecting the income of this Institute of School of Science to tax in the absence of any approval granted to it u/s 10(23C)(vi) of the Act. The contents of the notice so issued by the ld. CIT(Exemptions) are reproduced at paragraph No.3 of the order as under:-

"3. On the perusal of case records, it is seen that the assessee Trust had claimed exempted income of Rs. 39,50,90,102/- u/s 10(23C)(vi) of the I. T. Act under year consideration. However, it is also noticed from the certificate of approval granted U/s 10(23C)(vi) of the I.T. Act, 1961 that income of school of science is not included in the approval U/s 10(23C)(vi) of the I.T. Act, hence, the profit of Rs. 1,03,29,317/- of School of Science shall be chargeable to tax. For sake of clarity, relevant provision is enumerated as under:

"As per Section 10(23C)(vi) of the I.T. Act, any income received by any person on behalf of any university or other education institution existing solely for educational purposes and not for profit, other than those mentioned in sub-clause (iiiad) of sub-clause (iiiad) and which may be approved by the prescribed authority, shall not be included in total income of a previous year."

3.1 As such assessment made by the Assessing Officer who had allowed the exemption u/s 10(23)(vi) of the Act by passing assessment order u/s 143(3) of the Act on 30.10.2017 in spite of income of school of science is not included in the approval U/s 10(23C)(vi) of the I. T. Act. Therefore, assessment order u/s 143(3) of the Act dated 30.10.2017 appears to be erroneous and prejudicial to the interest of the revenue as there is under assessment of income to the tune of Rs.1,03,29,317/- which is worked out as following:

Excess of income over expenditure (I&E A/c of School of Science)	71,25,997
Add-Income shown in the accounts of R. K. University School of Science (i) Affiliation Fee Income – Rs.4,63,000 (ii) Enrollment Fee Income – Rs.1,79,250 (iii) Exam Fee Income (M.Sc.) – Rs.3,83,250 (iv) Exam Fee Income (B.Sc.) – Rs.22,98,250	33,23,750
Less: Expenses shown in the accounts of R. K. University regarding School of Science (i) Paper setting expenses Rs. 34,805 (ii) Examination expenses (B.Sc.) Rs. 55,075 (iii) Examination expenses (M.Sc.) Rs. 30,550	1,20,430
Net Profit chargeable tax	1,03,29,317

4. In light of the above facts, it is to inform you that proceeding U/s 263 of the Act is initiated in your case for the A.Y. 2015-16. In this connection, it is asked to show cause as to why assessment order dated 30.10.2017 should not

*be revised u/s 263 of the Act in view of the above extent of net profit of Rs.1,03,29,317/-. Therefore, you are requested to make submission in support of your claims on or before 17.03.2021 along with all relevant documents. In case of non-compliance, it will be presumed that you have nothing to say in your case and the matter will be decided on merits and on the basis of documents available on record...."*

4. The assessee responded to the said notice by contending that the Trust had been granted approval vide order dated 17.04.2012 in respect of various institutions working under the said Trust and in view of the Board's Circular No.7/2010 dated 27.10.2010 no further the approval was required as it was a one-time approval as per prevailing law. The School of Science, i.e. the specific institution referred to by the Id. CIT(Exemptions), it was pointed out, became part of the trust from AY 2014-15 and in lieu of the continuation of the approval granted to the assessee-trust u/s. 10(23C)(vi) of the Act, the said approval, it was contended by the assessee, applied to the School of Science also which was included in the assessee-trust subsequent to the grant of approval in 2012. It was also contended that ,without prejudice to the same, since the assessee was registered as a charitable trust u/s 12A of the Act, it was entitled to claim its income as exempt u/s 11 of the Act; and, therefore, since the assessee had applied its entire income to charitable purposes and there was deficit of income, it was entitled to claim its entire income exempt u/s 11 of the Act.

5. The Id. CIT(Exemptions), however, rejected both the contentions of the assessee holding that the new institution added post approval granted u/s. 10(23C)(vi) of the Act cannot be automatically said to be approved by virtue of the approval granted originally. That continuation of approval granted by CBDT vide its Circular No.7/2010 did not imply that even new institutions included or added subsequently would be *suo moto* entitled to exemption u/s. 10(23C)(vi) of the Act. As for the contention of the assessee

that there was no prejudice caused to the Revenue since the assessee was entitled alternatively to exemption of its income u/s 11 of the Act, the Id. CIT(Exemptions) dismissed the same holding that the assessee had not made any such claim in its return of income and even otherwise the said claim needed to be verified. Accordingly, he held that the Assessing Officer having granted exemption to income of the institute run by the assessee which was not granted approval u/s. 10(23C)(vi) of the Act, the assessment order was in error. He set aside the assessment order and restored it back to the Assessing Officer to examine the claim of the assessee of exemption of the income afresh after allowing due opportunity of hearing to the assessee.

6. Before us, Id. Counsel for the assessee contended that neither of the twin conditions required to be fulfilled for invoking Section 263 of the Act, that is of the assessment order being erroneous and causing prejudice to the Revenue, were fulfilled.

7. His contention regarding the assessment order not being erroneous briefly put was:-

- (i) the approval granted u/s. 10(23C)(vi) of the Act was to the Trust and was not institution specific;
- (ii) that the requirement of law, as existing at the relevant point of time, was one-time grant of approval u/s. 10(23C)(vi) of the Act, doing away with the requirement of seeking approval repeatedly by assesses therefore this specific institution, i.e. School of Science, which was added to the institutions already being run by the assessee-trust and to which the approval was granted u/s. 10(23C)(vi) of the Act vide order dated 17.04.2012, the approval originally granted would continue to apply.

8. His contention with regard to no prejudice being caused to the Revenue was that since the assessee was registered as a charitable trust u/s 12A of the Act, its income was entitled to exemption u/s 11 of the Act, and since the financial statements of the assessee-trust for the impugned year revealed that it had applied its entire income earned in the School of Science for running the said institute, the entire income of School of Science was entitled to exemption u/s 11 of the Act; and, therefore, even if the said institute was not entitled to exemption u/s. 10(23C)(vi) of the Act its income was exempt u/s 11 of the Act thus causing no prejudice to the Revenue on account of the order granting exemption to the said institute u/s. 10(23C)(vi) of the Act.

9. The ld. DR, however, vehemently objected to the above contentions of the ld. Counsel for the assessee. His contention against the argument of the ld. Counsel for the assessee of there being no error in the assessment order was that the approval u/s. 10(23C)(vi) of the Act is required to be institute specific and it cannot be treated as applicable to the Trust as a whole. He relied on the decision of the Hon'ble Apex Court for the said proposition in the case of *New Noble Educational Society Vs. CIT*, reported in [2022] 143 taxmann.com 276 (SC) and on the decision of the Hon'ble Karnataka High Court in the case of *CIT Vs. Children's Education Society*, reported in [2013] 358 ITR 373 (Karnataka). He contended that the Assessing Officer had appreciated incorrect fact in the present case and, therefore, committed a mistake of law by granting exemption to an institute which had not been granted approval u/s. 10(23C)(vi) of the Act. The Assessing Officer's finding was, he contended, therefore an incorrect finding of fact in law and thus the order was erroneous causing prejudice to the Revenue.

10. As for the contention of the assessee that there was no prejudice caused to the Revenue since it was even otherwise entitled to exemption u/s 11 of the Act, the Id. DR countered by stating that by virtue of CBDT Circular No.1/2015 dated 21.01.2015, the assessee is disentitled to alternatively claim exemption u/s. 10(23C)(vi) and Section 11 of the Act, that if it has claimed exemption u/s. 10(23C)(vi) of the Act it is debarred from claiming exemption of the same income u/s 11 of the Act. Ld. DR contended that an order does not become erroneous merely because there is anything wrong with the order if all facts stated therein are assumed to be correct. He contended that it becomes erroneous also on account of failure to make an inquiry which ought to have been made in the circumstance. For the said proposition, he relied on the order of the ITAT Ahmedabad Benches in the case of Babulal S. Solanki Vs. ITO in ITA No. 3493/Ahd/2016 dated 04.03.2019.

11 We have carefully heard the contentions of both the parties and have also gone through the orders of the Id. CIT(Exemptions). As stated above, the error in the assessment order found by the Id. CIT(Exemptions) was grant of exemption u/s. 10(23C)(vi) of the Act to an institute run by the assessee-trust which was not granted approval u/s. 10(23C)(vi) of the Act. The fact that the School of Science was not included in the list of institutes run by the assessee-trust which was granted approval u/s. 10(23C)(vi) of the Act vide order dated 17.04.2012 is not disputed. We have noted that the assessee had explained the non-inclusion of this institute in the list of institute which was granted approval u/s. 10(23C)(vi) of the Act as being addition of this institute in the assessee-trust subsequent to the grant of approval i.e. in the year 2014 this institute was added to the trust while the approval u/s 10(23C)(vi) of the Act was granted in the year 2012.

12. In the light of these facts, the argument of the Id. Counsel for the assessee that the approval originally granted is to be presumed to apply to this institute also considering the prevailing position of law that only one-time approval was required to be taken u/s. 10(23C)(vi) of the Act, we find and hold, has been correctly rejected by the Id. CIT(Exemptions). His finding that this relaxation provided by the legislature of seeking only one time approval does not imply that new institutions can be added by the assessee and the approval will *suo moto* will apply to the said institute, we hold is correct. We do not find any infirmity in the same. For the sake of clarity, his findings in this regard at paragraph no.5 of the order are reproduced hereunder:-

*"5 The submission/ explanations furnished by the assessee (as summarized in preceding para no. 4 above) have been duly examined and the same is placed on records. The assessee trust has tried to justify that the benefit of approval u/s 10(23C)(vi) is available to the entire trust and is not restricted to any specific institutions. However, on perusal of certificate issued by the CCIT, Rajkot vide F. No. CC/Rjt/Tech./10(23C)(vi)/2/2011-12 dated 17.04.2012. (copy of the same furnished by the assessee Trust) It is seen that the aforesaid certificate mentioned name of specific institutes and in the list the name of School of Science does not appear. It is observed that the assessee trust was granted approval u/s 10(23C)(vi) in respect of*

*Income of following 5 institutions only:*

- (i) R. K. College of Engineering and Technology*
- (ii) R. K. College of Pharmacy*
- (iii) R. K. College of Diploma Engineering*
- (iv) R. K. College of Business Management and*
- (v) R. K. College of Physiotherapy.*

*After approval was granted for 3 assessment years viz. A.Y. 2010-11 to 2012-13. However, considering the difficulties faced by assessees in renewal of approval, the CBDT has relaxed such approval as one-time. However, such relaxation does not imply (as has been presumed by the assessee) that new institutions can be added by the assessee and it can suo-motto claim approval u/s 10(23C) (vi) in respect of institutions not covered by the order dated 17.04.2012. This approval has imposed certain conditions which are*

*mentioned in the approval order itself. Thus the contention of assessee on this issue is not acceptable."*

13. We are in complete agreement with the Id. CIT(Exemptions) that the approval granted to the assessee-trust in the year 2012 cannot apply to a new institution added to the trust subsequently. Therefore, the argument of the Id. Counsel for the assessee that the approval u/s. 10(23C)(vi) of the Act would apply to the new institute also and hence there was no error in the order granting exemption to the income of the new institute is dismissed. The findings of the Id. CIT(Exemptions) in this regard are confirmed by us.

14. The contention of the Id. Counsel for the assessee before us that the approval is granted to a trust and not a specific institute is also rejected since the certificate granting approval specifically mentions each institute which was being run by the assessee-trust at the relevant point of time. The approval obviously is specifically granted to the institutes mentioned. The CIT is required to grant approval after examining the genuineness of activities carried out and therefore specifically having examined the activities of the then existing institutes the approval letter mentions each institute of the assessee trust found by him eligible to exemption u/s 10(23C) (vi) of the Act. This institute, i.e. School of Science added to the trust subsequent to grant of approval its activities needed to be examined and the assessee ought to have applied afresh for grant of approval to this specific institute. We agree with the Id. CIT(Exemptions) that the approval could not have extended to the new institute added subsequently.

15. With regard to the contention of the Id. Counsel for the assessee that there was no prejudice caused to the Revenue since it is otherwise entitled to exemption of income u/s 11 of the Act, the Id. CIT(Exemptions), we have noted, has rejected this contention of the assessee also stating that the

assessee had never made any such claim in its return of income and, therefore, the claim needed to be verified and required scrutiny. His finding recorded in this regard at paragraph no. 6 of his order is as under:-

*“6. The assessee has made an alternate contention (as summarized in para no. 4.3). This is only an after thought as no such claim was filed in the return of income or during assessment proceedings. Besides, the computation submitted by the assessee with regards to claim of deficit requires deep scrutiny.”*

16. We see no reason to disagree with the Id. CIT(Exemptions). Undoubtedly, the assessee had not claimed its income exempt u/s 11 of the Act and merely because it has been granted registration u/s 12A of the Act, exemption u/s 11 of the Act is not automatic and the same needs verification. The Id. Counsel for the assessee cannot contend that since it has been granted registration u/s 12A of the Act, its entire income is exempt by virtue of Section 11 of the Act and no prejudice therefore is caused to the Revenue. We agree with the Id. CIT(Exemptions) that this claim of the assessee, that it was not liable to pay any tax on account of its income being exempt u/s 11 of the Act, needed to be verified and in the absence of the same, it cannot be said that there was no prejudice caused to the Revenue. On this account, we agree with the Id. CIT(Exemptions)'s rejection of this contention of the Id. Counsel for the assessee.

17. At the same time, we may add that the argument made by the Id. DR before us that this contention of the assessee is not acceptable since the CBDT vide its Circular No.1/2015 dated 21.01.2015 has debarred assesseees from making alternative claim of exemption u/s. 10(23C)(vi) and Section 11 of the Act, we hold, is not correct. We have gone through the relevant CBDT circular and we find that what has been debarred by virtue of the said circular, which is explanatory notes to the provisions of the Finance Act,

2014, is that assessee's claiming exemption of their income u/s. 10(23C)(vi) of the Act or Section 11 of the Act are debarred from claiming exemption of such income under any other provision of Section 10 of the Act. What has been introduced by virtue of amendment made by Finance Act, 2014 is that assessee's claiming exemptions of their income on account of carrying out charitable activities or running educational institutions are entitled to claim exemption under the relevant sections 11 and 10(23C)(vi) of the Act only subject to fulfillment of conditions specified therein. Such assessee's have been disentitled/debarred from claiming their incomes as exempt by virtue of any other provisions exempting income provided in Section 10 of the Act. Therefore, this argument of the Id. DR, we find, is incorrect that the assessee cannot alternatively seek exemption of their income u/s. 10(23C)(vi) and Section 11 of the Act.

18. In view of the above, we hold that the Id. CIT(Exemptions) has rightly found the assessment order to be erroneous in granting exemption u/s. 10(23C)(vi) of the Act to the income of an institute run by assessee-trust which was not granted approval for the said purpose and finding that as a consequence prejudice has been caused to the Revenue. The order of the Id. CIT(Exemptions) accordingly is upheld, and the appeal of the assessee is dismissed.

19. In effect, the appeal of the assessee is dismissed.

**Order pronounced in the open Court on 04/12/2023 at Ahmedabad.**

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 03/12/2023

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Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**