

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member and
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 718/Kol/2024
Assessment Year: 2013-14**

**Sri Govinddeo Educational Institute,
78, Syed Amir Ali Avenue,
Ballygunge, Kolkata - 700019
[PAN: AABTS6053J]**

Appellant

vs.

**Income Tax Officer (Exemption),
Ward 1(3), Kolkata,
10B Middleton Row,
Kolkata - 700071**

Respondent

Appearances by:

Assessee represented by : Shri Akkal Dudhewala, AR
Department represented by : Shri Sanjay Paul, Addl. CIT

Date of concluding the hearing : July 02, 2024
Date of pronouncing the order : July 30, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Commissioner of Income Tax, Appeal Addl/JCIT(A)-2, Mumbai, dated 13.03.2024 arising out of Assessment Order dated 05.03.2016, passed under Section 143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

- "1. *For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the action of AO denying the benefit of exemption claimed u/s 10(23C) (iiia) of the Act.*
2. *For that on the facts and in the circumstances of the case, the lower authorities failed to correctly appreciate that the*

appellant was indeed maintaining and aiding education institutions and it existed solely for educational purposes without any motive for profit and since its annual receipts did not exceed the limit of Rs.1 crores, it had rightly claimed exemption u/s 10(23C) (iiiad) of the Act.

3. *For that on the facts and in the circumstances of the case, the Ld. CIT(A) acted in complete disregard of the binding precedent in assessee's own case for AY 2011-12 and thereby erred in not allowing the benefit of exemption claimed u/s 10(23C)(iad) of the Act.*
4. *For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.*

3. In the instant appeal, the assessee has raised as many as five common issues relating to denial of exemption claimed under Section 10(23C)(iiiad) of the Act without appreciating the fact that the assessee was maintaining and aiding educational institution and it existed solely for the purpose of education.

4. Brief facts of the case are that the assessee filed its return of income by declaring total income as 'Nil'. The assessee is registered society under the registration act and also registered under Section 12A of the Act, 1961. The assessee did not claim exemption under Section 11 of the Act but under Section 10(23C) (iiiad) of the Act as its annual receipts during the year were less than Rs. 1 Crore. From the income and expenditure statement the assessee had claimed to have earned following income during the year:

a.	Dividend	Rs. 39,70,825/-
b.	Interest	Rs. 4,45,221/-
c.	Surplus on investment	Rs. 3,75,709/-
	Total	Rs. 47,91,755/-

Expenses claimed are as under:

a.	Donation	Rs. 25,00,000/-
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b. Expenses for running school	Rs. 8,50,874/-
c. Service Charges	Rs. 67,416/-
d. Misc. Expenses	Rs. 2,411/-
e. Auditor Remuneration	Rs. 6,742/-
Total	<u>Rs. 34,27,443/-</u>

5. The Ld. AO during the assessment proceedings observed that out of two schools situated in Village Bagi and another in Village Sapkhali, though the schools are claimed to be run by the name of Shri Govinddeo Educational Institute, local people know them as Govinddeo School. According to the Ld. AO schools are actually run as coaching centre and classes are held from Class Nursery to Class IV, a nominal school fee of Rs. 20/- is charged from the students. The Ld. AO observed that rented premises from the coaching centre are run do not have any proper infrastructure. The condition of premises are not appropriate for students to attend the school/coaching centres. The students have to sit on the floor, on mat or otherwise. There is no bench or desk for the students. During the course of assessment proceedings, the Ld. AO issued a show cause notice to the assessee seeking explanation and clarification on all these observations and the assessee made a detailed submission explaining its case by submitting a written explanation on 02.03.2016. The relevant extract of the same is reproduced as under:

"The Finance (No.-2) Act, 1998 introduced section 10(23C) w.e.f.01.04.1999, which is similar to the erstwhile section 10(22) of the Act. This exemption is available to any University or educational institution existing solely for educational purposes and not for the purpose of profit if the aggregating amount received by the said University or educational institution does not exceed the amount of annual receipt as may be prescribed, i.e. Rs. 1 crore.

The sole object of our institution as embodied in clause (3) & (4) of our Memorandum of Association is "education".

It is reiterated in Clauses 3 & 4 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 I.T. Act in force for the time being and/or from time to time".

Thus, the sole object of the institution is education and we are carrying on educational activities only. For that, we are running educational institutions at Murshidabad and Bishnupur in state of West Bengal. The geographical area covered by us is only remote and underdeveloped villages. We have no other activities and the expenditure on education is incurred in respect of schools run by us. It is not necessary that an educational institutions claiming exemption under section 10(23C)(itiad) should be affiliated to or recognized by Governments or Educational Boards or Authorities. The schools in question are only primary schools in remote and underdeveloped villages which impart education to the students upto Class IV only. Therefore, we are eminently eligible for exemption under section 10(23C) (iiiad) as an educational institution both in law as well as on facts.

Schools being run by us are at the junior basic level and for that no fees are charged from the students except a nominal tuition fee at Bishnupur school. As such, there was no income from the schools run at Murshidabd. There is meager income from the school run at Bishnupur. The entire expenditure of the schools at Murshidabad and the two schools at Bishnupur are being incurred by us. Expenses are met by dividend from investment in shares and interest on fixed deposit with banks.

From the above you will find that schools are not even self-supportive. The school at Murshidabad is not charging anything from the students. The salary of the teacher who conduct classes is paid by us and in case of the schools at Bishnupur, nominal fees are collected. There is huge deficit. Therefore, some income is necessary for running the institution. It is a welcome feature that we are earning dividend and interest income which is utilized for running the educational institutions.

Further, the organizations have been treated as educational institutions by the AO for the assessment years 1985-86, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 and exempt under section 10(22) of the IT Act, 1961. Section 10(23C)(iiiad) is the successor to the Erstwhile section 10(22). The AO in these assessment years have considered our claim that we are educational institutions after elaborate deliberation and have come to the unanimous view that we are educational institutions and it is well settled and provisions of section 10(23C)(iiiad)and (vi) pertaining to educational institutions are equally applicable to provisions of earlier section 10(22) pertaining to educational institutions.

The law laid down in respect of section 10(22) is equally applicable to these provisions mutatis mutandis is held, inter alia, in American Hotel and Lodging Association Institute v. CBDT (2008) 301 ITR 86 (SC)."

6. During the assessment proceedings, the assessee admitted that schools are being run at the junior level basis for which no fees were charged from the student except a small tuition fee of Rs. 20/-. The entire expenditure of the schools run by assessee were incurred by it and accounted for in its books of accounts. According

to the assessee, the geographical area covered by it is a remote and under developed village, therefore, no other activities except for education on which expenditure was incurred were carried out, it was also argued that due to smallness of the centre and other circumstances that remuneration to the teachers were paid cannot be the basis for denial the claim of exemption made by the assessee. The assessee also submitted that right from the inception the trust has been treated as educational institution by the Ld. AO from the assessment year 1985-86, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99, exempt under section 10(22) of the Act, Section 10(23C) (iiad) is the successor to erstwhile section 10(22) of the Act. According to the aforesaid assessment year, the Ld. AO has considered the claim of the assessee of its running educational institution and has allowed the claim made by the assessee. However, considering the submission made by the assessee. The Ld. AO concluded adversely and disallowed the claim made under Section 10(23C)(iiiad) of the Act.

7. Aggrieved by the order of the Ld. AO, assessee went in appeal before the Ld. CIT(A) who confirmed the said disallowance.

8. Dissatisfied with the above order, the assessee is in appeal before this Tribunal. The Ld. Counsel for the assessee stated that on identical facts and circumstances, the coordinate Bench of the ITAT, Kolkata Bench in the case of the assessee in ITA No. 1156/Kol/2023 vide order dated 04.03.2024 had held that provision of Section 10(23C)(iiiad) of the Act are applicable and consequently income of the institution was treated as exempted as the assessee trust is fulfils all conditions as prescribed therein while deciding the case in favour of the assessee. The coordinate bench relied upon another decision in the case of Sewa Sansthan Vs. CIT(E), Kolkata in ITA No. 363/Kol/2020 for AY 2017-18 by observing in following manner:

"4. Before us, Id. 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)(iii) 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)(iii) 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)(iii) 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)(iii) 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 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 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) 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) 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) 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) 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)(iii) 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)(iii) 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)(iii) of the said Act despite the fact that the assessee failed to fulfill the conditions for being eligible for exemption under Section 10(23C)(iii) 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.”

9. We have heard the rival submission of the parties and perused the material available on record and gone through the order referred by the Ld. Counsel for the assessee passed by the co-ordinate bench in ITA No. 1156/Kol/2023. It is seen that the facts in the order relied upon are similar to those in the case of the assessee which is squarely covered in favour of the assessee and therefore respectfully following the same the appeal of the assessee is allowed for the claim of exemption under Section 10(23C)(iiiad) of the Act. Accordingly, appeal of the assessee is allowed.

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

Kolkata, the 30th July, 2024.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 30.07.2024.

AK, PS

Copy of the order forwarded to:

- 1 Sri Govinddeo Educational Institute
2. Income Tax Officer (Exemption), Ward 1(3), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches