

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.1068/Ahd/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Dr.Babasaheb Ambedkar Open University "Jyotirmay Parisar" Dr.Babasaheb Amvedkar Open University Marg Sarkhej-Gandhinagar Highway Chharodi Ahmedabad - 382 481 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The CIT(Exemption) Ahmedabad
स्थायी लेखा सं./PAN: AABFD 2922 P		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Manish Bhatt, Advocate
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 14/10/2024
घोषणा की तारीख /Date of Pronouncement: 22/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal is preferred by the assessee, Dr. Babasaheb Ambedkar Open University (hereinafter referred to as "the University" or "the assessee"), against the revisionary order passed by the Commissioner of Income Tax (Exemptions), Ahmedabad [hereinafter referred to as "CIT(E)"] under Section 263 of the Income Tax Act, 1961[hereinafter referred to as "the Act"], dated

29th March 2024. The order under challenge revises the assessment order passed by the Assessing Officer [hereinafter referred to as "AO"] u/s 147 r.w.s. 144B, dated 29th March, 2022, accepting the assessee's claim for exemption under Section 10(23C)(iiiab) of the Act for the Assessment Year (AY) 2014-15.

Facts of the Case:

2, The assessee, Dr.Babasaheb Ambedkar Open University (BAOU), established under the State Open University Act, 1994, is a Government-funded Educational Institution located in Ahmedabad (Gujarat), who had not filed its original return of income for the AY 2014-15. Subsequently, Notice under section 148 of the Act was issued to the assessee on 24/03/2021. This notice was issued as part of the reassessment process, indicating that the AO believed that income chargeable to tax had escaped assessment. The assessee filed its return of income u/s.147 of the Act on 30/04/2021, in response to the notice. A subsequent notice under section 143(2) of the Act was issued on 15/06/2021 to conduct a scrutiny assessment, and the reasons for selection were communicated. The AO called for various details through statutory notices under section 142(1) of the Act, dated 09/12/2021, 22/12/2021, and 17/02/2022. The assessee responded by submitting the required details through the e-filing portal. The AO examined the details and submissions made by the assessee, which were placed on record. The AO passed order u/s 147 r.w.s. 144B of the Act accepting the assessee's claim for exemption under Section 10(23C)(iiiab) of the Act.

2.1. The CIT(E) invoked Section 263 of the Act primarily contending that the assessee was not wholly or substantially financed by the government for the

relevant assessment year, thereby questioning the assessee's eligibility for the exemption under Section 10(23C)(iiiab) of the Act. The CIT(E) concluded that the AO failed to properly examine whether the assessee qualified as substantially financed by the government. The CIT(E) believed that the AO had overlooked critical facts, making the order erroneous and prejudicial to revenue interests. While doing so, the CIT(E) scrutinized the university's income composition for the assessment year and focused on the total income of Rs.25,03,59,292/-, which included income from various sources such as:

- State Government Grants: Rs.3,28,91,722/-
- Fees: Rs.11,38,65,510/-.
- Interest Income: Rs.10,17,71,295/-.
- Miscellaneous Income: Rs.13,82,513/-.

2.2. The CIT(E) highlighted that the Government grant (Rs.3,28,91,722/-) only constituted 13% of the total income, a figure significantly below the level required to classify the institution as "substantially financed" by the government. Therefore, the CIT(E) believed that the assessee did not qualify for exemption under Section 10(23C)(iiiab) of the Act, which applies to institutions that are wholly or substantially financed by the government. The CIT(E) referred to Rule 2BBB of the Income Tax Rules, 1962, which defines "substantially financed" as institutions receiving 50% or more of their income from government grants which came into effect from AY 2015-16. The CIT(E) acknowledged that the Rule 2BBB applies prospectively from AY 2015-16 and not to AY 2014-15. However, the CIT(E) inferred that, even without formally applying the rule, the university fell short of the "substantial financing" threshold based on the 13% figure derived from state grants.

2.3. The CIT(E) made a critical exclusion by not considering interest income earned on Government grants (Rs.10,17,71,205/-) as part of Government financing. The CIT(E) held that the interest income was generated from grants but was treated as independent income by the university, and thus, it could not be considered part of the government grant for calculating whether the university was substantially financed by the government. This conclusion was contrary to the assessee's submission, which relied on Rule 230(8) of the General Financial Rules (GFR), which stipulates that interest on Government grants, unless returned to the Consolidated Fund of India, is to be treated as part of the grant. The CIT(E) did not accept this reasoning and concluded that interest income should not be added to the total grants for the purposes of determining substantial financing. The CIT(E) referred to the Hon'ble Supreme Court ruling in **Visvesvaraya Technological University v. Assistant Commissioner of Income Tax (384 ITR 37)** to substantiate the view that the university was not substantially financed by the Government. In the Visvesvaraya case, the Hon'ble Supreme Court held that an institution receiving only 6% of its total income from Government grants could not be considered substantially financed. The CIT(E) set aside the AO's assessment order dated 29/03/2022 and directed the AO to re-examine the case and re-adjudicate the issue of the allowability of the exemption under Section 10(23C)(iiiab) of the Act, after proper verification of facts.

3. Aggrieved by the order of the CIT(E), the assessee is in appeal before us with following grounds of appeal:

The main grounds of challenge to the said order passed by the learned Commissioner under Section 263 of the Act are as under: -

1. *That the impugned order passed under Section 263 of the Act is erroneous as the same is dehorse the factual and legal position.*
 2. *That it ought to have been appreciated that in view of the decision rendered by the Hon'ble Karnataka High Court in the case of CIT (Exemptions), Delhi v. Institute of Liver and Biliary Sciences reported in (DELHC) 2023 ITL 2430 and in view of Rule 230(8) of the General Financial Rules, all interests or other earnings against grants-in-aid are required to be mandatory returned to the Consolidated Fund of India. If the said interest is not returned back the same is required to be added to the Grant by the Government. Thus in the instant case, the percentage of Government grant would come to 54 %.*
 3. *That it ought to have been considered that the grants received by the assessee were Rs.2,50,00,000/- + 78,91,722/- towards salary grant, totaling to Rs.3,28,91,722/- and adding the interest of Rs.10,17,71,295/-, the figure came to Rs.13,46,63,017/-- Considering the receipt of fees of Rs.11,38,65,510/-, the total comes to Rs.24,85,28,527/- Comparing the total receipt of Rs.24,85,28,527/-, the grant + interest would bare a proportion of 54 %. Thus, even applying the prospective Rule 2BBB, the assessee crossed the benchmark of 50%.*
 4. *That in view of the decision of the Hon'ble Karnataka High Court in the case of Commissioner of Income Tax v. Indian Institute of Management, reported in 2011 (196 TAXMANN 0276), in paragraph 4, the Hon'ble Court has noted that as per the various provisions including the Banking Regulation Act, 1949, the beneficial interest of more than 10% of the total capital would amount to having substantial interest, similarly, "substantial interest" has also been defined in Explanation to Section 40 A (2) (a) of the Act where a person having voting power of not less than 20% in the case of Company would be treated as having substantial interest.*
 5. *That the learned Commissioner erred in relying upon the decision of the Hon'ble Supreme Court in the case of Visvesvaraya reported in 384 TR 37 (SC), where the aspect of interest forming part of the grant was not the subject matter.*
 6. *That the impugned order passed by the learned Commissioner under Section 263 being dehorse the provisions of law and facts may kindly be set aside.*
4. During the course of hearing before us, the Authorised Representative (AR) of the assessee clarified that the assessee is a state-established university under the State Open University Act, 1994, and that all the funds, including fees charged to students, were regulated and approved by the State

Government. The AR further clarified that the university exists solely for educational purposes and not for profit. The assessee contended that the entire financial structure of the university is governed by the State, and the fees charged from students are also part of the government-authorized financial ecosystem. The assessee argued that such financial control by the government should qualify as substantial financing by the Government under Section 10(23C)(iiiab) of the Act. The AR referred to Article 266 of the Constitution, emphasizing that all funds received by the university belong to the Consolidated Fund of the State. The AR further stated that the university is also subject to audits by the Comptroller and Auditor General (C&AG), further proving that its finances are under the complete control of the State Government.

4.1. The AR argued that the interest earned on government grants (Rs.10,17,71,295/-) should also be considered part of the Government financing. The interest was generated from grants provided by the Government, and as per Rule 230(8) of the General Financial Rules (GFR), if the interest is not returned to the Consolidated Fund of India, it is treated as part of the grant itself. Adding the interest income to the Government grant, the AR claimed that the total Government funding would constitute 54% of the university's gross receipts, thus meeting the threshold for "substantial financing" under Section 10(23C)(iiiab) of the Act. The AR highlighted that Rule 2BBB, which defines "substantially financed" as 50% or more of an institution's income being from government grants, was introduced only from AY 2015-16 which could not be applied retrospectively to AY 2014-15. The AR contended that the CIT(E) had incorrectly attempted to apply this rule retroactively, despite the fact that it did not apply to the year under

consideration. The AR also argued that in previous assessment years, such as AY 2010-11 and AY 2012-13, the AO had consistently allowed the assessee's claim for exemption under Section 10(23C)(iiiab) of the Act and the facts of the case had not changed significantly, and there was no justification for deviating from the established position in AY 2014-15.

4.2. The AR relied on several judicial precedents, including the judgement of the **Hon'ble Delhi High Court in CIT (Exemptions) v. Institute of Liver and Biliary Sciences (2023 ITL 2430)**, where the court held that interest income on Government grants should be considered part of Government financing. The AR also cited the **Hon'ble Karnataka High Court's judgement in CIT v. Indian Institute of Management (196 Taxmann 276)**, where the court held that substantial financing could occur even if the Government grant is below 50%. The assessee argued that this precedent applied to its case as well, as the university was governed and financed by the State Government to a significant degree.

5. The Departmental Representative (DR), on the other hand, relied on the order of CIT(E).

6. We have carefully considered the submissions of the assessee, the order passed by the CIT(E) under Section 263 of Act and the relevant judicial precedents as relied upon. Section 263 of the Act empowers the CIT(E) to revise any order passed by the AO if the order passed by the AO is erroneous and prejudicial to the interests of Revenue. Both limbs must be fulfilled for the CIT(E) to validly invoke Section 263 of the Act. We will examine whether

the order passed by the AO in this case met these criteria and, accordingly, determine the validity of the CIT(E)'s invocation of Section 263 of the Act.

6.1. The CIT(E) observed that the university received government grants of Rs.3,28,91,722/-, which constituted 13% of its total income. He concluded that this did not meet the threshold of being “substantially financed by the government. The CIT(E) excluded interest income earned on Government grants (Rs.10,17,71,205/-), arguing that this should not be treated as part of the Government financing. The CIT(E) indirectly applied Rule 2BBB, which defines “substantially financed” as 50% or more of the institution’s income being derived from Government grants. This rule was introduced prospectively from AY 2015-16, but the CIT(E) referenced it while evaluating AY 2014-15.

6.2. The assessee submitted that interest earned on Government grants should be considered part of government financing, as per Rule 230(8) of the General Financial Rules (GFR), which states that interest on Government grants must be returned to the Consolidated Fund of India unless otherwise stipulated. By including the interest income, the proportion of Government financing would rise to 54% of the total receipts, exceeding the 50% threshold required under Rule 2BBB. The assessee contended that Rule 2BBB, introduced from AY 2015-16, cannot be applied retrospectively to AY 2014-15. The legal framework prevailing at the time of assessment did not prescribe such a threshold. The assessee pointed out that in prior assessment years, such as AY 2010-11 and AY 2012-13, the AO accepted the assessee’s claim for exemption under Section 10(23C)(iiiab) of the Act. The facts and

circumstances had not changed, and the principle of consistency should apply.

6.3. We first consider whether the AO's order was erroneous. The AO accepted the assessee's claim for exemption under Section 10(23C)(iiiab) of the Act after examining the relevant facts and submissions. The assessee provided detailed calculations showing that when interest income on government grants is included, the government financing exceeds 50% of the total income, thereby meeting the threshold for substantial financing. The AO did not apply Rule 2BBB retrospectively, as the rule was introduced only from AY 2015-16. There was no legal requirement during AY 2014-15 to adhere to the 50% threshold outlined in Rule 2BBB. Moreover, the assessee relied on judicial precedents, such as Institute of Liver and Biliary Sciences and Indian Institute of Management, which support the inclusion of interest income in the calculation of Government financing. The AO's decision to allow the exemption based on the prevailing legal framework and facts of the case cannot be termed as erroneous. For an order to be prejudicial to the interests of revenue, it must result in a loss to the revenue. In this case, the AO properly accepted the assessee's exemption claim after considering the applicable laws and facts. The assessee's income was primarily derived from government grants and regulated fees, and the AO correctly determined that the university was substantially financed by the Government. The CIT(E)'s conclusion that the AO's order was prejudicial to revenue is based on the incorrect exclusion of interest income and an erroneous application of Rule 2BBB for AY 2014-15. As such, the order passed by the AO did not cause any loss to the Revenue.

6.4. In light of the submissions, judicial precedents, and factual background, we find that the order passed by the AO was neither erroneous nor prejudicial to the interests of revenue. The AO's decision to allow the assessee's exemption under Section 10(23C)(iiiab) of the Act was based on a correct appreciation of the facts and applicable law, and the principle of consistency must be upheld. The CIT(E) erred in excluding interest income from the government grants and in attempting to apply Rule 2BBB retrospectively. Accordingly, the CIT(E)'s order invoking Section 263 of the Act is quashed, and the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 22 October, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 22/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(E)-Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad