

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH

BEFORE  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER  
&  
SHRI BALAKRISHNAN S., ACCOUNTANT MEMBER

आ.अपी.सं / ITA No.446-449/Viz /2024 & SA No. 17 to 20/Viz/2024  
(निर्धारण वर्ष / Assessment Year: 2015-16 to 2018-19)

Maqbool Hussain Educational Welfare Society  
Visakhapatnam  
[PAN : AAABM0227F] Vs. Income Tax Officer  
(Exemption Ward)  
Visakhapatnam

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P.Murali Mohanarao, AR  
राजस्व द्वारा/Revenue by: Dr.Satyasai Rath, CIT-DR

सुनवाई की तारीख/Date of hearing: 03/03/2025  
घोषणा की तारीख/Pronouncement on: 05/03/2025

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the orders dated 11/10/2024 and 14/10/2024 passed by the learned Commissioner of Income Tax (Appeals) (“Ld.CIT(A)”), National Faceless Appeal Centre, Delhi , in the case of The Maqbool Hussain Educational Welfare Society (“the assessee”) for the assessment year 2015-16 to 2018-19, assessee preferred these appeals along with stay applications. Since the facts involved in all these appeals are same, we deem it just and convenient to dispose of all these appeals by way of this common order, taking the facts of ITA 446/Viz/2024 for the assessment year 2015-16 as a lead case.

2. Briefly stated relevant facts are that the assessee society is registered under the provisions of Registration of Societies Act, 1860 on 14/3/1990 and obtained approval under section 10(23c)(vi) of the Income Tax Act, 1961 ("the Act") on 20/12/2007 granted by the Chief Commissioner of Income Tax, Visakhapatnam. Assessee society set up the educational institutions, namely, AQJ college of Degree and P.G. College, AQJ Centre for PG Studies and AQJ College of Pharmacy, and was running the same during the subject financial year.

3. For the assessment year 2015-16, assessee filed the return of income on 31/3/2016 declaring nil income, after claiming exemption under section 10(23c)(vi) of the Act to the tune of Rs.2,34,62,119/-. During the course of assessment, learned Assessing Officer noticed that apart from carrying out the activity of imparting education for graduation and post-graduation courses like B.Sc.,B.Com., MBA., and MCA, the assessee also carrying out short-term courses like coaching for competitive examinations like I-CET, PGCET, banking recruitment, group 1 and 2 services etc., and derived more than 52.72% of income from such activities. According to the learned Assessing Officer such activity does not fall in the category of education and amounts to business. Learned Assessing Officer, therefore, brought to tax the difference between the receipts from and the expenditure on such activity. He also disallowed the depreciation on assets stating that disallowance on the assets acquired towards utilization of funds amounts to double benefit and also a sum of Rs. 19 lakhs towards the consideration received on purported sale of books.

4. Aggrieved assessee preferred appeal before the learned CIT(A). By way of impugned order, the learned CIT(A) upheld the additions stating that the amount collected from the students for short term courses will not come under the purview of deduction under section 10(23c)(vi) of the Act, where it is clearly mentioned that the institution eligible for the deduction should not be for the purpose of profits. In respect of the addition on account of depreciation also learned CIT(A) confirmed the findings of the learned Assessing Officer. Hence this appeal.



*which may be approved by the 34-35[Principal Commissioner or Commissioner]; or*

...                      ...                      ...  
...                      ...                      ...

8. It, therefore, makes it clear that Section 10(23C)(vi) of the Act provides tax exemptions to institutions that are established solely for educational purposes and do not operate for profit. Condition for this exemption is that all income generated by the institution must be used exclusively for educational purposes. This does not exclude the coaching activities conducted by the educational institutions that offer training for professional exams such as Civil Services, I-CET, or Group Exams, so long as they meet the necessary criteria. In *Sole Trustee, Loka Shikshana Trust v. CIT (supra)* Hon'ble Apex Court gave guidance for interpretation of the word "education" under the Income Tax Act. Hon'ble Court expanded the definition of education beyond formal schooling to include any structured activity aimed at intellectual, professional, or character development, such as coaching for professional exams.

9. For an institute to qualify for tax exemptions under Section 10(23C)(vi) of the Act, its primary objective must remain educational, and it must operate without a profit motive. The institution's income, for example, from coaching fees, must be reinvested into the educational activities of the institution, such as faculty development or infrastructure improvement. If the income is diverted for non-educational purposes or distributed as profit, the institution would lose its eligibility for the exemption. This requirement is central to ensuring that institutions claiming exemptions under Section 10(23C)(vi) of the Act are truly focused on educational goals and not on generating private profit.

10. In addition to meeting the criteria of Section 10(23C)(vi) of the Act, the institution must also be registered under Section 12A of the Act, which ensures that the institution operates for charitable purposes. While Section 12A of the Act registration confirms the charitable nature of the institution, it does not automatically grant eligibility for tax exemptions under Section 10(23C)(vi) of the Act. The institution must still meet the specific

requirements of using all income exclusively for educational purposes and operating without a profit motive. This is particularly important for the educational institutions which also conduct coaching activities, which, while not traditional schools or universities, can qualify as educational institutions under Section 10(23C)(vi) of the Act if they focus on educational activities and reinvest their income into furthering those activities.

11. Ultimately, the Supreme Court's interpretation in Loka Shikshana Trust ensures that the scope of "education" under the Income Tax Act is broad enough to encompass non-traditional educational activities like coaching activities. Such institutions can qualify for tax exemptions as long as they fulfill the statutory requirements, namely, their income is used solely for educational purposes, they operate as non-profit entities, and they are registered under Section 12A of the Act. Therefore, while Section 12A registration is a critical mechanism to ensure the rendering of charitable activities, it is the alignment of the institution's activities with the broader definition of education and its commitment to using all income for educational objectives that determines eligibility for tax exemptions under Section 10(23C)(vi) of the Act.

12. Next addition is on account of disallowance of depreciation that was made for the reason that the cost of acquisition was claimed as application in the year of acquisition. It is the argument of the learned AR that the provisions of section 11(6) of the Act have been inserted and was made w.e.f. 01/04/2015, thus the said provisions shall be applicable to the new assets acquired on or after 01/04/2015, in the present case no such new assets are acquired during the year after the said date and the depreciation on the opening balance of fixed assets cannot be denied, as the amendment made shall be prospectively applicable and not retrospectively. He placed reliance on the CIT Vs. Rajasthan and Gujrati Charitable Foundation [2018] 402 ITR 441 (SC).

13. Per contra, learned DR contended that depreciation should not be considered as an application if the cost of acquisition was already claimed as application in the year of acquisition, therefore the learned DR relied

upon the order of the learned CIT(A) and prayed to uphold the contention of the lower authorities.

14. We have considered the rival submissions based on the material on record. In the present case no new assets are acquired during the year after the date of amendment in the Act and the assessee claimed the depreciation on the opening balance of fixed assets which cannot be denied. On the face of this fact, the issue is also no longer res integra. In the case of Rajasthan and Gujrati Charitable Foundation (supra), Hon'ble Apex Court held that the legislature, realizing that there was no specific provision in this behalf in the Act, has made amendment in Section 11(6) of the Act vide Finance Act No.2/2014 which became effective from the Assessment Year 2015-16, that the Hon'ble Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature, and it also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

15. Respectfully following the judgement of Hon'ble Supreme Court in case of Rajasthan and Gujarati Charitable Foundation(supra), the depreciation claimed by the assessee is an allowable claim.

16. With regards to the addition of sale of library the learned AR submits that the sale of library was already accounted in the FY 2013-14 as reduction from block of asset, wherein the consideration was received in current FY 2014-15, the assessee follows mercantile method of accounting and the sale of the library books was already given effect in FY 2013-14 namely, AY 2014-15, thus, the addition made in this regard shall not hold good in the eye of law.

17. During the AY 2015-16, the amount receivable on sale of library books pertaining to FY 2013-14 was received for an amount of Rs.19,00,000/-, where the sale of library books made in FY 2013-14 was already reduced from the block of assets in that year itself, and therefore, the same cannot be taxed in AY 2015-16, merely because the amount of sale consideration was received in the subsequent year.

18. learned DR relied upon the findings of the learned CIT(A) and prayed to uphold the contention of the learned Assessing Officer that the amounts were not shown as receipts of this year neither in the Receipts & Payments A/c nor in the Income & Expenditure account.

19. On this aspect, we are of the considered opinion that since the sale of library books made in FY 2013-14 was already reduced from the block of assets in that year itself, which is evident from the depreciation schedule, no addition shall be made in the present case of the assessee as it was already reduced in the FY 2013-14. We, therefore, direct the deletion of the addition on this account. Appeal for the A.Y.2015-16 accordingly stands allowed.

**Assessment Years 2016-17, 2017-18 and 2018-19**

20. In all these appeals, only ground involved is in respect of the disallowance of exemption under section 10(23C)(vi) of the Act, which we discussed and answered in the preceding paragraphs. Such a finding is equally applicable to these three years also on all its fours. Following the same, we answer the grounds in favour of the assessee. Since the appeals are disposed of, stay applications become infructuous and therefore, dismissed.

21. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on this the 5<sup>th</sup> day of March 2025.

Sd/-  
**(S.BALAKRISHNAN)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 05/03/2025

*L.Rama, SPS*

Copy forwarded to:

1. Shri Maqbool Hussain Educational Welfare Society, C/o P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda Hyderabad
2. The Income Tax Officer, Exemption Ward, Visakhapatnam
3. The Pr.CIT, Visakhapatnam
4. The Ld.DR, ITAT, Visakhapatnam
5. GUARD File

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