

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA Nos. 1502 & 1503/Bang/2024
Assessment Years : 2017-18 & 2018-19

The Assistant Commissioner of Income Tax (Exemptions), Circle – 1, Bengaluru.	Vs.	M/s. Karnataka Institute of Diabetology, 9 th Block, SJIC Campus, Bannerghatta Road, Jayanagar, Bangalore – 560 069. PN: AABTK3567F
APPELLANT		RESPONDENT

Assessee by	:	Shri K. Thirumala Naidu, CA
Revenue by	:	Shri Sridhar E, CIT-DR

Date of Hearing	:	13-11-2024
Date of Pronouncement	:	06-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These are the appeals filed by the revenue challenging the orders of the NFAC, Delhi dated 13/06/2024 in respect of the A.Ys. 2017-18 and 2018-19 on the following grounds of appeal:

Assessment Year 2017-18

1. The Order of Ld.CIT(A) is opposed to facts and circumstances of the case;
2. The Ld.CIT(A) has erred in granting exemption u/s.10(23C)(iiia) of the Income Tax Act, 1961 to the assessee without appreciating the fact that the government grants received by the assessee during the financial year 2016-17 relevant to the assessment year 2017-18, had fallen short of the "stipulated" 50% of the total receipts and the assessee did not come under the purview of Section 10(23C)(iiia) of the Income Tax Act, 1961;
3. The Ld.CIT(A) has erred in granting exemption u/s.10(23C)(iiia) of the Income Tax Act, 1961 to the assessee without appreciating the fact that the assessee was not "wholly or substantially financed by the Government" within the meaning of Section 10(23C)(iiia) of the Income Tax Act read with Rule 2BBB of the Income Tax Rules, 1962 and was not eligible to claim exemption;
4. The Ld.CIT(A) has erred in allowing the assessee's claim of exemption u/s.11(2) of the Income Tax Act, 1961 without appreciating the fact that the assessee had failed to furnish Form 10 within the due date of 07.11.2017 for the assessment year 2017-18 and the provisions of Section 13(9) operates in the assessee's case;
5. The appellant craves leave to add, alter or amend all or any of the Grounds of Appeal before or at the time of the hearing of the appeal.
6. The Order of the Ld.CIT(A), NFAC may be set-aside and the Order of the AO may be confirmed.

Assessment Year 2018-19

1. The Order of Ld.CIT(A) is opposed to facts and circumstances of the case;
2. The Ld.CIT(A) has erred in granting exemption of Rs.12,63,13,824/- u/s.10(23C)(iii) of the Income Tax Act, 1961 to the assessee without appreciating the fact that the government grants received by the assessee during the financial year 2017-18 relevant to the assessment year 2018-19, had fallen short of the "stipulated" 50% of the total receipts and the assessee did not come under the purview of Section 10(23C)(iii) of the Income Tax Act, 1961;
3. The Ld.CIT(A) has erred in granting exemption Rs.12,63,13,824/- u/s.10(23C)(iii) of the Income Tax Act, 1961 to the assessee without appreciating the fact that the assessee was not "wholly or substantially financed by the Government" within the meaning of Section 10(23C)(iii) of the Income Tax Act read with Rule 2BBB of the Income Tax Rules, 1962 and was not eligible to claim exemption;
4. The Ld.CIT(A) has also erred in relying upon the decision of *Hon'ble High Court of Karnataka* in the case of *CIT Vs. IIM, Bengaluru (2014) 49 taxmann.com 136*. In the case relied upon, the issue was what does constitute 'wholly or substantially financed by Government? However, the issue involved in the present case is, what is the percentage of grants received by the government to the total receipts of the assessee and whether the assessee trust is eligible to claim exemption u/s. 10(23C)(iii) of the Income Tax Act, 1961?
5. The appellant craves leave to add, alter or amend all or any of the Grounds of Appeal before or at the time of the hearing of the appeal.
6. The Order of the Ld.CIT(A), NFAC may be set-aside and the Order of the AO may be confirmed.

2. The brief facts of the case are that the assessee is a registered trust u/s. 12A of the Act and during the assessment year, the assessee claimed the exemption u/s. 10(23C)(iii) of the Act. The AO issued notice and stated that the assessee institute has received less than 50% grant from the Government during the year in order to claim the exemption under the above section. Further, the AO had observed that the assessee had not furnished the form 10 within the due date and therefore they are not entitled to claim the exemption u/s. 11(2) of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee is an autonomous body set up by the Government for diabetic treatment by providing all the infrastructure and funds and also it was wholly managed by the Government. The assessee further submitted that they had furnished requisite form 10 to communicate the accumulation of income which is falling short by 85% as per the requirement of section 11(2) of the Act and also submitted that the delay to condone the same was also made before the appropriate authority. The Ld.CIT(A) had allowed the appeal and observed in its order that the requirement of filing the audit report with the return is merely a procedural requirement and the exemption would not be denied so long as the report is available before the completion of the assessment. On the above said findings, the Ld.CIT(A) had observed that the assessee is eligible for exemption u/s. 11 of the Act. Insofar as the disallowance u/s. 10(23C)(iii) of the Act is concerned, the Ld.CIT(A) considered the records and came to the conclusion that the grants by the Government exceeds more 50% as contemplated under the above section. The Ld.CIT(A) also relied on the Jurisdictional High Court judgment to allow the case of the assessee.

3. As against the said order of the Ld.CIT(A), the revenue is in appeals before this Tribunal.

4. At the time of argument, the Ld.DR submitted that the grant received by the assessee during the assessment year 2017-18 falls short of the 50% of the total receipts and therefore they are not eligible for exemption u/s.

10(23C)(iii)ac) of the Act. The Ld.DR also submitted that the assessee failed to submit form 10 within the due date and therefore they are not entitled for exemption u/s. 11(2) of the Act.

The Ld.AR had submitted a paper book enclosing a brief facts and notes on the issues and also filed some documents along with the case laws and contended that the order of the Ld.CIT(A) is based on the records submitted by the assessee and unless and until the revenue had produced some other records, contrary to the documents filed by the assessee, the order of the Ld.CIT(A) is in order and prayed to dismiss the appeals filed by the revenue.

5. We have heard the arguments of both sides and perused the material available on record.

6. As seen from the details furnished by the assessee, during the Assessment Year 2017-18, the assessee had received a grant of Rs. 5.63 crores. Apart from the said grants, the assessee had also received an interest of Rs. 2,79,53,567/- on the term deposits made by the assessee. The said interest has been accrued from the excess credits of unspent grant of Rs. 10,69,44,621/- as on 31/03/2017. The total term deposits as on 31/03/2017 is Rs. 39,85,99,141/-. Therefore the interest received on the fixed deposits made out of the unspent grants also would be treated as a grant and if the said interest amount is added to the total grants received during the Assessment Year, it will exceed the 50% prescribed u/s. 10(23C)(iii)ac). Therefore we found that apart from the grants received during the assessment year, the assessee is also receiving interest income on the unspent grants which is also a grant and in that circumstances, the Ld.CIT(A) had granted the relief which is in accordance with law. The Ld.CIT(A) in his order in paragraph no. 4.1 had considered the said facts and also considered the fact that the assessee is an institute wholly and substantially managed by the Government of Karnataka and therefore they are entitled for deduction u/s. 10(23C)(iii)ac) of the Act. The relevant finding of the Ld.CIT(A) is as follows:

4.1. The assessing officer did not proceed with verifications regarding exemption u/s 10(23C)(iii)ac since the appellant claimed exemption u/s 11 instead. Even though it is held that the appellant is eligible for exemption u/s 11, grounds of appeal raised by the appellant regarding exemption u/s 10(23C)(iii)ac also need to be adjudicated. The assessing officer held that the government grants received by the assessee institute were less than the 50% of the total receipts. The appellant stated that the Government grants are Rs.5.63 Crore as against the other income of the hospital at Rs.6.51 Crore. Therefore, the funds received from the Government of Karnataka were 46.37% of the total receipts of the

Institute during the relevant financial year. However this other income contains interest of Rs.2,79,53,567 on term deposits. These term deposits contain unspent grants of Rs.10,69,44,621 from earlier years. Excess of income over the expenditure is not available for distribution but invested as per requirement of section 11(5) of the Act. So indirectly, the interest on term deposits constitute accumulated grants of the government. The appellant argued that either interest on deposits should be removed from total receipts in order to measure the share of government grants or interest from accumulated grants should be considered as government grant. Either way the share of government grants will cross the 50% threshold.

4.2 The Governing Council of the appellant trust consists of the Hon'ble Minister for Medical Education as Chairperson, Principal Secretary, Secretaries to the various departments of Government of Karnataka as the Members. No members from the general public or non-government organisations are included in the governing council. Hence it is clear that the Institute is wholly and substantially managed by the Government of Karnataka. The appellant relied on the case of CIT Vs. IIM, Bengaluru (2014) 49 Taxmann.com 136 (Karnataka) wherein the High Court of Karnataka held that the word "wholly or substantially financed by the Government" cannot be confined only to the annual grants. Apart from providing annual grant, if the Government grants land, invests money in building and infrastructure and also running the Educational Institutions all that has to be taken into consideration to decide whether the institution is wholly or substantially Government by the Government. The facts of this case and the material on record clearly establishes that the assessee is wholly or substantially financed by the Government and therefore, the assessee is entitled to the benefit of exemption under Section 10(23C)(iiiab) of the Income Tax Act. In that view of the matter, the substantial question of law which was framed is answered in favour of the assessee. Hence it is held that the appellant is an Institution set up by the Government of Karnataka for philanthropic purposes and not for purposes of profit and is wholly or substantially financed by Government of Karnataka, and as such, the general intention for the purposes of

Section 10(23C)(iiiac) of the Act is fulfilled. As a result, the appeal is allowed.

Rec'd
15-11-24

Similar facts are also available in respect of the A.Y. 2018-19 and the Ld.CIT(A) also considered the grants as well as the interest received from the deposits and come to the conclusion that the assessee is entitled for deduction u/s. 10(23C)(iiia) of the Act.

7. The Ld.DR appearing for the revenue has not brought out any fresh facts in order to treat the order of the Ld.CIT(A) as illegal but only raised general grounds which are not sufficient for setting aside the order of the Ld.CIT(A). Insofar as the filing of form 10 belatedly by the assessee, the Ld.CIT(A) had relied on the judgment of Hon'ble Calcutta High Court reported in 195 ITR 825 and held that the requirement of the audit report to be filed along with the return of income is only a procedural requirement and therefore exemption would not be denied when the said audit report is available with the AO before the completion of the assessment. This finding is also in accordance with the principles laid down by the Hon'ble Calcutta High Court and therefore we hold that the assessee is eligible for exemption u/s. 10(23C)(iiia) of the Act and also u/s. 11(2) of the Act. In these circumstances, we find no merit in the contention of the Ld.DR and therefore we dismiss the appeals filed by the revenue as devoid of merits.

8. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 06th January, 2025.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 06th January, 2025.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore