

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.908/Bang/2025
Assessment year : 2023-24

Sandur Kushala Kala Kendra, Door No.139/A1, Ward No.20, Bhagya Jyothi Colony, Kudligi Road, Sandur – 583 119. PAN: AAAAS 5081N	Vs.	The Income Tax Officer, Exemptions Ward 1, Gulbarga.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sachin Mehta, CA
Respondent by	:	Shri Subramanian, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.06.2025
Date of Pronouncement	:	28.07.2025

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Sandur Kushala Kala Kendra (the assessee/appellant) for the assessment year 2023-24 against the appellate order passed by the Addl. CIT(Appeals)-3, Kolkata [ld. CIT(A)] dated 26.3.2025 wherein the appeal filed by the assessee against the intimation u/s. 143(1) of the Income Tax Act, 1961 [the Act] dated 4.10.2024 was dismissed.

2. The assessee has raised the following grounds:-

“1. Eligibility of exemption under section 10(23B) of the Income Tax Act, 1961 (the Act)

- 1.1. On the facts and circumstances of the case, the learned National Faceless Appeal Center (NFAC) erred in not appreciating the fact that the appellant society has obtained requisite approval from the Khadi and Village Industries Commission and the Income Tax Officer (as a matter of abundant caution), thereby rendering it eligible for claiming exemption under section 10(23B) of the Act.
- 1.2. On the facts and in the circumstances of the case, the learned NFAC erred in declining exemption claimed under Section 10(23B) of the Act, on the ground that the Certificate of Registration dated March 28, 1988, issued by the Registrar of Societies and the approval certificate from the Income Tax Officer dated April 4, 1996, were issued in earlier years and are very old. The NFAC erred in not appreciating that the Certificate of Registration is issued on incorporation and not issued periodically. The NFAC erred in not appreciating that the section 10(23B) of the Act does not envisage any approvals from the Income Tax Officer, that such approval was sought as a matter of abundant caution and in any case, such approval specifically states that as long as our income falls under the category of institutions referred to in the said section, our income would be exempt and consequently, there is no time limit after which the approval from the Income Tax Officer lapses.
- 1.3. On the facts and circumstances of the case, the learned NFAC erred in denying exemption claimed under section 10(23B) of the Act on the ground that the Khadi and Village Industries Commission had granted approval for a period of 5 years instead of a period of 3 years specified in the said section. The NFAC erred in not appreciating the fact that the time period for which the certificate is granted is not within the control of the appellant and a beneficial exemption section intended to encourage growth of Khadi and Village Industries is to be interpreted liberally and not denying exemption based on technicalities.

2. Non-applicability of Form 10B/10BB of the Income Tax Rules, 1962 (the Rules)

On the facts and circumstances of the case, the learned NFAC, erred in classifying the appellant society as a charitable trust without appreciating the fact that the relevant sections (11 to 13 of the Act) and the connected forms stipulated under the Rules relevant thereto have no application to a society engaged in development of Khadi and Village produce by employing economically backward people in a rural area and that Section 10(23B) of the Act and does not envisage obtaining of an audit report in Forms 10B/10BB of the Rules. Accordingly, the NFAC erred in confirming the denial of exemption on extraneous grounds.

3. Taxing expenditure incurred of Rs. 2,95,14,060/- as income

On the facts and circumstances of the case, the learned NFAC erred in endorsing the action of the Centralized Processing Centre (CPC) in treating the application of income amounting to Rs. 2,95,14,060/- as taxable income of the appellant society, without duly appreciating the fact that the appellant society is entitled to exemption under Section 10(23B) of the Act, and in any case, the amount expended for earning income can never be taxed as it does not have the character of income.

Particulars	Amount (Rs.)
Gross receipts of the society	4,00,53,090/-
Less: Application of income/expenditure incurred during the year and erroneously taxed as income	2,95,14,060/-
Surplus claimed as exemption under section 10(23B) of the Income Tax Act, 1961 and not granted	1,05,39,030/-

4. Development of Khadi and Village Industries vs Profit motive business

On the facts and circumstances of the case, the learned NFAC erred in denying exemption under section 10(23B) of the Act, on the ground that the appellant society is engaged in a profit motive business, as purportedly evidenced by a substantial surplus over expenditure, without appreciating the nature and objectives of the

assessee's activities. All the income of the society is applied towards meeting its working capital needs like inventory, receivables apart from funds invested in bank accounts for meeting future needs and contingencies. No part of the funds of the society have been utilized for an impermissible purpose.

5. On the facts and circumstances of the case, the learned NFAC has inadvertently erred in recording that a period exceeding seven years had elapsed since the filing of the appeal, without appreciating that, in reality, less than one year had transpired warranting appropriate reconsideration of the entire case, and in any case, prompt disposal of the appeal is not within the control of the appellant and that it can only provide all relevant information in a timely manner, when sought.
6. On the facts and circumstances of the case, the learned NFAC erred, in presuming that the appellant lacked interest in pursuing the appeal, merely on the basis of a solitary instance of non-compliance without due consideration of the fact that the appellant was not aware of the notice posted on the income tax portal, consequently not providing sufficient time to submit the response, which is in violation of the principles of natural justice.
7. On the facts and circumstances of the case, there is no justification for the CPC to levy interest under sections 234B and 234C of the Act, amounting to Rs. 23,90,903/- and Rs. 6,35,477/- respectively.

The appellant seeks leave to add to, to amend, alter or delete any of the foregoing grounds as and when considered necessary/at the time of hearing.”

3. The brief facts of the case show that assessee filed its return of income on 30.10.2023, claimed exemption u/s. 10(23B) of the Act of Rs.1,05,39,029. It is a registered society to revive the traditional craft and improve the quality of life of craftsmen by encouraging and developing their skills and marketing the products. This trust was initially promoted by Sandur Manganese & Iron Ores Ltd. It is

registered under the Karnataka Societies Registration Act on 28.3.1988. It is also an approved institution for claiming exemption u/s. 10(23B) of the Act. It is submitted that during the year assessee has received sale consideration of Khadi embroidery work of Rs.4,00,53,090 and has expenditure of Rs.2,95,14,061.

4. This return of income was processed u/s 143(1) of the Act on 4.10.2024 providing for exemption u/s. 10(23B), but showing the total income of Rs.2,95,14,060.
5. As per the assessee, as the deduction u/s. 10(23B) is wrongly computed, the assessee preferred the appeal before the Id. CIT(A). The grievance of the assessee was that claim of deduction u/s. 10(23B) is not correctly computed.
6. The Id. CIT(A) issued notice on 21.1.2025 which was replied to by the assessee by submitting the written submission and ground-wise arguments. Once again a notice dated 3.3.2025 where a specific query was raised that date of filing of return was 30.10.2023 wherein it is found that there is an incorrect claim. The income due to disallowance of exemption is less than the difference on account of gross receipt and exemption claimed. Hence the exemption of Rs.2,95,14,061 is at variance. The Id. CIT(A) further referred to page 18 of Income Tax Return and held that there is accumulation of income claimed of Rs.1,05,39,029. It was further stated that as Form 10B and 10BB has not been filed, the claim of the appellant with respect to application of income of Rs.2,95,14,061 of expenditure made towards object of the

institution is not allowed. The Id. CIT(A) further noted that though return of income is filed on 30.10.2023 where the due date of filing of return of income is 30.11.2023, Form 10B has not been filed. Thus, the Id. CIT(A) categorically raised a query whether the assessee has filed any Form 10B/10BB and any petition for condonation of delay is filed or not. Both these notices were served on the 2 email-ids furnished by the assessee, but no reply was given. Thereafter, this appeal was transferred to the office of the CIT in e-appeal scheme. As the assessee did not furnish any reply, he held that assessee has nothing more to furnish. Further since more than 7 years have passed, he proceeded to dispose of the appeal. It was further held that in terms of Circular No.10 of 2019, with respect to condonation of delay in filing of Form 10B for years prior to AY 2018-19 and came to the conclusion that he does not have any power to condone the delay and grant deduction. He further held that when specific authority is given such powers, the assessee should avail the same opportunity. Accordingly he confirmed the action of the CPC.

7. Regarding the exemption u/s. 10(23B), he found that assessee has claimed expenses of Rs.2,95,14,061 and claimed the balance of Rs.1,05,39,029 as exempt income, he held that there is huge income over expenditure of Rs.1,05,39,029 at a total turnover of Rs.4,00,53,090 which is 26.31% and therefore there is a profit motive which is not eligible for such exemption. He further stated that assessee has furnished the old certificate of registration which is not as per law. Accordingly the appeal of the assessee was dismissed.

8. The assessee aggrieved with the above appellate order, has preferred this appeal.
9. The Id. AR submitted a paperbook containing 75 pages. It was submitted that assessee has submitted the details before the CIT(A) on 21.1.2025. Therefore, it is incorrect to state that assessee has not submitted details. He submitted the e-proceedings response acknowledgement wherein as per notice dated 6.1.2025, the due date of submission was 21.1.2025 which was submitted on the same date, was not at all considered by the Id. CIT(A). He also referred to the written submissions made before the CIT(A). It is the claim of the Id. AR that assessee is entitled for exemption u/s. 10(23B) of the Act on the entire income of Rs.1,05,39,029, such excess of income over expenditure is determined by considering the total receipt of Rs.4,00,53,090 and expenditure towards object of the trust of Rs.2,95,14,061. It was further stated that assessee trust is approved and registered under the respective law as per provisions of section 10(23B). He submits that when all the conditions are fulfilled, the Id. CIT(A) is incorrect in denying the deduction under that section.
10. The Id. DR vehemently supported the orders of Id. lower authorities.
11. We have carefully considered the rival contentions and perused the orders of the Id. lower authorities. The assessee has filed return of income on 30.10.2023 for the impugned assessment year where the due date of filing ROI was upto 30.11.2023. In the return of income, the assessee has claimed exemption u/s. 10(23B) of Rs.1,05,39,029.

However, while processing the return of income, the CPC has taken a sum of Rs.2,95,14,061 as chargeable income. In fact the assessee has gross income of Rs.4 crores and expenditure of Rs.2.94 crores which resulted into exemption claim of Rs.1,05,39,029. Thus there is an error definitely at the time of filing of return of income wherein instead of mentioning the gross total income, the assessee mentioned the excess of income over expenditure. Due to this, the income to the extent of expenditure incurred by the assessee of Rs.2,95,14,061 was considered as taxable income of the assessee by the CPC. The Id. CIT(A) has decided the issue on altogether different point which was not there. The simple issue before him was that whether the assessee is entitled to deduction u/s. 10(23B) of the Act, on what amount. The correct amount of deduction is Rs.1,05,39,029 which is arrived at by reducing the expenditure of Rs.2,95,14,061 from the total receipt of Rs.4,00,53,090. The other findings of the Id. CIT(A) regarding the allowability of deduction u/s. 10(23B) are also unwarranted.

12. Therefore, the issue involved in this appeal is merely the mathematical calculation of determination of correct income of the assessee. Therefore, we restore the whole issue in appeal back to the Id. AO with a direction to the assessee, to show the correct computation of total income before him. The Id. AO may verify the same and compute the correct income of the assessee. Thus, the whole issue in appeal is restored back to the file of the Id. Assessing Officer as directed above.

13. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 28th day of July, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 28th July, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.