IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH,JODHPUR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No.163/Jodh/2022
Assessment Year: 2016-17

Bharat Mata Mandir Nyas Gali No.3, Rati Talai, Rajasthan. [PAN: AABTB4925E] **(Appellant)**	**Vs.**	Income Tax Officer, (Exemption), Udaipur. **(Respondent)**

Appellant by	**Sh. Amit Kothari, CA.**
Respondent by	**Sh. Laxman Singh Gurjar, Sr. DR**

Date of Hearing	**21.11.2023**
Date of Pronouncement	**06.12.2023**

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the NFAC, Delhi, order passed u/s 250 of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2016-17. The impugned order was emanated from the order of ld. Income Tax Officer, Ward (Exemption) Udaipur. Order passed u/s 154/143(1) of the Act.

The assessee has taken the following ground:

"1. The ld. CIT(A) has erred in making variation in the returned income u/s 143(1) and has erred in upholding the order u/s 154 made by the Id. AO rejecting the application of the appellant. The order of the Id. AO was bad in law and bad on facts and the Id. CIT(A) has erred in sustaining the same.

2. The Id. CIT(A) has erred in not granting the exemption claimed u/s 10(23C)(iiiad) amounting to Rs.28,04,078/-claimed by the appellant in relation to educational institution run by the appellant. The denial of such exemption is bad in law and bad on facts and contrary to consistent claim being always allowed in the past.

3. The appellant crave liberty to add, amend, alter, modify or delete any of the ground of appeal on or before its hearing before your honour."

2. The brief fact of the case is that the assessee is an educational institution and running 246 institutions all over India. The gross receipt during impugned assessment year amount to Rs.1,60,69,588/-. The assessee society is claiming exemption u/s 10(23C) (iiiad) amount to Rs. 28,04,078/-. The assessee society is also registered u/s 12AA of the Act, and also registered u/s 80G of the Act w.e.f. dated 01.04.2008 and 14.05.2010 respectively. The assessee is mainly engaged in educational activities. During processing of return u/s 143(1), the revenue rejected the claim u/s 10(23C)(iiiad) as the gross receipt of the society as well as school

/educational institutions in the extant case not exceeds Rs.1 crore. The claim of exemption U/s 10(23C)(iiiad) is rejected by the revenue. The income was assessed amount to Rs.28,04,078/- and demand was raised. The assessee filed a rectification petition u/s 154 of the Act but remained unsuccessful. Being aggrieved assessee challenged the order u/s 154/143(1) before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

3. The ld. AR filed written submissions which are kept in the record. The ld. AR vehemently argued and placed that the assessee is running the multiple institutions near about 246 institutions and every institutions/educational institution has below the gross receipt amount to Rs. 1 crore. The assessee is eligible for deduction u/s 10(23C)(iiiad) on limine of the individual institutions not as a whole of the society. The ld. AR invited our attention in assessment order passed u/s 143(3) dated 25.10.2017 for A.Y. 2015-16 where the ld. AO accepted the assessee's claim when the gross receipt was more than Rs.1 crore and allowed the deduction u/s 10(23C)(iiiad). The assessee after receiving the intimation u/s 143(1) had filed rectification petition u/s 154 and claimed the deduction u/s 10(23C) (iiiad) of the Act. The ld. AR further challenged that the ld. AO has no jurisdiction to rejection the claim of deduction under the purview of processing of return section 143(1).

3.1 The ld. AR relied on the order of the Hon'ble Karnataka High Court in the case of **CIT vs. Children Educational Society (2013) 358 ITR 373 (Kar.)**. The relevant paragraph is reproduced as below:

> *"21. Firstly, if the word "aggregate annual receipts" of other educational institution is to be understood as clubbing of annual receipts of all educational institutions run by an assessee society, then it will also include the annual receipts of an educational institution which is wholly or substantially financed by the Government. If that was intention of the Legislature, they would not have introduced separate sub-clauses as (iii)(ab) and (iii)(ad). If such an interpretation is placed, sub-clause (iii)(ab) becomes otiose. Therefore, it is not possible to place such an interpretation. If an assessee society is running several educational institutions, if some of them are wholly or substantially financed by the Government in terms of sub-clause (iii)(ab), the income on behalf of such educational institution received by the assessee is exempted from being computed the total income of the assessee. If the assessee is running other educational institutions which are not wholly or substantially financed by the Government, then the benefit of that exemption is also extended to the income derived from such educational institutions and received by the assessee under sub-clause (iii)(ad) reading with sub-clause (iii)(ad) along with Rule2BC. It was contended, the Legislature used the word "aggregate annual receipt" and "amount of annual receipts"*

and therefore, the provisions are not one and the same. The word "aggregate" has been defined in Chambers 21st Century Dictionary as under:

"aggregate - noun = a collection of separate units brought together, a total taken altogether, bring together."

In Wharton's Law Lexicon, it is defined as thus:

"a collocation of individuals, units or things in order to form a whole"

22. Similarly relying on the judgment of the Apex Court in the case of ADITANAR EDUCATIONAL INSTITUTION vs. ADDL CIT (supra), it was contended the word "other educational institution" refers to the assessee society and not to the individual educational institution. If the intention of the Legislature was to club the annual receipts of all educational institutions run by the assessee society, they could have said so in clear terms. On contrary what is stated in the said Section is the aggregate annual receipts of such University or such educational institution referring to other educational institution. Other educational institutions are to be understood with the context of the first word i.e., the University. Both in the University and any educational institutions, education is imparted. The University is a statutory body. But there are a number of educational institutions which are not run by a statutory authority which are imparting education, the word "other educational institution" has to be understood in the

context of other than any University. If so understood, all that it means is every educational institution existing solely for educational purpose and not for the purpose of profit, if the aggregate annual receipts of such educational institution exceeds Rs.1 crore, then the income from such educational institution received by the assessee is excluded from his total income. In an educational institution the amount is calculated periodically. It may be calculated under different heads. All such amount received constituted receipts and those receipts may be received throughout the year. Therefore, the word "annual" has been inserted. But to be eligible for exemption, aggregate of annual receipts should not exceed Rs.1 crore i.e. the total annual receipts of a year if it does not exceed Rs.1 crore, then the income derived from such educational institution in the hands of the assessee cannot be taken into consideration to compute the income of the assessee.

23. No doubt, education has become a business, a very profitable business also. But it requires huge investment. It is the duty of the Government to provide education to all its citizens, as the Government is not able to shoulder the responsibility completely. Therefore, the field of education is now thrown open to private organizations. But for throwing open the field to the private operators, probably, the country would not have achieved in the field of education what it has achieved. Therefore, lot of funds are invested in running these educational institutions, either by creating a Society or a Trust.

In course of time, they have expanded their activity providing course in various subjects at various levels and for that purpose they have established more than one educational institution. Each educational institution is a separate entity controlled under various statutes for various purposes. May be the Management of these educational institutions would be in the hands of the Societies or the Trust, but for all other purposes they are different, independent entities. That is the reason why Section 10 (23)(c) is worded as under:

"Any income received by any person on behalf of..."

Here "any person" refers to the assessee and "on behalf of" refers to such institutions. It may be an University, it may be an educational institution, it may be a hospital or other institutions of similar nature. As all such institutions are independent entity and they generate income and when that income is received by the assessee, it becomes the income in the hand of the assessee and it is such income which is sought to be excluded while computing the total income of the assessee under Section 10. The test prescribed under the aforesaid provision is not the income of the educational education. It is the aggregate annual receipts of such educational institution that is prescribed at Rs.1 crore. Therefore, irrespective of the expenditure incurred by those institutions, the exemption is based on the total receipts. Even if the word "aggregate" has to be understood as suggested by the Revenue as the annual receipts of such

educational institutions put together, probably, the said provision regarding exemption would be of no use at all. Especially, if the society is running a medial college or any engineering college or other professional courses, then the annual receipt of each institution would run to few crores and therefore, the very object of granting exemption to such genuine institution would be lost. Therefore, the word "aggregate annual receipt" has to be understood with the context in which it is used and the purpose for which the said provision was inserted, keeping in mind, the Scheme of the Act. Therefore, if an assessee is running several educational institutions, if any of them is wholly or substantially financed by the Government, then the income from such educational institution received by the assessee is not included while computing his total income. Similarly, income from each educational institution if they are not receiving any aid from the Government wholly or substantially in respect of which the aggregate annual receipt do not exceed Rs.1 crore received by the assessee, is also not included while computing annual total income of the assessee.

4. The ld. DR vehemently argued and followed the rule that the turnover should be taken care on basis of the society not for the individual entity. The ld. DR fully relied on the order of the revenue authorities. The ld. DR invited our attention in relevant paragraphs of the order of the CIT(A) which are reproduced as below:-

"5. I have perused the rectification order, the submissions of the appellant and the legal position with respect of provisions of sec. 10(23C)(iiiad). The appellant runs and manages 246 educational institutions. These institutions have generated surplus of Rs.28,04,079/-which has been claimed to be exempt u/s 10(23C)(iiiad) of the I.T. Act. The annual receipts of all the 246 educational institutions is Rs.1,60,69,588/. The aggregate receipts of no educational institutions out of 246 educational institutions run by the assessee exceeds Rs.1 crore. The issue in this appeal is whether the upper monetary limit of aggregate receipts of Rs.1 crore applies qua the educational institution or qua the assessee. The AO has held that this limit of Rs.1 crore applies qua the assessee or the person and not the educational institution whereas the assessee has contended otherwise. The appellant in support of his claim has relied upon the judgement of the Hon'bleKarnataka High Court in the case of CIT vs. Children Educational Society (2013) 34 taxmann.com 285 in which it has been held that the limit of the receipt being less than Rs.1 crore applies to an individual educational institution and not to the person. The appellant has also cited order u/s 143(3) for A.Y. 2015-16 passed by the ITO(Exemption), Udaipur dated 25.10.2017 in which exemption u/s 10(23C)(iiiad) has been granted to the assessee even though the aggregate receipts from all the educational institutions exceeded Rs.1 crore. The appellant has also stated that in the intimation u/s 143(1) for A.Y. 2017-18 in the case of the

assessee no adjustment has been made to its total income despite the fact that the aggregate receipts from all the educational institutions exceeded Rs.1 crore. In view of these facts, the appellant has requested that exemption u/s 10(23C)(iiiad) may be granted to the appellant.

It is seen that the Finance Act 2021 has inserted an Explanation after sub clause (iiiad) of sec.10(23C) in which it has been clarified that the exemption under sub clause (iiiad) shall not apply if the aggregate of annual receipts of the person from such University or Universities or educational institution or institutions exceeds the monetary limit whjch has been increased to Rs. 5 crore w.e.f. 01.04.2022. Here it is to be noted that the Explanation has clarified that the monetary limit of receipts applies to aggregate annual receipts of the person from all such University or Universities or educational institutions or institution. This amendment has been introduced in the form of Explanation and has not been made by amending the main clause (iiiad). This shows that the intention of the Legislature was always that exemption u/s 10(23C)(iiiad) will be applicable to small charitable trusts with respect to aggregate annual receipts qua the person. In fact, in the Budget speech while presenting the Finance Act 2021, the Hon'ble Finance Minister has stated as under:-

"Relief to Small Trusts

We hope to reduce compliance burden on small charitable trusts running educational institutions and hospitals. So far,

there is a blanket exemption to such entities, whose annual receipt does not exceed Rs. 1 crore. I now propose to increase this amount to Rs. 5 crore. "

This also shows that provisions of Sec.10(23C)(iiiad) are applicable to small charitable trusts only. In order to reduce the compliance burden on such small charitable trusts, the blanket exemption given to such entities whose annual receipt did not exceed Rs.1 crore was enhanced to Rs.5 crores. Here it has not been stated that the manner of computation of annual receipt (qua person vis a vis qua institute) has been changed by insertion of the amendment. This implies that the limit of Rs.1 crore applies to the person and not to each educational institution. Therefore, the amendment in the form of an Explanation further clarifies the already existing legal position of sec. 10(23C)(iiad) that the limit on receipts is qua the person. The judgement of the Hon'ble Karnataka High Court has been rendered prior to the Finance Act 2021. With respect to the contention of the appellant that the AO has accepted its claim in A.Y. 2015-16 and in A.Y. 2017-18, it is to be stated that this principle of res-judicata does not apply to the Income tax proceedings. In view of the above discussion, the appeal of the assessee is dismissed.

In the result, the appeal is dismissed."

5. We heard the rival submission and perused the documents available in the record. The two issues are agitated by the assessee before the bench. Whether the

ld. AO has processed the return u/s 143(1) beyond the jurisdiction for disallowing the deduction u/s 10(23C) further the issue is agitated that the turnover of the society should be considered on basis of individual educational institution not for the whole of the society itself. The ld. AR respectfully relied on the order of the Hon'ble Karnataka High Court. We also respectfully relied on the order of the **Children Educational Society**(supra). Here, we insert the section 10(23C)(iiiad) as below:_

"Section 10(23C)……..

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed."

The assessee is dealt with the AY 2016-17. The explanation is inserted in Finance Act,2021 which is not implemented for AY 2016-17. In consideration of the said Act and the order of Hon'ble Karnataka High Court the quantum of Rs. 1cr is fixed for each educational institution not all. In assessee each institution is below Rs. 1cr of aggregate annual receipt. So, the aggregate annual receipt of assessee itself is not the point of consider for determining the exemption U/s 10(23C)(iiiad) of the Act. We set aside the appeal order and demand is quashed. So, the **Ground No-2** of the assessee is allowed.

The legal **Ground No-1** related jurisdiction of the ld. AO related disallowance the exemption U/s 10(23C(iiiad) is only remained for academic purpose.

The Ground No-3 is general in nature.

6. In the result, the appeal of the assessee bearing **ITA No. 163/Jodh/2022** is allowed.

Order pronounced on 06.12.2023 at Amritsar, Punjab in accordance with Rule 34(4) of the Income tax (Appellate Tribunal) Rules, 1963.

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**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.

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