

INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)

ITA No. 121/AGR/2023
(Assessment Year: 2017-18)

Dharam Samaj Society, DS Inter College and Sanskrit Pathsala Parao Dubey, UP (Appellant) PAN:AABAD9648R	Vs.	CIT(A), NFAC, Delhi (Respondent)
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Assessee by :	Shri Pankaj Garh, Adv
Revenue by:	Shri Shailendra Srivastava, Sr. DR
Date of Hearing	03/02/2025
Date of pronouncement	03/02/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.121/Del/2023 for AY 2017-18, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 28.06.2023 against the order of assessment passed u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 12.12.2019 by the Assessing Officer, ITO, Ward-4(1)(4), Aligarh (hereinafter referred to as 'Id. AO').
2. The first issue to be decided in this appeal is as to whether the Id NFAC was justified in sustaining the addition made in the sum of Rs 15,64,500/- on account of cash deposits in the facts and circumstances of the instant case. The interconnected issue involved therein is as to whether the Learned NFAC was justified in confirming the addition made on account of 8% of turnover as profits of the assessee society. Further whether the activities of the assessee

society could be construed as business in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The primary facts pertaining to the assessee as stated in the Statement of facts filed before us are that the assessee is a charitable society registered with Registrar of Societies, Agra. The said society is the parental body of D S College, D S Inter College, Dharam Samaj Bal Mandir only for the supervision of day-to-day activities of the school / college. D S College is a PG college and is affiliated with Dr. B.R. Ambedkar University, Agra. This college is fully aided by the State Government and under the direct control of Dr. B.R. Ambedkar University, Agra. D S Inter College is an intermediate school fully aided by the State Government and under the direct control of UP Government. The activities as per the objects of the assessee society are solely and exclusively educational and hence the assessee society is legally entitled for exemption under section 10(23C)(iiiab) of the Act as the gross receipts of the assessee society are less than the prescribed limit in the said section. The assessee society pleaded that it is not engaged in any business activity.

4. There was a deposit of cash in the bank accounts of the assessee during the demonetization period to the tune of Rs 50,10,118/-. Since the assessee had not filed its income tax return for the assessment year 2017-18 neither under section 139(1) of the Act nor in response to notice under section 142(1) of the Act, the Learned AO sought to treat the cash deposits made in the bank accounts as unexplained money and accordingly issued a show-cause notice to the assessee. The authorized representative of the assessee society appeared before the Learned AO and stated that the amounts deposited in the bank account during demonetization is out of fee collection of students and sources

of which are properly explainable. However, no documentary evidences were submitted by the assessee in that regard. Even though the Learned AO observed that totally a sum of Rs 50,10,118/- stood deposited in cash in bank accounts of the assessee during demonetization period, ultimately only a sum of Rs 15,64,500/- was sought to be treated as unexplained money under section 69A read with section 115BBE of the Act. Further, the Learned AO observed that in the bank statements, there were multiple credit and debit entries. Since assessee did not perform its legal obligation by filing the return of income by explaining the nature of credit entries thereon, the Learned AO concluded that the total credits found in the bank account to the tune of Rs 6,70,81,054/- represents business proceeds of the assessee and from that figure, the amount already added as unexplained cash of Rs 15,64,500/- was sought to be reduced and the remaining balance of Rs 6,55,16,554/- was treated as business turnover of the assessee. The Learned AO applied profit percentage at the rate of 8 percent on the said business turnover and made an addition of Rs 52,41,320/- in the assessment.

5. The assessee before the Learned NFAC submitted additional evidences by clearly stating that the entire income is exempt under section 10(23C)(iiiab) of the Act and that there were no business activity carried out by the assessee society. These additional evidences were sent to the Learned AO for seeking remand report by the Learned NFAC. The Learned AO furnished a remand report vide letter dated 05-07-2022 reiterating the observations made in the assessment order and objected to the admission of additional evidences. The assessee vide letter dated 19-10-2022 furnished rejoinder to the remand report which is reproduced in pages 6 to 8 of the appellate order. The Learned NFAC observed that the assessee had not filed its return of income per se for the assessment year 17-18 pursuant to the amendment that had brought in the statute with effect from assessment year 16-17 that any assessee trust/ society

would be entitled for exemption under section 10(23C)(iiiab) of the Act only if the same had been claimed in the return of income. Since no return of income was filed by the assessee, the assessee would not be entitled for claim of exemption under section 10(23C)(iiiab) of the Act. Since the assessee's entitlement for claim of exemption under section 10(23C)(iiiab) of the Act has been denied, the Learned NFAC observed that assessee's activities are only commercial in nature and hence upheld the additions made by the Learned AO in the assessment and dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before us.

6. The Learned AR before us placed reliance on the coordinate bench decision of Kolkata Tribunal in the case of Haringhata Mahavidyalay vs ITO in ITA No. 11/Kol/2024 for assessment year 2018-19 dated 1-10-2024, wherein it has been held that the exemption under section 10(23C)(iiiab) of the Act cannot be denied to an assessee for non-filing or late filing of income tax return as required under section 139 of the Act and within the period specified under section 139(1) of the Act. Accordingly, he pleaded that assessee would be entitled for a claim of exemption under section 10(23C)(iiiab) of the Act as the educational institutions are aided by the State Government and the gross receipts are less than the prescribed limit thereon. Per contra, the Learned DR vehemently relied on the observations made by the Learned NFAC by drawing our attention to the relevant paragraphs there on which are already reiterated supra.

7. We find that the issue in dispute is as to whether the claim of exemption under section 10(23C)(iiiab) of the Act could be granted to the assessee society where no return of income has been filed. The provisions of section 139(4C) of the Act are amended with effect from 1.4.2016 relevant to Assessment Year 2016-17 that any assessee claiming exemption under section 10(23C)(iiiab) of

the Act had to file its income tax return on or before the due date prescribed under section 139(1) of the Act. The Kolkata Tribunal decision relied upon by the Learned AR is distinguishable as it had not considered the amendment brought in the statute with effect from Assessment Year 2016-17. Hence we hold that since no return of income for the Assessment Year 2017-18 was filed by the assessee, it would not be entitled for claim of exemption under section 10(23C)(iiiab) of the Act in the instant year. However, it is not clear as to whether the assessee society is earlier registered under section 12A of the Act and consequentially would be eligible for exemption under section 11 of the Act. We find from the provisions of section 139(4A) of the Act, even for claiming exemption under section 11 of the Act, the assessee should have filed the return of income within the due date prescribed under section 139(1) of the Act. Admittedly, no return of income was filed by the assessee society for the Assessment Year 2017-18. Hence it would not be eligible for exemption under section 11 of the Act for the year under consideration. Hence the assessment need to be framed by treating the assessee as an Association of Persons (AOP) and income need to be determined on commercial principles. However, we find that the assessee had always stated that cash deposits made in the bank account were out of fee collection from students. The assessee had filed all the relevant documents by way of additional evidences, which were not admitted by the Learned NFAC. If the source of cash is explainable, then no addition needs to be made for cash deposits separately. Similarly, instead of estimating the profit of the assessee society at the rate of 8%, the same need to be carried out based on the actual results reflected in the books of accounts subject to assessee producing the same and justifying the entries thereon with documentary evidences. In the interest of substantial justice and fair play, we deem it fit and appropriate, to restore this appeal to the file of Learned AO for denovo adjudication of the assessment in the capacity of AOP in accordance

with law and in the light of aforesaid directions. Needless to mention the assessee be given reasonable opportunity of being heard. The assessee is entitled to file fresh evidences, if any, in support of its contentions. Hence, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on /03/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: /03/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi