

आयकर अपीलीय अधिकरण  
गुवाहाटी पीठ, कोलकाता में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH AT KOLKATA

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)  
एवं

श्री राकेश मिश्रा, लेखा सदस्य

के समक्ष

Before

SRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)

&

SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 16/GTY/2024  
Assessment Year: 2017-18

|  |     |   |
|--|-----|---|
| National Institute for Teacher<br>Education<br>(Appellant) | Vs. | Income Tax Officer, Ward-<br>1(4), Guwahati<br>(Respondent) |
| PAN: AAJN1020F   |     |   |

**Appearances:**

**Assessee represented by** : Anil Agarwala, AR.

**Department represented by** : Kausik Ray, JCIT

Date of concluding the hearing : December 24<sup>th</sup>, 2024

Date of pronouncing the order : January 10<sup>th</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 dated 21.04.2023, which has been passed against the assessment order u/s 144 of the Act, dated 05.07.2019.



2. The assessee is in appeal before this Tribunal raising the following grounds of appeal:

*“1. For that the Learned Commissioner of Income Tax (Appeals) erred in law as well as on facts in upholding the order of the assessing officer determining total income of Rs. 13,54,560 under the heads Profits and Gains from Business and Profession and Income from Other Sources in the hands of the appellant institution.*

*2. For that the Learned CIT(A) erred in denying exemption u/s 10(23C)(iiiad) to which the appellant assessee was entitled under law considering the eligible activities carried on by them.*

*3. For that the appellant urges leave to add to, modify or delete any ground of appeal, before or at the time of hearing of the appeal.”*

3. Brief facts of the case of the assessee are that the assessee is an educational institution being a unit of a registered trust Bharali Education Foundation (BEF). The assessee had not filed its return of income for the AY 2017-18 within the stipulated time. During the demonetization period, the assessee had deposited cash of Rs. 12,97,000/- in the bank account maintained with the State Bank of India, Maloibari. Thereafter, the assessment proceedings were completed u/s 144 of the Act on 05.07.2019, determining the total assessed income of Rs. 13,54,560/- by making an addition of Rs. 12,97,000/- on account of cash deposits in the bank during the demonetization period. Being aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who examined the submission of the assessee and has dismissed the appeal by holding as under:

*“7.4 In Ground No. 3, the appellant has contended that the AO has ignored the vital facts that the appellant institution is a unit of a Registered Trust and hence not assessable independently. As is evident from the Assessment Order, the Appellant has obtained a separate PAN and is a separate taxable legal entity in the eyes of the IT Act, 1961. In fact, a person cannot hold more than one PAN. If a PAN is allotted to a person, then he cannot apply for*



obtaining another PAN. A penalty of Rs. 10,000/- is liable to be imposed under Section 272B of the Income-tax Act, 1961 for having more than one PAN. Hence, the contention of the appellant that the appellant is not a separate taxable entity is not tenable in law. Moreover, the appellant has failed during the assessment proceedings as well as during the appellate proceedings to fully demonstrate that the transactions appearing in the name of the appellant are accounted for in the case of the other assessee viz. Bharali Education Foundation (BEF). Hence, Ground No. 3 of the appellant is Dismissed.

7.5 In Ground No. 4 of the appellant, it is argued that the impugned order of assessment is not tenable in law in as much as it is done ignoring the vital facts that the appellant institution is exempt from income tax in terms of section 10(23C)(iiiad). In this regard, it is pertinent to note that the appellant has not filed any evidence for registration of either the appellant or the other assessee viz. Bharali Education Foundation (BEF) u/s 10(23C) of the IT Act, 1961 and simply stated that the said trust is exempt from tax. Be that as it may, as already held while deciding Ground No. 3 above, the appellant having a separate PAN is held to be a separate taxable legal entity. Hence, the appellant cannot take shelter of the alibi that it is a part of the Bharali Education Foundation (BEF) and hence exempt from tax as per the provisions of S. 10(23C)(iiiad).

7.6 In Ground No. 5, the appellant has pleaded that the learned Assessing Officer erred in law as well as in fact by treating the entire cash deposit during the demonetization period as income completely ignoring the Audited statement of accounts submitted before him. The contention of the appellant is that it is not a separate legal taxable entity and is just a unit of the other assessee viz. Bharali Education Foundation (BEF). However, as discussed by the AO in para 5 of the impugned Assessment Order, the Trust Deed produced during the assessment proceedings by Shri R C Bharali, Secretary of BEF, did not exhibit the name, status, objectives and other crucial details of the appellant institute. It was also rightly held by the AO that neither the appellant nor the BEF is registered before the CIT under Section 12A/ 12AA of the IT Act, 1961 for enjoying the benefit of exemption as per the provisions of the IT Act. It is also observed by the AO that the appellant has not got the books of accounts audited as per the requirement of the Act. The appellant had contended that the cash deposits made by the appellant in the SBI, Maloibari branch (Current A/c No. 36119845291) during the demonetization period were receipts by way of advance fees from students for the academic session but the appellant has not been able to satisfactorily justify this stand with cogent material and requisite evidence. Hence, I find no fault in the action of the AO in bringing to tax the cash deposits of Rs. 12,97,000/- made during the demonetization period. Ground No. 5 of the Appellant is, therefore, DISMISSED.”

3.1. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us.

4. Rival contentions were heard and the paper book, documents and submissions made have been considered. It was submitted by the Ld. AR that the assessee is an educational institution and is a part of the Trust and had surrendered the duplicate PAN. The cash deposit of Rs. 12.97 lakh was deposited during the demonetization period. The details were filed but only one hearing was allowed and no further details were called for. The details against the Trust deed, bank statement, income and expenditure statement, receipt and payment account, balance sheet as on 31.03.2017 along with written submission were also filed. The Ld. AO denied the exemption as the assessee was not registered u/s 12AA of the Act. The relevant extract from the order of the Ld. AO is as under:

*“5. I have carefully perused the assessee's submission as well as other details brought on record and following facts have been surfaced during the course of proceedings stated as under:*

*1. The assessee namely "National Institute for Teacher Education" bearing PAN AAAJN1020F having three Bank Accounts maintained under (1) State Bank of India, Maloibari branch (2) Assam Gramin Vikash Bank, Khetri Branch & (3) Central Bank of India, Khetri branch during the financial year 2016-17 relevant to the A Y 2017-18.*

*2. Shri R C Bharali, Secretary of above institution contended that assessee institution is a unit under "Bharali Education Foundation" which is a Registered trust and its income is exempted however, trust deed produced by Shri Bharali do not exhibit the name, status as well as objectives of assessee institution.*

*3. It has been observed in course of proceedings neither of above institutions is registered by the Commissioner of Income-tax under section 12AA/A for enjoying benefit of exemption as per provision of Income-tax Act nor got its books of accounts audited as per requirement of Act.*



4. As per extract of bank statement obtained from SBI, Maloibari brach (Current A/C No. 36119845291) shown that assessee institution had made cash deposit of Rs. 12 97,000/- in bank during demonetization period.

5. The assessee contended that above cash deposits during demonetization period were receipt by way of advance fees from student for the academic session but could not satisfactorily justify the deposits with requisite evidences.

6. The assessee did not file its Return of Income for the A.Y. 2017-18.

6. It has been emerged from above facts that institution namely "National Institute for Teacher Education" during the financial year 2016-17 was carrying on business activities in the guise of trust, it is also evident that objective of above institution has not been explicitly stated in compliance with the terms of the trust or rule governing the institution, therefore, it cannot be said that above business activities are incidental to the attainment of objectives of institution during the year under consideration.

7. In view of above discussion it is found cash deposits of Rs. 12,97,000/- in bank Account of assessee institution are receipt from business during the period under consideration which is liable to be taxed for want of satisfactory explanation. Accordingly, Rs. 12,97,000/- is added to the business income of the assessee for the assessment year 2017-18."

4.1. It was submitted that it was the case of the Ld. AO that since the assessee had two PANs and registration u/s 12AA of the Act had not been granted, and the assessee had been carrying on business in the guise of the trust, hence the deposits in the bank account were nothing but the business receipts which were liable to be added. The Ld. CIT(A) in para 7 at page 7 of the impugned order has mentioned that the assessee failed to demonstrate that the transactions are accounted for in the name of the Trust while the assessee claimed that it was not legally required to file the return of a loss and the primary source of the deposits in the bank account was the fees received from the students at Rs. 82,00,000/-.

4.2. The Ld. DR argued that the PAN was surrendered on 28.10.2020 and the Trust was not registered u/s 12A of the Act in response to which

the Ld. AR countered that the PAN was surrendered after the assessment was made but merely because the assessee held a PAN, it does not become a separate person. No registration u/s 12A of the Act was required as the exemption was due u/s 10(23C)(iiiad) of the Act which does not require any registration u/s 12A of the Act. It was submitted that the National Institute for Teacher Education is a unit of the registered trust Bharali Education Foundation (BEF) and the ITR 7 for subsequent AY 2018-19 was filed on 17.11.2018. The Ld. DR had no objection to the source of deposit but relied upon the order of the Ld. CIT(A) in support of the claim that the assessee was a separate legal entity than the trust and hence separately assessable.

4.3. We have considered the submissions made. The provisions of Section 10(23C)(iiiad) of the Act for the impugned A.Y. are as under:

*“Any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed.”*

4.4. The assessee submitted that it is an educational institution and the copy of Trust Deed which was filed before the Ld. AO as well as Ld. CIT(A), which has also been filed before us and in which the object of the Trust is to set up formal educational institution as well as to run and operate them. In the paper book filed at page 14 which was also filed before the Ld. AO as well as Ld. CIT(A) being the auditor's report, it is stated that National Institute for Teacher Education is a unit of Bharali Education Foundation (BEF). In the statement of income & expenditure account, a copy of which has been filed, the fees collected from students are shown at Rs. 82,08,600/-, sale of application form at Rs. 17,800/- besides accrued interest on fixed deposits and interest on SB A/c at Rs. 39,623/-. The Ld. AO has added a sum of Rs. 12,97,000/-



being the cash deposited in the bank account. The assessee had surrendered the duplicate PAN and by way of fresh evidence filed before us at page 24 of the paper book, the necessary evidence has been filed. It was also granted affiliation by GU, NAAC etc. Thus, on the basis of the evidence filed before the Ld. THE LD. AO, it is evident that the assessee is an educational institution and the cash deposit of Rs. 12,97,000/-, which was less than the total fee received from the students as Rs. 82,08,600/-, can be presumed to be out of the receipt from the students and cannot be treated as business receipts merely because the registration u/s 12A of the Act was not granted. There is merit in the argument of the Ld. AR that for getting exemption u/s 10(23C)(iiiad) of the Act for the receipt being less than the amount of tt annual receipts as prescribed, no registration u/s 12A of the Act was required as the exemption u/s 10(23C)(iiiad) of the Act is granted to the universities and other educational institutions existing only for educational purposes and not for the purposes of profit while the exemption u/s 11 of the Act is granted to a charitable institution established for charitable purposes. Hence, the order of the Ld. CIT(A) dismissing the appeal on the ground that no evidence for registration was filed by the assessee or the other assessee viz Bharali Education Foundation (BEF) is not justified. The assessee being an educational institution is justified in claiming exemption u/s 10(23C)(iiiad) of the Act as no evidence has been brought on record that it was not existing solely for educational purposes. Hence, the order of the Ld. CIT(A) is set aside, ground nos. 1 & 2 are allowed and the deposits in bank account are deemed to be out of the fees received from the students and the Ld. AO is directed to delete the addition of Rs. 12,97,000/- made to the



income of the assessee. Ground No. 3 is general in nature and does not require any separate adjudication.

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

**Order pronounced in the open Court on 10<sup>th</sup> January, 2025.**

*Sd/-*

**[Duvvuru RL Reddy]**

Vice President (KZ)

*Sd/-*

**[Rakesh Mishra]**

Accountant Member

Dated: 10.01.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

- 1. National Institute for Teacher Education, Khetri, 37 National Highway, Dist. Kamrup, Guwahati, Assam, 782403.**
- 2. Income Tax Officer, Ward-1(4), Guwahati.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata