IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SH. BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER

I.T.A. No. 417/Ind/2024
Assessment Year: 2018-19

Prof. Rajendra Singh Shikshan Samiti, 10 Stadium Market, Keshav Nagar Mandsaur 458001 Madhya Pradesh [PAN: AAEAP 0905C] **(Appellant)**	Vs.	DCIT, CPC, Bengaluru and ITO (Exemption), Ujjain, Ujjain **(Respondent)**

Appellant by	:	S/Sh. Apurva Mehta & Rajesh Mehta, ARs
Respondent by	:	Sh. Ashish Porwal, Sr. D. R.
Date of Hearing	:	29.01.2025
Date of Pronouncement	:	23.04.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of the ld. Addl./JCIT(A)-1, Nasik passed u/s 250 of the Income Tax Act, 1961 dated 20.02.2024 which has emanated from the order of the Assessing Officer, CPC, Bengaluru passed u/s 143(1) of the I.T. Act, 1961 dated 12.03.2020.

2. It is pointed out by the registry that the appeal is belatedly filed by 14 days. The assesee has filed an affidavit praying for condonation of delay, where it is submitted that the order of the first appellate authority has been passed on 20.02.2024 and the appeal should have been filed within 60 (sixty) days by 24.04.2024. In the instant case, the appeal is filed on 4th May, 2024 which is belated by 14 days. It is further stated that the appellant society is registered under the *Madhya Pradesh Societies Registrikaran Adhiniyam, 1973* and the assessee society is running an educational institutions which is also registered with the *Madhya Pradesh Board*. It is submitted that during the month of February and March, 2024, the schools are very much preoccupied for conducting the Board examination and the Board results are announced in the month of April, 2024 and the entire school staffs are fully occupied in the admission process of new students for the new session. As such, the assessee society could not coordinate properly with their legal councils within time and this because of preoccupation with Board examination and admission process. The filing of this appeal has been delayed by 14 days and it has been immediately filed in the first week of May, 2024 immediately after conclusion of new admission process. As such, it has been prayed that the appeal may please be admitted to be heard on merits.

3. The ld. DR has no objection on the issue of condonaton of delay.

4. We have heard and considered the reasons contained in the affidavit and we are satisfied regarding the reasons put forth and as such we condone the delay of 14 days and admit the appeal for hearing on merits.

5. The grounds of appeal taken by the assessee in Form 36 are as follows:

> *"1. On the facts and in the circumstances of the case and in law, the Ld. Additional / Joint Commissioner of Income Tax (Appeals)-1, Nashik ['the Ld. Jt. CIT(A)'] has erred in confirming the disallowance of exemption u/s. 10(23C)(iiiad) of the Income Tax Act, 1961 ('the Act') made by the Ld. CPC, Bengaluru ('the Ld. AO') which is wrong and contrary to the facts of the case and provisions of the Act. Thus, exemption u/s. 10(23C)(iiiad) of the Act may kindly be allowed to the appellant society.*
>
> *2. On the facts and in the circumstances of the case and in law and without prejudice to the above, the Ld. Jt. CIT(A) and the Ld. AO have erred in not appreciating that the assessee society is a charitable society (solely for educational purpose) registered u/s. 12AA and 10(23C)(vi) of the Act. Thus, the disallowance of exemption is liable to be deleted and tax should not be levied upon the assessee society running solely for educational purpose.*
>
> *3. On the facts and in the circumstances of the case and in law, the Ld. Jt. CIT(A) and the Ld. AO have erred in disallowing the exemption u/s 10(23C)(iiiad) of the Act without appreciating that the annual gross receipts of the assessee society and three educational institutions (Samiti and 3 schools operated under Samiti) being run separately by the assessee society, considered separately, is below Rs. 1 Crore of the assessee society and 3 Schools being run under the assessee society. Thus, the disallowance of exemption u/s. 10(23C)(iiiad) of the Act is wrong and contrary to the provision of the Act.*

4. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in disallowing the exemption u/s 10(23C)(iiiad) of the Act without appreciating that adjustments u/s. 143 (1)(a) of the Act can only be made for only prima facie adjustment and not for issues which are debatable in nature. Thus additions made on the basis of disallowing the exemption u/s. 10(23C)(iiiad) of the Act is wrong and is liable to be deleted.

The assessee society craves leave to add, alter, amend or withdraw any of the grounds of appeal."

6. The brief facts of the case are that the appellant is a registered society under the '*Societies Registration Act', 1973* and is also registered u/s 12AA and 10(23C) of the Income Tax Act, 1961 and has been running (3) three more educational institutions in addition to its own as under:

"1. Saraswati Vidhya Mandir Hr. Sec. School, Keshav Nagar,Mandsaur

2. Saraswati Shishu Mandir, Middle School, Keshav Nagar, Mandsaur

3. Saraswati Shishu Mandir, Abhinandan Nagar, Mandsaur

7. For the assessment year under appeal, the assessee filed return of income declaring Nil total income which was processed by CPC, Bengaluru on a total income of Rs.49,41,457/-, by disallowing the claim of the assessee u/s 10(23C)(iiiad) of the Act, 1961.

8. The matter was carried in appeal and the ld. first appellate authority has dismissed the appeal without adjudicating the same on merits, in absence of any response from the assessee to the notice of hearing issued by the first appellate authority by observing as follows:

> *6.3 In view of the discussion as above and facts of the case, it seems that the appellant has nothing to add in this matter, despite being given two (02) opportunities. The appellant has only filed an appeal in the form No.35. The appellant has not filed any written submission with respect to ground raised in form-35 and therefore the action of the AO cannot be critically analyzed. However, in the interests of Natural justice, the grounds of the appellant are taken up on merits as well. Accordingly, I am constrained to hold the action of the AO to be sustainable. The ground raised by the appellant is therefore dismissed.*
>
> *7. In the result, for statistical purpose, appeal of the appellant is* ***dismissed****."*

9. Now, the assessee is in appeal before the Tribunal on the grounds contained in the memorandum of appeal. In course of hearing, the ld. AR of the assessee submitted that written submissions on merits of the case has already been filed along with the statements of facts contained in the memorandum of appeal in Form 35 which is also reproduced in the appellate order itself. However, the ld. first appellate authority has not given any cognizance to the said submissions contained in the memorandum of appeal and has disposed of appeal without adjudicating the case on merits. He further submitted that as per the provisions of section 10(23C)(iiiad) of

the Act, the aggregate annual receipt of each educational institutions has to be considered separately for determining allowability of claiming exemption. He submitted that during the year under appeal, the society was running four educational institutions and the respective receipts under each educational institution were as follows:

Sr. No.	***Particulars***	***Amount (in Rs.)***
1.	*Prof. Rajendra Singh Sikskan Sainiti, Mandsaur*	*35,57,986*
2.	*Saraswati SMsku Mandir, Abliinandan Nagar*	*9.34,734*
3.	*Saraswati Shisku Mandir, Middle School, Keshav Nagar*	*53,76,704*
4.	*Saraswati Vidhya Mandir Hr. Sec. School, Keshav Nagar, Mandsaur*	*87,47.609*

10. Return of income has been filed u/s 139(4C) of the Act voluntarily on 30.03.2019 and the books of account of the assessee society were duly audited by the chartered accountant on 21.06.2018 and audit report was duly filed on 31.03.2019 and since the assessee society is existing solely for educational purpose and not for the purpose of profit, surplus if any arising during the normal course of the educational activity of the society is incidental to the objects of the society and is solely applied for the objects of the society and there is no clause in the byelaws of

the society regarding the distribution of profits arising out of the activity of the society. He further submitted that the aggregate annual receipts of each of the educational institutions, considered separately are below the prescribed limit of Rs. 1 (one) crore and in the instant case, the ld. AO, CPC, Bengaluru without appreciating the same has disallowed the claim of the assessee u/s 10(23C)(iiiad) of the Act and has clubbed together the aggregate annual receipts of the society while making the disallowance.

11. The ld. AR submitted a copy of the written submissions filed before the first appellate authority and has also submitted that the ld. AO was wrong in making adjustments to the total income while processing the return u/s 143(1)(a) of the Act, because the provisions of the Act does not allow any such adjustments, because the said adjustments are not prima-facie in nature. He further submitted that the issue of exemptions u/s 10(23C)(iiiad) being debatable in nature the same cannot be decided in course of processing of return u/s 143(1).

12. In support of his claim u/s 10(23C)(iiiad), he relied on the judgments of the Hon'ble Jammu and Kashmir High Court in the case of *M/s Vivekanand Society of Education and Research v. CIT and Another, in ITA No.23/2014 dated 29.12.2017*, and also relied on the decision of *Hon'ble ITAT Lucknow Bench in the case of ITO v. M/s Chironji Lal Virendrapal Saraswati Shiksha Parishad in ITA No. 713 &*

714/LKW/2014 dated 31.03.2015 and also relied on the decision of *Hon'ble ITAT Delhi Bench in the case of Asst. CIT v. M/s Shiksha Samit in ITA No. 5083/DEL/2012 dated 16.02.20215* and he prayed that considering the legal aspect of the matter, the claim for exemption u/s 10(23C)(iiiad) of the Act, 61, may please be allowed and the additions sustained by the ld. first appellate authority may please be deleted.

13. The ld. DR relied on the order of the ld. first appellate authority.

14. We have heard the rival submissions and considered the materials on record. We find that the Hon'ble Jammu and Kashmir High Court in the case of *M/s Vivekanand Society of Education and Research v. CIT and Another, in ITA No.23/2014 dated 29.12.2017* has dealt with the question regarding interpretation of section 10(23C)(iiiad) where the Hon'ble High Court in response to the question whether aggregate annual receipts of the different institutions are to be clubbed for the purpose of section 10(23C)(iiiad) or not, the Hon'ble Court after analyzing the section and rule 2BC, it has observed as under: (Relevant portion reproduced).

> *"14. It is not in issue that 'the person' in the facts of the present case has reference to the assessee society. It is also not in issue that the expression 'educational institution' has reference to the two institutions of the assessee society. It is also not disputed that these two institutions exist solely for educational purposes and not for purposes of profit. It is, therefore, clear that there is a distinction between the expression 'any person' and 'educational institution', and that the two are not the same. Had it been the intention of the legislature to have limited the scope of the*

provision to the interpretation which has been given by the Tribunal, it could easily have said that, if the aggregate annual receipts of any person from all institution(s) do not exceed Rs. 1.00 crore then the income derived there from would not be included in the total income of that person. But, this is not the case here. The reference here is pointedly to the 'aggregate annual receipts' of the educational institution. The expression, 'educational institution' and 'any person' do not refer to the same entity and are distinct and different insofar as Section 10 (23C) (iiiad) of the said Act is concerned.

15. In our view, therefore, where there are more than one such institutions, which are under a particular society or trust, such as the assessee society in the present case, the aggregate annual receipts of each of the educational institutions would have to be considered separately and not together. Thus, if there are two institutions A and B and if the aggregate annual receipts of the Institution A is less than Rs. 1.00 crore, then the income received by a person (such as the assessee society) on behalf of the Institution A, would not be included in the total income of that person (such as the assessee society). At the same time, if the aggregate annual receipts of Institution B exceeds Rs. 1.00 crore, then any income received by any person on behalf of Institution B would be included in the total income of that person. Similarly, by taking this logic further, if neither Institution A nor Institution B has aggregate annual receipts of Rs. 1.00 crore or more, any income received by any person on behalf of these institutions, would not form part of the total income for the purposes of income tax.

16. This is our opinion and view upon a plain reading of the provisions. We are, of course, not alone insofar as this interpretation is concerned. The High Court of Karnataka has considered this very issue in its decision in the case of ***The Commissioner of Income Tax and Deputy Commissioner of Income Tax v. M/S Children Education Society, (2013) 358 ITR 373 (Kar).*** *In that decision, several*

questions had been framed. We are concerned with question nos. 2 and 3, which are as under: -

" 2. Whether, on the facts of the case, the Tribunal is correct in holding that the exemption in terms of provisions of Section 10(23C) (iiiad) of Income Tax Act, 1961, is available to the respondent- assessee as annual receipts of each of the institutions of the respondent- society is less than the prescribed limit under the said provision ?
3. Whether the Tribunal is correct in holding that the exemption in terms of Section 10(23C) (iiiad) of Income-Tax Act, 1961, is allowable?"

17. Those are the exact issues which arise in the present case also. The answer given to these questions is that the aggregate annual receipts of other educational institutions means the total annual receipts of each educational institution, taken separately and not clubbed together. Paragraph nos. 23, 24 and 25 of the said decision makes the position very clear:-

> *"23. No doubt, education has become a business, a very profitable business also. But it requires huge investment. It is the duty of the Government to provide education to all its citizens, as the Government is not able to shoulder the responsibility completely. Therefore, the field of education is now thrown open to private organizations. But for throwing open the field to the private operators, probably, the country would not have achieved in the field of education what it has achieved. Therefore, lot of funds are invested in running these educational institutions, either by creating a Society or a Trust. In course of time, they have expanded their activity providing course in various subjects at various levels and for that purpose they have established more than one educational institution. Each educational institution is a separate entity controlled under various statutes for various purposes. May be the Management of these educadonal institutions would be in the hands of the*

Societies or the Trust, but for all other purposes they are different, independent entities. That is the reason why Section 10 (23)(c) is worded as under:

"Any income received by any person on behalf of..."

24. Here "any person" refers to the assesseee and "on behalf of" refers to such institutions. It may be an University, it may be an educational institution, it may be a hospital or other institutions of similar nature. As all such institutions are independent entity and they generate income and when that income is received by the assesseee, it becomes the income in the hand of the assesseee and it is such income which is sought to be excluded while computing the total income of the assesseee under Section 10. The test prescribed under the aforesaid provision is not the income of the educational education. It is the aggregate annual receipts of such educational institution that is prescribed at Rs.l crore. Therefore, irrespective of the expenditure incurred by those institutions, the exemption is based on the total receipts. Even if the word "aggregate" has to be understood as suggested by the Revenue as the annual receipts of such educational institutions put together, probably, the said provision regarding exemption would be of no use at all. Especially, if the society is running a medical college or any engineering college or other professional courses, then the annual receipt of each institution would run to few crores and therefore, the very object of granting exemption to such genuine institution would be lost. Therefore, the word "aggregate annual receipt" has to be understood with the context in which it is used and the purpose for which the said provision was inserted, keeping in mind, the Scheme of the Act. Therefore, if an assesseee is running several educational institutions, if any of them is wholly or substantially financed by the Government, then the income from such educational institution received by the assesseee is not included while computing his total income. Similarly,

income from each educational institution if they are not receiving any aid from the Government wholly or substantially in respect of which the aggregate annual receipt do not exceed Rs.l crore received by the assesseee, is also not included while computing annual total income of the assesseee.

25. Clause (vi) makes it clear that if educational institution do not fall under either of those two categories and still such educational institutions are also entitled to the exemption, provided such institutions are approved by the prescribed authority. Therefore all these three provisions apply under three differed spheres. Otherwise, there was no necessity for the Legislature to introduce these three provisions. In that view of the matter, the finding recorded by the Tribunal that aggregate annual receipt of other educational institution means, total annual receipt of each educational institution, is correct and it does not call for any interference. Therefore the substantial questions of law No.2 and 3 is answered in favour of the assesseee and against the revenue."

18. We entirely agree with the conclusion arrived at by the Karnataka High Court in the case of ***Children's Education Society*** *(supra).*

19. In view of the foregoing, the questions are answered in favour of the assessee and against the revenue. As a consequence, the decision of the Tribunal on this aspect of the matter is set aside and that of the CIT (A) is upheld. The result would be that the addition of Rs. 69,27,948/- made to be taxable income of the assessee society would stand deleted."

15. Similar view has also been held by the Hon'ble Tribunal in the case of ITAT Lucknow Bench *in the case of ITO v. M/s Chironji Lal Virendrapal Saraswati Shiksha Parishad (supra)* where it has been held (relevant portion reproduced).

"that this is very important to mention that as per section 10(23C)(iiiad) also, the term used is 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 and the receipts so prescribed is Rs. One crore as per Rule 2BC. Hence, it is seen that the reference is to the educational Institution and not the assessee as a whole. Considering these facts, we are of the considered opinion that when the annual receipt of each institution is below Rs. One crore, the assessee is eligible for exemption in respect of both the institutions having annual receipt of below Rs. one crore each. Hence, we decline to interfere in the order of CIT(A) on this issue."

16. Similarly, the ITAT Delhi Bench in the case of *Asstt. CIT v. M/s Shiksha Samiti in ITA No. 5083/DEL/2012* has also taken an identical view in cases where annual receipts of each educational institutions are less than one crores (relevant portion reproduced) as under:

"We find that the corpus donations received by the assessee society are separated, the annual receipts of the educational institution are only Rs 69,24,857/-. Keeping in view of the order of ITAT in the case of Jat Education Society Vs DCIT (supra), exemption u/s. 10(23C) (iiiad) can be denied if the aggregate annual receipts of each educational institution is more than Rs 1.00 crore. We are of the view that since the annual receipts of the educational institution of the assessee society are below Rs. 1.00 crore, exemption u/s. 10(23C)(iiiad) of the Act the surplus is allowable and accordingly. Ld. CIT(A) has rightly deleted the addition in dispute. In view of the above, we are of the view that no interference 15 called for in the well reasoned order passed by the Ld. CIT(A), hence, we uphold the same.

17. We further take note that the provisions of section 10(23C)(iiiad) has been substituted by the Finance Act 2021 w.e.f., 01.04.2022 to read as follows:

> *"(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual [receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees]; or"*

18. The above explanations has been inserted w.e.f, 01.04.2022 to give an end to long prevailing controversies and the amendment has made it clear that if a trust is having more than one educational institution, the threshold limit of 5 (five) crores will not be checked for each educational institution but such threshold limit will be checked on aggregate basis for the whole trust itself.

19. Since, in the instant case before us the assessment year is 2018-19, each educational institutions will have to be treated separately as laid down by the Hon'ble Jammu and Kashmir High Court in the case of *M/s Vivekanand Society of Education and Research v. CIT* (supra). As such, respectfully following the law down by the Hon'ble High Court, we are of the opinion that in the instant case, the assessee trust is entitled to exemption u/s 10(23C)(iiiad) because the annual receipts of each educational institution run by the assessee society has to be considered separately and cannot be clubbed together and the assessee society is duly eligible to claim the exemption.

20. As such, the Assessing Officer is directed to allow the exemption as claimed u/s 10(23C)(iiiad) of the Act.

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

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 23.04.2025

Sd/-	**Sd/-**
(Bhagirath Mal Biyani)	**(Udayan Dasgupta)**
Accountant Member	**Judicial Member**

GP/Sr.PS

Copy of the order forwarded to:

(1)The Appellant:
(2) The Respondent:
(3) The CIT concerned
(4) The Sr. DR, I.T.A.T

True Copy

By Order

		Date	Initial	
1.	Draft dictated on	12.03.2025		Sr.PS/PS
2.	Draft placed before author	14.03.2025		Sr.PS/PS
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr. P.S./P.S.			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order			