

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, GUWAHATI**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 211/GTY/2024**  
**Assessment Year: 2019-20**

**The Jorhat Institute of Science and Technology,**

N.H. 37, Chenijaan B.O, Sotai Chah Bagisa,

Jorhat (Assam) - 785010

[PAN: AAEAT3652Q]

.....**Appellant**

**vs.**

**ITO Ward 2(3), Exem, Guwahati,**

Aaykar Bhawan, G.S. Road,

Guwahati - 781005

..... **Respondent**

**Appearances by:**

Assessee represented by : Anil Kumar Agarwala, FCA

Department represented by : Subrata Dhar, Addl. CIT

Date of concluding the hearing : 31.07.2025

Date of pronouncing the order : 06.08.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present appeal arises from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”], dated 11.07.2024.

1.1 The facts in brief are that the assessee is a government funded educational institution existing solely for the purpose of education. It is a full-fledged Government Engineering College categorised as such vide Notification No. ATE.131/2013/97 dated 30.12.2016 issued by The

Government of Assam, Higher Educational (Technical) Department. For AY 2019-20, the assessee did not file its return of income under section 139(1). However, it duly furnished the same in response to a notice issued under section 148 of the Act. In the return so filed, the assessee claimed exemption under section 10(23C)(iiiab), being a government funded educational institution. The Ld. AO denied the exemption solely on the ground that the return was not filed under section 139(4C) of the Act.

On appeal, the CIT(A) upheld the order of the AO on the grounds that: (a) Return was not filed u/s 139(4C) within time allowed u/s 139(1); (b) No belated return was filed u/s 139(4); and (c) the return furnished in response to notice under section 148 was not filed within the stipulated period provided in the notice.

1.2 the Ld. AO is seen to have estimated profit @ 12% of gross receipts of Rs. 2,86,50,849/- (being Rs. 34,38,101/-) and treated the impugned amount as business income. The Ld. CIT(A) restricted the addition to Rs. 7,97,027/- on the ground that this was the actual surplus available with the assessee.

1.3 Aggrieved with this action of Ld. CIT(A) the assessee is in appeal before the ITAT with the following grounds:

*“For that the order of the Learned CIT(A) upholding the additions made by the AO under the head Profits and Gains from Business to the extent of Rs 7,97,207 is bad in law and in facts.*

*For that the Learned CIT(A) erred in denying exemption u/s 10(23C)(iiiab) to which the appellant assessee was entitled under law on the ground that the claim for exemption was not made through a valid return filed u/s 139.*

*For that the Learned CIT(A) erred in denying exemption u/s 10(23C) (iiiab) to which the appellant assessee was entitled under law on the ground that there was a mistake in filling up the return filed u/s 148.*

*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.”*

2. Before us, the Ld. AR argued with the help of paper book running

into 56 pages, through which it was attempted to be demonstrated that the assessee was squarely covered under the provisions of section 10(23C)(iiiab) of the Act and hence was not exigible to any tax. It was also averred that there was an oversight in filling up the form of return of income through which erroneously a surplus was shown. The Ld. AR argued that even if the return of income was not filed u/s 139(4C) of the Act then to the AO could not have denied exemption under Section 10(23C)(iiiab) of the Act. The Ld. AR relied on two coordinate Bench orders of the ITAT in his support.

2.1 The Ld. DR relied on the orders of the authorities below.

3. We have carefully considered the rival submissions and have gone through the documents contained in paper book and we have also perused the orders of authorities below. It is seen that the authorities below have laid over emphasis on the fact that the assessee did not file any return of income under Section 139(4C) of the Act. Thereafter, the entire receipts have been subjected to tax by the Ld. AO and partial relief on the same is seen to have been given by the Ld. CIT(A). The main issue here is whether once the assessee is covered under Section 10(26C)(iiiab) of the Act then simply because he does not file the return of income then the entire receipts could be taxable. In this regard, the discussion contained in two Coordinate Bench orders relied upon by the Ld. AR deserve to be extracted for reference:

(a) ITA No. 11/Kol/2024, dated 10.10.2024

*“3. The Ld. Counsel for the assessee has contended that there is no provision under the Income Tax Act vide which the exemption u/s. 10(23C)(iiiab) of the Act can be denied to an assessee for non-filing or late filing of the income tax return as required u/s. 139 of the Act and within the period specified u/s. 139(1) of the Act.*

*4. The Ld. DR could not point out any relevant provision or section under the Income Tax Act which disentitles the assessee from claiming exemption u/s. 10(23C)(iiiab) of the Act for non-filing/late filing of the income tax return.*

*Therefore, the action of the lower authorities in denying the exemption to the assessee on this ground is not sustainable.*

5. *The second issue as to whether the filing of the return in wrong form i.e. Form u/s. 139(4D) instead of Form u/s. 139(4C) becomes irrelevant.*

*In view of the above stated legal position the action of the lower authorities in denying exemption to the assessee cannot be held to be justified. The impugned order of the Ld. CIT(A) is set aside and the Ld. AO is directed to grant exemption to the assessee as claimed u/s. 10(23C)(iiiab) of the Act.”*

(b) ITA No. 2225/Del/2024 dated 14.05.2025

*“11.3. We have carefully considered the above provisions and are of considered view that filing of return of income by the assessee for claiming exemption u/s 10(23C)(iiiab) is not mandatory. We agree with the submissions of the assessee that for claiming exemption u/s 10(23C)(iiiab) of the Act only two conditions are required i.e. the university or the other educational institution should exist solely for education purposes and not for purposes of profit, and the second, the university or other educational institution is wholly or substantially financed by the Government and in the case of the assessee both the above conditions are satisfied as evident from the copy of The Haryana and Punjab Agricultural University Act, 1970, vide which the assessee university was created in the name of The Haryana Agricultural University' and notified in Gazette of India dated 02.04.1970 by Ministry of Law, Govt. of India, which was later on substituted by Haryana Act No.15 of 1991 as Chaudhary Charan Singh Haryana Agricultural University (placed at page no.36 to 67 of the paper book more particularly at page no.36-37 and 39-40). As per para-7 of the said Act, the object of the assessee university ....*

*11.5. Therefore, the assessee satisfies both the twin conditions for claiming the exception u/s 10(23C)(iiiab) of the Act. Moreover, the AO has not brought any fact on record that the assessee did not exist solely for education purposes and or for purposes of profit, and that the university or other educational institution was not wholly or substantially financed by the Government....*

*11.7 Further, it may be mentioned that there is a specific provision u/s 234F of the Act for the consequences for not filing of return in the case of an assessee, which is required to file its return of income as per the provision of section 139 of the Act.....*

*11.9. As seen from the above discussion, there is no such mandate in the provisions of section 10(23C)(iiiab) and section 139(4C)(e) of the Act that filing of return u/s 139(4C)(e) of the Act by the assessee was a mandatory condition for claiming exemption u/s 10(23C) (iiiab) of the Act.”*

3.1 It is clear that as a matter of interpretation the mere non-filing of return under Section 139(4C) of the Act cannot be a cause for denying exemption under Section 10(23C)(iiiab) of the Act. The two orders of ITAT cited above are squarely on this issue. Now, we come to the question of the part addition sustained by the Ld. CIT(A). In this regard, the Ld. AR

has mentioned that by mistake they have filed the return of income in which surplus is shown. In this regard, we feel that this matter needs to be re-examined by the Ld. AO for the purposes of application of section 10(23C)(iiiab) of the Act. The Ld. AO would also do well to keep in mind the provision of section 234F of the Act in this regard. Accordingly, we set aside the impugned order and remand this matter back to the file of Ld. AO with directions as above.

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

Order pronounced on 06.08.2025

Sd/-  
**[Manomohan Das]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 06.08.2025

*AK, Sr. PS*

*Copy of the order forwarded to:*

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

*//True copy//*

By order

Assistant Registrar, Kolkata Benches