

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA  
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1156/Kol/2023  
Assessment Year: 2011-12**

Sri Govinddeo Educational Institute 78, Syed Amir Ali Avenue, Ballygunge, Kolkata-700019. (PAN: AABTS6053J)	Vs.	DDIT, Exemption Circle-1, Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Akkal Dudhwewala, FCA  
Respondent by : Shri Subhro Das, Addl. CIT, Sr. DR

Date of Hearing : 31.01.2024  
Date of Pronouncement : 04.03.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order No. ITBA/NFAC/S/250/2023-24/1057301274(1) dated 23.10.2023 passed against the assessment order by DDIT, (Exemption)-1, Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.03.2014 for AY 2011-12.

2. Assessee has raised five grounds of appeal which all relate to common issue of denial of exemption claimed u/s. 10(23C)(iiia) of the Act without appreciating the fact that assessee was maintaining and aiding educational institution and it exists solely for the purpose of education. The grounds are not reproduced for the sake of brevity.

3. Brief facts of the case are that assessee filed its return of income on 02.09.2011 reporting total income at nil. Assessee is registered

under Societies Registration Act, 1961 and also registered u/s. 12A of the Act vide registration No. CIT/S-80/WB-VII of 1982-83 dated 05.02.1983. Assessee did not claim exemption u/s. 11 of the Act but u/s 10(23C)(iiia) as its annual receipt during the year was less than Rs. 1 Cr. From the income and expenditure statement, the assessee had claimed to have earned the following income during the year:

a.	Dividend	Rs.53,77,850/-
b.	Interest	Rs. 1,26,864/-
c.	Surplus on investment	Rs.39,63,524/-
	Total	Rs.94,68,238/-

Expenses claimed are as under:

a.	Donation	Rs.1,00,00,000/-
b.	Expenses for running school	Rs. 6,98,016/-
c.	Service Charges	Rs. 66,908/-
d.	Misc. Expenses	Rs. 4,404/-
e.	Auditor Remuneration	Rs. 6,618/-
	Total	Rs.1,07,75,946/-

3.1. Assessee claimed that it was running four schools and incurred expenditure as under:

- a) One school at Khatipura road (Jaipur) – Expenses incurred is Rs.440/- as bank charges.
- b) One school at Burwan, Murshidabad, West Bengal – expenditure incurred is Rs.20,754/-.
- c) Two schools at Bishnupur, South 25 Parganas, West Bengal – expenditure incurred is Rs.6,76,822/-.

3.2. Ld. AO in the course of assessment proceeding observed that out of two schools situated in village Bagi and Another in village-Sapkhali, though the schools are claimed to be run in the name of Shri Govindeo Educational Institute, local people know them by Birla's Primary School. There are two other schools, under Paschim Bishnupur Gram Panchayat, which are claimed to be run in the name

of Venkateshwara Educational Institute and they are also popularly known as Birla's Primary Schools.

3.3. According to Ld. AO, the schools are coaching centres/schools. Classes in the school are held from nursery to class V and nominal school fee is charged from the students. Ld. AO also observed that rented premises from which the coaching centres are run do not have any board indicating its name. The conditions of the premises are not appropriate for the students to attend the school/coaching centres. They have to sit in floor on mat or otherwise. There are no bench or desk for the students. Ld. AO also noted in the impugned order that Venkateshwara Education Institute and the assessee trust belong to the same group of trust. According to him, none of the schools are affiliated to any board of education recognised by any authority. To enquire all these observations which ld. AO has noted, he had called for report from the Inspector. He had also issued a show cause notice to the assessee seeking explanation and clarification on all these observations.

3.4. Assessee had made detailed submission explaining its case. According to assessee, the sole object of the Trust as contained in clause 3 and 4 of its Memorandum of Association is 'education'. The said clauses 3 and 4 are reproduced as under:

*"3. The object for which the Society is established is solely education and for this purpose to do and take all acts, deeds, things and steps as are necessary for or incidental to the attainment of the said object.*

*4. the Society is established for the objects and purposes stated in Clause 3 above solely for educational purposes and not for purposes of profit. No part of the funds or income of the Society shall be invested, applied or used in such manner so as to disentitle and/or deprive the Society of the benefits and/or advantages and/or exemption under any law including the provisions contained in section 10 of the Income-tax Act in force for the time being and/or from time to time."*

3.5. Assessee affirmed that schools are being run at the junior basic level for which no fees is charged from the students except a small tuition fee at Bishnupur school. The entire expenditure of the schools run by the assessee are incurred by it and accounted in its books. According to the assessee, the geographical areas covered by it is remote and underdeveloped villages and there are no other activities except for education on which expenditure is incurred towards running of the schools. Smallness of the centre and the circumstances that remuneration to the teachers paid cannot be the basis for denying the claim of exemption made by the assessee.

3.6. Assessee also submitted that right from the inception, the trust has been treated as educational institution by the Ld. AO from the Assessment Years 1985-86, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 as exempt u/s. 10(22) of the Act. Section 10(23C)(iiiad) is the successor to the erstwhile section 10(22) of the Act. In the aforesaid assessment years, the Ld. AO has considered the claim of the assessee of it running educational institutions and has allowed the claim made by the assessee. After considering the submissions made by the assessee, ld. AO concluded adversely and disallowed the claim made u/s. 10(23C)(iiiad). Aggrieved, assessee went in appeal before the ld. CIT(A) who confirmed the said disallowance. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee at the outset pointed that on identical set of facts and circumstances, the Coordinate Bench of ITAT, Kolkata in the case of Shri Venkateshwara Educational Institute in ITA No. 145/Kol/2022 vide order dated 17.02.2023 had held that provisions of section 10(23C)(iiiad) are applicable and consequently income of the institution is exempt as the assessee trust has satisfied all the conditions as prescribed therein. While deciding in favour of this assessee, the Coordinate Bench had relied on another decision of

the same Coordinate Bench in the case of Sewa Sansthan Vs. CIT(E), Kolkata in ITA No. 363/Kol/2020 for AY 2017-18 dated 09.02.2022 wherein it was held that the income earned by the trust out of interest income from investment, has been accumulated to the extent of 88% and only 12% were applied for the activities and that the provisions of section 10(23C)(iiiie) of the Act would be applicable to the said trust.

4.1. The relevant observations and findings from the decision of Venkateshwara Educational Institute (supra) is extracted below for ease of reference:

“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)(iii)ae) of the Act would be applicable to the said trust as the institution is engaged in running medial 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)(iii)ae) 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)ae) 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)ae)] 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)ae) 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)ae) 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)ae) 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)ad) 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)(iii)ad) 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."

4.2. Ld. Counsel further submitted that the issue in the case of Shri Venkateshwara Educational Institute went before the Hon'ble jurisdictional High Court of Calcutta where the revenue had raised three substantial questions of law for the consideration of the Hon'ble Court. Hon'ble jurisdictional High Court found that the Tribunal rightly granted relief to the assessee. Taking note of the facts and circumstances of the case, the appeal of the revenue was thus dismissed as there was no question of law which arose much less substantial question of law in the said appeal.

4.3. Relevant substantial question of law and observations and finding of the Hon'ble jurisdictional High Court are reproduced as under:

*“i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in setting aside the order of the Commissioner of Income Tax (Exemptions), Kolkata and holding that the assessee is eligible for exemption under Section 10(23C)(iiiad) of the Income Tax Act, 1961 in spite of the fact that the assessee does not exist solely for the educational purpose and it has profit motive?*

*ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in holding that the assessee is squarely covered by the provisions of Section 10(23C)(iiiad) of the said Act despite the fact that the assessee's activities are not solely for educational purpose and that there is no receipt from any educational institution and its source of*

*iii) income consists of dividend income, interest income and capital gain with a surplus of 53% of total receipts?*

*iii) Whether the Learned Tribunal has substantially erred in law in allowing the appeal of the assessee and holding that the assessee is eligible for exemption claimed under Section 10(23C)(iiiad) of the said Act despite the fact that the assessee failed to fulfill the conditions for being eligible for exemption under Section 10(23C)(iiiad) of the said Act?*

*We have heard learned Counsel on either side.*

*The respondent/ assessee is a trust registered under Section 12A/ 12AA of the Act and it claimed exemption under Section 10(23C)(iiiad) by way of dividend, interest income and capital gain on sale of shares of mutual funds. The assessee admittedly is running an educational institution in a very remote and/or backward area and does not charge any fee from the students towards studying in the said school. The learned Advocate after considering the factual aspects found that the covenant in the trust deed clearly show that the assessee is solely formed for the purpose of establishing school and educational institution and this fact has not been disputed by the revenue. Further the Tribunal noted that the assessee has incurred a sum of Rs.41,83,984/- on various expenses connected with the rent and maintenance of the school. Further the Tribunal found that the total receipt by way of dividend, interest and capital gain on sale of shares of mutual fund were accumulated in order to improve the infrastructure of the school and construction of new schools with the aim and object of the assessee trust. The Tribunal also referred to a decision of the Coordinate Bench in the case of Swasthya Sewa Sansthan vs.CIT(E), Kolkata in ITA No. 363/Kol/2020 dated 9.2.2022 wherein the facts were more or less identical and relief was granted to the said trust.*

*Further the learned Tribunal also noted that there is no allegation made by the department that the assessee was involved in any other activity for profit and not for educational purposes. Thus, we find that the Tribunal rightly granted relief to the assessee, taking note of the facts and circumstances of the case and we find that no question of law arises much less substantial questions of law.*

*There is nothing for consideration in this appeal at this stage.*

*Accordingly, the appeal stands dismissed.”*

5. Ld. Counsel thus pointed out that in the impugned assessment order AO has categorically taken note that two schools are run in the name of Venkateshwara Educational Institute and that this trust as well as the assessee trust belongs to the same group of trust.

According to him, the decision in the case of Shri Venkateshwara Educational Institute (supra) by the Hon'ble jurisdictional High Court of Calcutta squarely applies in the case of the assessee also and, therefore, the claim of the assessee u/s. 10(23C)(iiiad) ought to be allowed. Per contra, Ld. Sr. DR placed reliance on the order of the authorities below.

6. We have heard the rival contentions and perused the material available on record. We have gone through the orders referred by the Ld. Counsel for the assessee passed by the Coordinate Bench of ITAT, Kolkata as well as by the Hon'ble jurisdictional High Court, Calcutta in the case of Shri Venketaswara Educational Institution (supra). The factual matrix in the present case already narrated in the above paragraph are similar to those in the case of of Shri Venketaswara Educational Institution (supra). We also take note of the fact that Ld. AO has also referred to the said other institute in the impugned assessment order while dislodging the claim made by the assessee u/s. 10(23C)(iiiad). We find that case of the assessee is squarely covered by the judgment of Hon'ble jurisdictional High Court of Calcutta, for which relevant observations and findings are extracted above. Respectfully following the same, we allow the appeal of the assessee for the claim of exemption u/s. 10(23C)(iiiad). Accordingly, appeal of the assessee is allowed.

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

Order is pronounced in the open court on 4th March, 2024

Sd/-  
(Sanjay Garg)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 4<sup>th</sup> March, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A), NFAC, Delhi
  4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata