IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

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

ITA No. 563/Bang/2024
Assessment Year : 2014-15

ITI Education Committee, Vidyamandir, Dooravaninagar, Bengaluru-560 016 **PAN – AAAAI 0748 L**	Vs.	The Income Tax Officer (Exemption), Ward - 1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Shambu Sharma, C.A
Revenue by	:	Ms. Matta Padma, Addl. CIT (DR)

Date of hearing	:	06.06.2024
Date of Pronouncement	:	19.08.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 30/01/2024 in DIN No. ITBA/NFAC/S/250/ 2023-24/1060251209(1) for the assessment year 2014-15.

2. The only issue raised by the assessee is that the ld. CIT(A) erred in denying the exemption u/s 10(23C)(vi) of the Act on the reasoning that the assessee is not engaged solely in educational activities.

2.1 The necessary facts are that the assessee in the present case is a society promoted and managed by the nominated employees of Indian Telephone Industries Limited for the purpose of promoting and imparting education to the children. The assessee is also registered u/s 12AA besides, 10(23C)(vi) of the Act. The assessee in the year under consideration has claimed exemption amounting to Rs. 2,65,56,008/- on the ground that it is engaged in charitable activity being education and, therefore, the same is eligible for exemption u/s 11 and 10(23C)(vi) of the Act. However, the AO found that the assessee has been showing surplus from the educational activity to the tune of more than 15% precisely 24% in the year under consideration. Likewise, the AO also found that the assessee has also been showing surplus from its education activities consistently between 22 to 34% for the assessment years 2011-12 and 2013-14. Thus, the AO was of the view that the assessee is not solely engaged in the activity of education. As such, there is an element of profit motive while carrying out the educational activities. Therefore, the AO disallowed the exemption of Rs. 2,65,56,008/- and added to the total income of the assessee. On appeal, the ld. CIT(A) confirmed the order of the AO.

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

4. The ld. AR before us filed a paper book running from pages 1 to 158 and contended that the Tribunal in the own case of the assessee in the earlier year has allowed appeal of the assessee in ITA No. 425/Bang/2017 vide order dated 31/01/2018. The ld. AR further contended that whatever surplus was generated by the assessee, it was used for the purpose of the education for the later years. To this effect, the ld. AR drawn our attention on the surplus generated by the assessee

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and its utilization right from the financial years 2003-04 to 2017-18. Therefore, it was submitted by the ld. AR that the assessee cannot be denied benefit of exemption u/s 11(1023C)(vi) of the Act. It was also pointed out by the ld. AR that the judgments referred by the revenue authorities in their respective orders are not applicable to the given facts of the assessee.

5. On the other hand, the ld. DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that there is no dispute regarding the fact that the assessee is engaged in the educational activities. As per the revenue the assessee has generated surplus fund to the tune of 34% in the year under consideration from the educational activity which was unreasonable. Therefore, it was alleged by the revenue that the assessee is not engaged solely in the educational activity as there is an element of profit motive. Thus the revenue did not allow the exemption claimed by the assessee either under section 10(23C)(vi) or under section 11 of the Act on the reasoning that there was continuous unreasonable surplus fund generated by the assessee from the educational activity which suggest the activity of the assessee is for profit motive. In holding so, the AO has made reliance on the judgements of Hon'ble Supreme Court in the case of Visvesvaraya Technological University vs. ACIT reported in 384 ITR 37 (SC) and in the case of PA Inamdar & Ors vs. State of Maharashtra.

6.1 The learned CIT(A) while approving the finding of the AO has also made reliance on the judgements of Hon'ble Supreme court as referred by the AO and further made reliance on the judgment of Hon'ble

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Supreme Court in the case of Union of India vs Baba Banda Singh Bahadur Education Trust reported in 150 taxmann.com 40 and New Nobel Education Society vs. CIT reported in [2022] 448 ITR 594 (SC). It is pertinent to note that as per the revenue the surplus generated by the assessee for the year under consideration was to the tune of 34% whereas it was contended by the assessee that the surplus was only 29%. Furthermore, it was also contended by the assessee that the surplus of 29% was calculated after including the interest income of ₹ 85,06,649/- and if such income is excluded the surplus is arising only to the extent of 20.69% only. The logic given by the assessee to exclude interest income was that it was on the surplus money which was parked with the bank for temporary purposes which is nothing but passive income and the same should not be included while calculating the reasonable surplus income of the assessee. Without going into the quantification of the surplus income whether it is 34% or 29% or 20.69%, what is important to see is this that whether the assessee has acted solely for the purpose of educational activity.

6.2 Admittedly, the Hon'ble Supreme Court's in the cases i.e. Visvesvaraya Technological University vs. ACIT (supra) or Union of India vs Baba Banda Singh Bahadur Education Trust (supra) referred by the learned CIT(A) has held that the continuous unreasonable surplus income generated by the assessee from the educational activity or in other words continuous/systematic surplus generated in excess of what the assessee is required for furtherance of its objective of education cannot be said that such activity is solely for the purpose of education. However, we note that the issue involving in the case of Baba Banda Singh Bahadur Education Trust (supra) was regarding approval of exemption under section 10(23C)(vi) of the Act which was rejected for

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the reason that the assessee has generated huge surplus of 67.81% before Depreciation and 44.48% after Depreciation which was considered as not reasonable surplus. Similarly, in the case of Visvesvaraya Technological University(supra), the claim of exemption was rejected for the reason the assessee in the short period of 10 years accumulated surplus fund of more than Rs. 500 crores by collecting money from student under different head. The fund collected year after year was more than 3 to 4 times of the expenditure. Further the assessee Visvesvaraya Technological University made huge amount of investment in the form of bank deposit out of surplus whereas in the case on hand the assessee has claimed that the surplus over 15% of receipt were ploughed back or utilised for the purpose of imparting educational activities within a period of 4 years. The proviso 3 to section 10(23C) of the Act stipulates that university or other educational institution can accumulate its income for application of wholly and exclusively for the object i.e. imparting education above 15% of its income but such amount exceeding 15% shall not exceed 5 years.

6.3 It is also pertinent to note that the Hon'ble supreme in series of cases such as *Aditanar Educational Institution* v. *Addl. CIT* [1997] 224 ITR 310/90 Taxman 528, *American Hotel & Lodging Association Educational Institute* v. *CBDT* [2008] 301 ITR 86/ and *Queen's Educational Society* v. *CIT* [2015] 55 taxmann.com 255 has held that any surplus results incidentally from the activity lawfully carried on by the educational institution and such surplus is ploughed back for educational purposes, it will not cease to be one existing solely for educational purposes and not for profit.

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6.4 Before parting we also feel pertinent to highlight that the Hon'ble Supreme Court in the case of *New Noble Educational Society* v. *CCIT* [2022] 143 taxmann.com 276 has withdrawn from the meaning of the phares "solely for education" defined in earlier judgments as discussed in the immediately preceding paragraph of this order. The learned CIT(A) in the present case referred the above judgment in case of *New Noble Educational Society* for deciding the issue against the assessee. In this regard we note that the Hon'ble Supreme Court in concluding paragraph has held that the change made in the meaning of "Solely" will be applicable from the date of impugned order i.e. 19th October 2022. The relevant observation reads as under:

> ***78.*** *In the light of the foregoing discussion, the assessees' appeals fail. It is however clarified that their claim for approval or registration would have to be considered in the light of subsequent events, if any, disclosed in fresh applications made in that regard. This court is further of the opinion that since the present judgment has departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the present judgment operates hereafter.*

6.5 From the above, there remains no ambiguity that the principles laid down by the Hon'ble Supreme Court in the case cited above (*New Noble Educational Society)* are not applicable for the year under consideration. In holding so we draw support and guidance from judgment of The Hon'ble Bombay High Court in the case of Laura Entwistle vs union of India reported in 148 taxmann.com 251 wherein it was held as under:

> ***28.*** *We are unable to agree with the respondents that the law laid down by the Supreme Court in the case of New Noble Education Society (supra), would be applicable to the present case in as much as it is held in paragraph 78 of the said judgment as under:*
> *"78..... it would be in the larger interests of the society that the present judgments operate hereafter. As a result, it is hereby declared that the law declared in the present judgment shall operate prospectively."*
> *Consequently, since the judgment itself held that it was prospective and not retrospective, it would not be applicable to the present case.*

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6.6 From the above, it is transpired that the judgement delivered by the Hon'ble Supreme Court in the case of *New Noble Educational Society (Supra)* cannot be applied to the instant set of facts. Accordingly, we hold that the learned CIT(A) erred in drawing any inference against the assessee after referring to the judgements cited above.

6.7 Moving ahead, from the preceding discussion and cited judgement, this is transpired that if the surplus fund generated by the assessee while imparting the educational activity has eventually been utilised for the purpose of educational activity within the period of 5 years in pursuance to the provisions of proviso 3 to section 10(23C) of the Act, then the assessee shall not be debarred from claiming the exemption under section 10(23C)(vi) of the Act.

6.8 As per the submission of the learned AR of the assessee placed on pages 6 and 7 of his written submission, it appears that the assessee has utilized the funds within 4 years. Apparently, it appears that the conditions attached in the proviso discussed above has been satisfied in the given facts and circumstances and therefore the assessee appears to be eligible for exemption under section 10(23C) of the Act. However, we note that whether the assessee has ploughed back the fund and used for charitable purposes has not been verified by the authorities below. Therefore, we for sake of justice and fair play are inclined to set aside the issue to the file of the AO for the limited purpose of verifying whether the assessee has utilised the surplus fund for imparting the education in the later years as discussed above as per the provisions of law. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

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

Order pronounced in court on 19th day of August, 2024

Sd/-	Sd/-
(GEORGE GEORGE K)	**(WASEEM AHMED)**
Vice President	Accountant Member

Bangalore,
Dated, 19th August, 2024
/ vms /

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

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