

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 122/Ahd/2026
Assessment Year: 2015-16**

Dr. Babasaheb Ambedkar Open University The Registrar, Dr. Babasaheb Ambedkar Open University "Jytoirmay Parisar", Dr. Babasaheb Ambedkar Open Mark, Sarkhej Gandhinagar Highway, Chharodi, Ahmedabad-382481 PAN: AABFD2922P (Appellant)	Vs	The DCIT, Circle-1, Exemption, Ahmedabad (Respondent)
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Assessee Represented: Shri Vijay H Patel, A.R.
Revenue Represented: Shri Rignesh Das, CIT- DR

Date of hearing : 11-02-2026
Date of pronouncement : 12-02-2026

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 10-12-2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under

section 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. Brief facts of the case is that the assessee is an educational institution. For the Asst. Year 2015-16 the assessee made financial transactions of Rs.28,30,18,670/- but did not file the Return of Income. Hence the assessment was reopened by issuing notice u/s. 148 of the Act on 31-03-2021. The assessee filed a belated return on 30-09-2021 in ITR-7 claiming exemption u/s. 11 of Rs. 1,53,65,909/-. As the assessee neither registered u/s. 12A nor has been granted approval u/s. 10(23C)(vi) by the Competent Authority for the Asst. Year 2015-16, therefore the income from other sources of Rs.28,09,13,820/- is treated as business income; profit of Rs.1,53,65,909/- claimed as exempt u/s. 11 is also disallowed and also addition of Rs.5 crores as unexplained credit u/s. 68 of the Act and demanded tax thereon.

3. Aggrieved against the additions, assessee filed an appeal before Ld. CIT(A), who dismissed the appeal filed by the assessee that the assessee's failure to file Form 10BB and obtain approval u/s. 10(23C)(iv) of the Act, confirmed the additions made by the A.O. by observing as follows:

"5.3.15. The appellant has relied upon a large number of judicial precedents, including Township Pvt. Ltd. Sri Adichunchunagiri Shikshana Trust. DIT v. Spic Educational United Educational Society v. JCIT. Genius Education Society v. ACIT. CIT v. Vatika Foundation, Shahzada Nand Charity Trust. Gujarat Oil & Allied Industries, and On careful examination. I find that none of these decisions advance the appellant's several Tribunal decisions rendered in the context of sections 11 and 12 of the Act. case in the present factual and legal matrix The decision in United Educational Society v. JCIT and Genius Education Society v. ACIT dealt with denial of exemption under sections 11 and 12 merely on account of belated filing of return prior to insertion of section 12A(1)(ba), where audit reports were ultimately furnished and registration under section 12A was undisputed. In the present case, the appellant's claim is under section 10(23C) and not under sections 11 and 12, and the mandatory audit report in Form No.

10BB was never validly filed nor condoned by the CBDT. The ratio of CIT v. Vatika Township Pvt. Ltd. relates to retrospectivity of amendments and does not dilute mandatory statutory conditions. The decision in DIT v. Spic Educational Foundation squarely supports the Revenue, holding that non-filing of prescribed audit report disentitles exemption. Similarly, Sri Adichunchunagiri Shikshana Trust dealt with depreciation under section 11 and has no bearing on exemption under section 10(230). Accordingly, the case laws relied upon by the appellant are either factually distinguishable, rendered in a different statutory regime, or do not support dilution of mandatory conditions prescribed under section 10(23C), and hence are not applicable to the present case.

5.3.16 Therefore, considering the appellant's failure to file Form 10BB, failure to obtain approval under section 10(23C)(vi), rejection of condonation by the CIT(Exemptions), absence of any subsequent condonation by CBDT, non-compliance with Rule 2BBB for claim under section 10(23C)(iiiab), lack of audited evidence, discrepancy in capital expenditure details, and absence of material to demonstrate exclusive application for educational objects, I find that the Assessing Officer was fully justified in denying the claim of capital expenditure of Rs. 13,13,00,782/- as application of income. The appellant's explanation is neither factually substantiated nor legally tenable. In view of the above detailed discussion and the explanation offered by the appellant lacking substance and merit, this ground is dismissed.

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5.4.9 Furthermore, the AO has rightly pointed out inconsistencies in the receipts disclosure. The financials did not clearly classify the grant as corpus, revenue, capital, or restricted fund. No notes to accounts were provided to clarify whether the grant was subject to conditions. In absence of such clarification or supporting evidence, the AO is justified in treating the amount as income

5.4.10 Given the statutory non-compliance with section 10(230) (vi), absence of Form 10BB, absence of approval, absence of condonation by CBDT, failure to satisfy Rule 2BBB for alternate claim under section 10(23C)(iiab), failure to furnish sanction letter, utilisation certificate, or evidentiary proof of application of grant, the AO correctly added the amount of Rs.5,00,00,000/- to the income of the appellant. The explanations offered are neither supported by facts nor by law. In view of the above detailed discussion and since the explanation offered by the appellant lacks substance and merit, this ground is dismissed.”

4. Aggrieved against the appellate order, assessee is in appeal before us raising the following Grounds of Appeal:

1) Whether, in facts and circumstances of the case, the Ld. CIT(A) erred in confirming the re assessment order dated 29.03.2022 passed u/s 147 r.w.s 144B of the Income Tax Act, 1961?

2) Whether, in facts and circumstances of the case, the Ld CIT(A) erred in not considering that no notice was issued by Ld. Assessing Officer u/s 143(2) of the Income Tax Act, 1961 and therefore the Assessment order was non-est?

3) *Whether, in facts and circumstances of the case, the Ld. CIT(A) erred in holding that additional evidence under Rule 46A of the Income Tax Rules, 1962 is required to be filed only at the time of filing of appeal u/s 250 of the Income Tax Act, 1961, despite the fact that the additional evidence was on account of events subsequent to filing of Appeal ?*

4) *Whether, in facts and circumstances of the case, the Ld. CIT(A) has contradicted himself as on one hand he refused to consider the additional evidence in para 5, whereas the same additional evidences are discussed in para 5.3.12 and 5.3.13 of his order?*

5) *Whether, in facts and circumstances of the case, the Ld. CIT(A) erred in not granting exemption u/s 10(23C) (vi) of the Income Tax Act, 1961 despite granting of approval by Ld GIT(Exemption)?*

6) *Whether, in facts and circumstances of the case, the Ld. CIT(A) erred in confirming the disallowance of exemption claimed by Assessee u/s 11 of the Income Tax Act. 1961 of Rs 1,53,65,909/-being 15% of gross receipt?*

7) *Whether, in facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 13,13,00,782/- claimed towards capital expenditure?*

8) *Whether, in facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition u/s 68 of the Income Tax Act, 1961 of Rs. 5,00,00,000/- being receipt of grant for construction?*

9) *Whether, in facts and circumstance of the case, the Ld. CIT(A) erred in not entertaining the ground relating to initiation of penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961?*

5. At the outset, ld. Counsel appearing for the assessee submitted that registration u/s. 10(23C)(vi) of the Act was granted to the assessee by Ld. CIT(E) vide order dated 13-02-2024 for the Asst. Years 2015-16 to 2017-18 which is placed at Page No. 27 to 29 of the Paper Book, which reads as follows:

“Order for approval under section 10(23C)(vi) of the Income Tax Act, 1961

I. Applications in form 56D of the Income Tax Rules, 1962, claiming exemption under section 10(23)(vi) of the Income-tax Act, 1961, were filed by the applicant on 07/12/2023 for AY 2015-16 to 2017-18. The delay in filing of said application is condoned u/s. 119(2)(b) of the Act by the CBDT vide order No. F.No. 197/232/2021-ITA-I dated 22/09/2023

II. After considering the application of the applicant and the material available on record, the applicant is hereby granted approval under section 10(23)(vi) of the Income Tax Act, 1961 with effect from the assessment year 2015-16 to 2017-18 subject to the conditions mentioned in paragraph (V).”

6. We observe that approval u/s. 10(23C)(vi) of the Act was granted on 13-02-2024 which is including for the present Asst. Year 2015-16, but the Ld. CIT(A) passed this impugned order on 10-12-2025 much later without considering the same. Therefore, we hereby direct Ld. CIT(A) to consider the above exemption u/s. 10(23C)(vi) of the Act and decide the matter in accordance with the provisions of law.

7. In the result, the appeal filed by the Assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 12-02-2026

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT *True Copy*
Ahmedabad : Dated 12/02/2026

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद