

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.585/Bang/2024
Assessment Year : 2020-21

Vijayanagara Institute of Medical Sciences (VIMS), OPD Circle, Cantonment, Ballari – 583 104. PAN – AAALV 0357 R	Vs.	The Dy. Commissioner of Income Tax (Exemptions), Circle - 1, Mangaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri H Siva Prasad Reddy, IRS & Shri B.S Balachandran, Advocate
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	08.05.2024
Date of Pronouncement	:	16.05.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl/JCIT (A)-1, Visakhapatnam dated 31/01/2024 in DIN No. ITBA/APL/S/250/2023-24/1060293659(1) for the assessment year 2020-21.

2. The only effective issue raised by the assessee is that the Id. CIT(A) erred in upholding the adjustment made u/s 143(1) of the Act by denying the exemption u/s 10(23C)(iiiab) of the Act.

3. The assessee in the return filed u/s 139(1) of the Act has claimed exemption u/s 11 of the Act, whereas the assessee was entitled for the

exemption u/s 10(23C)(iiiab) of the Act. The Revenue while processing the return of income of the assessee u/s 143(1) of the Act has disallowed the exemption claimed by the assessee for Rs. 1,17,24,904/- and added to the total income of the assessee.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A).

5. The assessee before the Id. CIT(A) submitted that the Revenue in the earlier asst. year 2018-19 has allowed exemption claimed u/s 10(23C)(iiiab) of the Act in the assessment framed u/s 144 r.w.s. 144B of the Act. Therefore, following the principle of consistency, the exemption should also be allowed in the year in dispute.

7. Without prejudice to the above, the assessee submitted that the scope of adjustment under the provisions of sec. 143(1) is limited to the extent of specified prima facie adjustments. As such, the exemption claimed u/s 10(23C)(iiiab) of the Act by the assessee cannot be denied by Revenue while processing the return u/s 143(1) of the Act, as there is no prima facie mistake requiring any adjustment to the total income of the assessee.

8. The assessee also submitted that the exemption cannot be denied merely mentioning the wrong section in the return of income. As such, it was duty upon the AO to apply the correct provisions of law after ignoring the mistake committed by the assessee. The assessee in support of his contention relied on the CBDT Circular No. 14(XL)-35 dated 11/04/1955.

9. However, the Id. CIT(A) disagreed with the contention of the assessee and upheld the intimation passed u/s 143(1) of the Act by observing as under:

“4.1 On verification of return of income filed by the appellant under PART A General-Filing Status - Please specify the section under which the exemption is claimed: Section 11. Further. the appellant stated that it is eligible for exemption u/s 10(23C)(iiiab). However on verification of return of income, Schedule VC: Voluntary Contributions (to be mandatorily filled in by all persons filing ITR-7), Grants Received from Government is mentioned at NIL. Therefore, the claim of the appellant for exemption u/s 10(23C)(iiiab) is not allowable. In the result appeal is Dismissed.”

10. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

11. The Id. AR before us filed the statement of facts running from pages 1 to 11, wherein, the contentions raised before the Id. CIT(A) were reiterated.

12. On the other hand, the Id. DR vehemently supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has been claiming exemption u/s 10(23C)(iiiab) of the Act, which was accepted by the Revenue in the assessments framed u/s 143(3) of the Act for different assessment years i.e. assessment years 2017-18, 2018-19, 2022-23. There is no change in the facts of the case before us vis-à-vis the facts of the case in the own case of the assessee in the earlier and later assessment years. Thus, we are of the view that the assessee is entitled for exemption u/s 10(23C)(iiiab) of the Act based on the principle of consistency.

13.1 Undeniably, the assessee has filled wrong section while filing the return of income i.e. sec. 11 instead of sec. 10(23C)(iiiab) but such inadvertent error in our considered view does not debar the assessee

from claiming the legitimate exemption, for which, the assessee was entitled. Therefore, we are of the view that such adjustment cannot be made in the return of income filed by the assessee u/s 143(1) of the Act.

13.2 It is pertinent to note that the Revenue has disallowed the exemption on the reasoning that the exemption was claimed under wrong section of the Act by the assessee, whereas the Id. CIT(A) has dismissed the appeal of the assessee on a different reasoning i.e. the details of the voluntary contribution grant received from Government was specified at Nil. As such, from the finding of the Id. CIT(A), it is transpired that the Id. CIT(A) has admitted the exemption claimed by the assessee u/s 10(23C)(iiiab) of the Act but denied the same on a different reasoning, which is not correct as per the provision of law. Nevertheless, none of the authorities below has looked in the case of the assessee on merit, therefore, in the interest of justice and fair play, we set aside this issue to the file of the AO for fresh adjudication in the light of the above said discussion and as per the provisions of law. Hence, ground of appeal raised by the assessee is allowed for statistical purposes.

14. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in court on 16th day of May, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 16th May, 2024

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore