

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस बालाकृष्णन, माननीय लेखा सदस्य

**SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI S BALAKRISHNAN HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.279/Viz2025
(निर्धारण वर्ष/ Assessment Year: 2017-18)

Om Sree Siva Shankar Educational Society, Visakhapatnam. PAN: AAAAO5307K	VS.	Income Tax Officer, Ward-1(1), Visakhapatnam.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Sri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	19/08/2025
घोषणा की तारीख/ Date of Pronouncement	:	24/09/2025

ORDER

PER S. BALAKRISHNAN, AM:

This appeal filed by the assessee is against the order of the Ld. Addl/JCIT(A)-1, Lucknow in DIN & Order No. ITBA/APL/S/250/2024-25/1073840169(1), dated 28/01/2025 arising out of the order passed U/s. 143(1) of the Income Tax Act, 1961 (in short "the Act"), dated 16/09/2019 for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is a registered educational society. The assessee has filed its return of income for the AY 2017-18 on 07/04/2018 claiming exemption U/s. 10(23C)(vi) of the Act. The return of income was processed U/s. 143(1) of the Act by raising a demand of Rs. 29,34,371/- vide the Intimation order dated 16/09/2019 wherein the tax computed on the gross annual receipts of Rs. 65,92,461/-. Aggrieved by the order of the Ld. AO / CPC, the assessee preferred an appeal before the Ld. Addl/JCIT(A)-1, Lucknow.

3. Before the Ld. Addl/JCIT(A)-1, Lucknow it was the contention of the assessee that in the return of income the assessee has claimed exemption U/s. 10(23C)(vi) instead of U/s. 10(23C)(iiiad) of the Act due to a clerical mistake. During the course of proceedings before the Ld. Addl/JCIT(A)-1, Lucknow, it was submitted by the assessee that the assessee society was established and has been running educational institution only and it has no other activity. The gross annual receipts of the assessee-society for the relevant AY 2017-18 is Rs. 65,92,461/- only. It was further contended that the provisions of section 10(23C)(vi) applies only to the institutions whose receipts exceed Rs. 1 Crs during the relevant assessment year. It was also submitted that, under the similar facts and circumstances, the assessee has been granted exemption U/s. 10(23C)(iiiad) for the subsequent Asst. Year

2018-19. The assessee further submitted that due to clerical mistake the necessary schedules for claiming the exemption were not properly filled in the return. However, the Ld. Addl/JCIT(A)-1, Lucknow did not consider the submissions of the assessee and dismissed the assessee's appeal by observing as under:

- “8.2. ...it is important to note that the appellant has not filed a revised return to rectify the mistakes made in the original return. Under the Income Tax Act, claimed or submissions not included in the original return cannot be accepted unless a revised return is filed. This principle is in line with the decision of the Hon'ble Supreme Court in *Goetz (India) Ltd vs. CIT (2006) 284 ITR 323 (SC)* which established that modifications or claim not made in the original return must be addressed through the filing of a revised return. Therefore, the appellant's claim for exemption U/s. 10(23C)(iiia-d) raised during the appellate proceedings cannot be entertained as it was not included in the original return. Accordingly, the appeal of the appellant is hereby dismissed.
- 8.3.
- 8.5. Therefore, the AO, in processing the original return, and I, in my capacity as the JCIT(Appeals) during the appeal process, do not have the statutory authority to condone any delay in filing the revised return or to accept any new claims after the statutory period has expired. The appellant has the option to seek condonation from the prescribed authority U/s. 119(2), but this issue falls outside the scope of the appellate proceedings.
- 8.6. Given the provisions of the Income Tax Act, as discussed above, the appellant's request for an additional or fresh claim (which was not included in the original / revised income tax return) during the appellate proceedings cannot be entertained.
9. In view of the above, I find no merit in the present appeal, and accordingly the appeal is dismissed.”

4. Aggrieved by the order of the Ld. Addl/JCIT(A)-1, Lucknow, the assessee is in appeal before us by raising the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.

2. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 65,92,461/- made by CPC towards disallowance of exemption U/s. 10(23C)(vi) of the Act.*
3. *The Ld. CIT(A) erred in rejecting the claim of the appellant made during appellant proceedings for exemption U/s. 10(23C)(iiiad) by holding that such claim is possible only in a revised return and such fresh claim cannot be made in appellate proceedings.*
4. *Without prejudice to the above, the Ld. CIT(A) ought to have held that the CPC is not justified in computing the entire gross receipts of Rs. 65,92,461/- as the income of the appellant and ought to have directed the AO to allow the expenses of Rs. 64,73,655/- incurred by the appellant.*
5. *Any other ground that may be urged at the time of appeal hearing.”*

5. Before us, the Ld.AR contended that the assessee is running educational institution and is eligible for exemption even U/s 10(23C)(iiiad) of the Act as the assessee's turnover did not exceed the stipulated limit. The assessee has also filed the return of income within the due date. However, while filing the return of income the assessee claimed exemption U/s. 10(23C)(vi) of the Act instead of section 10(23C)(iiiad) due to a clerical mistake. However, the Ld. Addl/JCIT(A)-1, Lucknow sustained the impugned addition of Rs. 65,92,461/- without considering the submissions of the assessee. The Ld. AR further submitted that the Ld. Addl/JCIT(A)-1, Lucknow by relying on the decision of the Hon'ble Supreme Court in Goetz (India) Ltd vs. CIT (2006) 284 ITR 323 (SC) observed that modifications or claim not made in the original return must be addressed through the filing of a revised return. Therefore, the appellant's claim for exemption U/s. 10(23C)(iiiad) raised during the appellate proceedings cannot be entertained as it was not claimed in the return of income. Accordingly,

the Ld. Addl/JCIT(A)-1, Lucknow dismissed the appeal of the assessee. The Ld. AR to buttress his aforesaid claim submitted that though the Hon'ble Supreme Court in the case of Goetz (India) Ltd vs. CIT (supra) had jeopardized the jurisdiction of an Assessing Officer to entertain a claim which does not emanate from the return of income filed by the assessee, but it had clarified in its order that the powers of the appellate authority / Tribunal would not be circumscribed by the said restriction. The Ld. AR submitted that on the identical legal issue, the jurisdiction Bench in ITA No. 177/Viz/2025 (AY 2023-24), dated 27/06/2025 in the case of Gangunaidu Sabbavarapu vs. ITO has held that the assessee remained well within his right to raise the claim which was not included in the original return. The Ld. AR therefore, pleaded for remitting the matter back to the Ld.CIT(A) with a direction to allow the assessee's claim for exemption U/s. 10(23C)(iiiad) of the Act.

6. On the other hand, the Ld. Departmental Representative (Ld. DR) heavily relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

7. We have heard both the parties and perused the material placed on record. It is evident from the record that the assessee has filed its return of income within the prescribed time limit. However, while filing

the return of income the assessee claimed exemption U/s. 10(23C)(vi) of the Act instead of section 10(23C)(iiiad) due to an inadvertent clerical mistake. The CPC while processing the return U/s. 143(1) of the Act, disallowed the exemption claimed by the assessee U/s. 10(23C)(vi) of the Act thereby determining the total income at Rs. 65,92,461/- and raised a tax demand of Rs. 29,34,371/- vide the Intimation order dated 16/09/2019. On appeal, this mistake was elaborately explained by the assessee before the Ld. Addl/JCIT(A)-1, Lucknow and made a claim for exemption U/s. 10(23C)(iiiad) however, the Ld. Addl/JCIT(A)-1, Lucknow rejected the assessee's claim by holding that the assessee's claim for exemption U/s. 10(23C)(iiiad) raised during the appellate proceedings cannot be entertained, as it was not claimed in the return of income. On the identical legal issue i.e., whether the assessee has the right to raise a claim in the course of the appellate proceedings, the jurisdictional Bench in ITA No. 177/Viz/2025 (AY 2023-24), dated 27/06/2025 in the case of Gangunaidu Sabbavarapu vs. ITO has held that the assessee remained well within his right to raise the claim which was not included in the original return. Respectfully following the decision of the jurisdictional Bench of the Tribunal, we are of the considered view that the assessee could not be jeopardized for making a wrong claim while filing the return of income. The assessee has rightly explained the mistake crept

while filing the original return of income, while pleading that the exemption shall be allowed U/s. 10(23C)(iiiad) of the Act during the appellate proceedings, since the assessee fulfils the criteria specified under that section. However, the Ld. CIT(A) has not considered the prayer of the assessee. We are therefore of the considered opinion that a mere clerical error while filing the return of income shall not be a reason to deny the exemption for which the assessee is entitled otherwise. Accordingly, we hereby set-aside the order of the Ld. Addl/JCIT(A)-1, Lucknow and remit the matter back to the file of the Ld. CIT(A) with a direction to entertain the assessee's claim for exemption U/s. 10(23C)(iiiad) of the Act and decide the matter in accordance with law after affording a reasonable opportunity of being heard to the assessee following the principles of natural justice.

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

Order pronounced in the open court on 24th September, 2025.

Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S BALAKRISHNAN) लेखासदस्य/ACCOUNTANT MEMBER
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Visakhapatnam, dated 24.09.2025.
OKK/sps

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	Om Sree Siva Shankar Educational Society, D.No. 53-27-7, KRM Colony, Seethammadhara, Visakhapatnam, Andhra Pradesh-530013.
2.	राजस्व/ The Revenue	:	Income Tax Officer, Ward-1(1), O/o. ITO, Pratyakshakar Bhavan, MVP Double Road, Visakhapatnam, Andhra Pradesh-530017.
3.	The Principal Commissioner of Income Tax,		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण /DR,ITAT, Visakhapatnam.		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam.