

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-I”, NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA No.6183/Del/2015
Assessment Year : 2010-11**

Niharika Education Society, C/o Akhilesh Kumar, Advocate, Chamber No.206-07, Ansal “Satyam”, RDC Raj Nagar, Ghaziabad. PAN : AAATN 6147 P	Vs.	Addl. CIT, Range-1, Ghaziabad.
(Appellant)		(Respondent)

Appellant by : Shri Akhilesh Kumar, Adv.
Respondent by : Shri Rajesh Kumar, Sr.DR
Date of hearing : 19-12-2016
Date of pronouncement : 19-01-2017

ORDER

PER S.V. MEHROTRA, A.M :

This is an appeal filed by the assessee against the order dated 02.09.2015 passed by the Commissioner of Income Tax (Appeals), Ghaziabad, u/s 143(3) of the Income Tax Act, 1961 (in short “the Act”) relating to assessment year 2010-11. The assessee has taken following grounds of appeal :-

“1. Because, the order of learned commissioner of income tax (A) is bad in law and against the facts and circumstances of the case and hence is unsustainable.

2. Because, learned commissioner of income tax (appeals) grossly erred in upholding the activities of providing higher education in recognized courses as ‘business’ ignoring undisputed facts on the records like providing regular classes with all infrastructure etc., past history and the law pronounced by hon’ble court etc.. Hence order is perverse.

3. *Because, learned commissioner of income tax (appeals) grossly erred in upholding the rejection of claim of exemption of Rs.7,17,913/- u/s 10(23C)(iiiad) of the Act.*

4. *Because, the learned commissioner of income tax (A) further erred in upholding the disallowance depreciation Rs.2,17,800/- debited to P&L A/c by considering the same as double claim ignoring the fact that assessee has not claimed the cost of assets as utilization and also ignoring the ratio of hon'ble jurisdictional tribunal.*

Therefore, it is prayed that the order of ld. lower authority may kindly be quashed and both the claims of appellant may kindly allowed."

2. Brief facts of the case are that assessee society had filed its return of income declaring Nil income. The Assessing Officer noticed that assessee society had not applied for registration u/s 12AA and also not registered u/s 80G of the Act. He noted that as per the memorandum of society filed, the assessee society had been established to promote the education. He noted that the assessee society was running an educational centre under the name and style of "Niharika Academy", Ghaziabad in which education was provided to the students of study centre of IMTCDL. Besides this the other objectives were to promote, organize and facilitate study of and research in all the branches of learning, to organize and provide facilities for conference, seminar, study centers, lectures, exhibitions and like. In the course of assessment proceedings, he show-caused the assessee that since income from contract was shown, therefore, why it should not be treated as income from business activities. In this regard, he noted that the institute was performing as per contract where there was no autonomy and the fees

was also not charged from students directly. He required the assessee society to answer the following questions :-

- (i) Whether society has got any affiliation for degree;
- (ii) Whether society is competent to provide degree to the students, and;
- (iii) Whether the fee is directly charged by the students.

3. In compliance to the above queries, the assessee replied as under :-

“We have establish as a Educational Society with the motive of education to students. We are giving the education to students as study centre. There is a understanding with IMT to educate the students which are enrolled with IMT for Distance Education Programme. The fees charged by IMT and shares with us. We have MOU with IMT and UPICO for fees sharing. The TDS has already been deducted by IMT & UPICO on shared fees. This is not the contract this is only a arrangement to share the fees against education to students and value of contract is also not fixed, it is the proportion of the fees. The copy of MOU with IMT & UPICO is attached herewith. As per section 10(23)(c) we are fulfilling all requirements, the object is education, there are no motive of profit. We are spending 85% of our income towards expenditure & we are investing accumulated surplus according to the section 11(5) so, we are fulfilling all the requirements.

It is further stated by the assessee that the institution has no affiliation for degree and society is not competent to provide degrees.”

4. The Assessing Officer did not accept the assessee’s contentions for the following reasons :-

- (a) *The assessee does not exist for education purpose as the education was provided on behalf of the IMT Centre for distant learning under contractual performance.*
- (b) *The evidence of contractual performance was that even doing this job of providing space and arranging teachers on payment on which TDS has been deducted by the payer, hence, it was institution which did not exist for education rather it exists for contractual performance as a business.*
- (c) *As per the termination clause of the Memorandum of Understanding (MOU) between Institute of Management Technology and assessee the fate of the student was directly linked with the IMT and the assessee had no responsibility*

for the future of the students, if the agreement was terminated as per clause given in MOU. The assessee could only provide its services as per the contractual agreement made with the IMT.

5. Relying on the decision of Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust vs. CIT, 101 ITR 234 (SC), he pointed out that it has been held in this case as under :-

“The sense in which the word “education” has been used in section 2(15) in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge.

Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But what is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is "the process of training and developing the knowledge, skill, mind and character of students by normal schooling”.”

6. The Assessing Officer, therefore, observed that education means systematic education which results into degree or qualification. The decision in the case of Sole Trustee, Loka Shikshana Trust (supra) was followed by Hon'ble Gujarat High Court and by Hon'ble Patna High Court in the case of Saurashtra Education Foundation vs. CIT, 273 ITR 139 (Guj) and Bihar Institute of Mining and Mines Surveying vs. CIT, 208 ITR 608

(Pat) respectively. The Assessing Officer pointed out that the activities of the society could not be said to be covered u/s 2(15) of the Act. As regards the assessee's claim of exemption u/s 10(23C)(iiiad), the Assessing Officer pointed out that the expression 'educational institution' would take colour from the word 'university', hence the expression 'other educational institution' would mean an institution imparting formal education in an organized and systematic training where the institution would be accountable to some authority and where there would be teachers and taught, the former having some degree of control over the latter. He, accordingly, stated that the activities of society could not be accepted to be covered u/s 2(15) or section 10(23C)(iiiab) of the Act and since neither the society was registered u/s 12AA nor approved u/s 80G of the Act, therefore, the claim of the assessee for exemption was not acceptable and he made an addition of Rs.7,17,913/-.

7. The Assessing Officer also disallowed a sum of Rs.2,17,800/-, *inter-alia*, observing that since the society had enjoyed its surplus profits generated in previous years which had been used in creation of fixed assets, therefore, depreciation of Rs.2,47,756/- as claimed in the income and expenditure account of the current year could not be allowed. Since, the assessee made an addition in the fixed assets of Rs.1,99,768/- out of the

current year profit and, therefore, allowed depreciation of Rs.29,965/- being 15% of the cost of fixed asset and disallowed the balance of Rs.2,17,800/-.

8. Ld. CIT(A) partly allowed the assessee's appeal. Being aggrieved, the assessee is in appeal before the Tribunal.

9. Ld. counsel referred to page 14 of the Paper Book to submit that IMT-CDL has been recognized by Distance Education Council, Government of India, vide their letter No.DEC/Recog/IMT/07/5966 dated 04.10.2007 for offering Distance Education Programme. He pointed out that this is almost similar to IGNOU. Ld. counsel referred to page 45 of the Paper Book wherein the assessment order in the case of K. S. Memorial For Education and Research is contained which is a society engaged in running of study centre at Hargovind Enclave, Vikas Marg, New Delhi which is a unit of IGNOU which is a Central University for providing higher education through distance learning programmes. The assessee's case is almost similar to that case of K. S. Memorial For Education and Research and in that society exemption has been granted u/s 12AA and the income has been determined at Nil. Ld. counsel, further, submitted that fee is structured by foreign organization viz. IMT-CDL as per the schedule contained at page 42 of the Paper Book. The portion of fees collected is given to foreign organization. Ld. counsel, further, referred to page 44 of the Paper Book

wherein the schedule of network of study centre of the assessee academy has been detailed as under :-

Ghaziabad02	Niharika Academy, R-8/60, Rajnagar, Ghaziabad, 201 001	0120-2822592, 2822861, 9810894140, 9871877603	nagzb2@gmail.com	M/s Chitra Biswas
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10. Ld. counsel referred to page 1 of the assessment order and pointed out that in para 3, the Assessing Officer has himself noticed the assessee as an institute. Further, he referred to page 2 of assessment order wherein in para 6 again the Assessing Officer has noted that the assessee as an institution. Ld. counsel referred to the MOU between the assessee and the Institute of IMT-CDL reproduced by Assessing Officer at page 3 and 4 of assessment order and specifically pointed out to the following clauses of agreement :-

- *Registration of candidates for considering them for enrolment to the programmes, subject to the norms and policies of IMT.*
- *Employment of academic staff to conduct the programme subject to the approval of IMT.*
- *Provision of appropriate facilities for the conduct of the courses, including computer laboratories, classrooms, library and general student support facilities as deemed appropriate by IMT.*
- *Distribution of course materials to students.*
- *Marking and assessment of assignments according to the procedure laid down by the IMT.*
- *Collection of tuition and other fees as per Schedule A and B from students and remitting the same to IMT with original application forms; retaining a photocopy of the same.*

11. From these averments, ld. counsel submitted that assessee was primarily providing additional support services to Study Centre. He pointed out that Assessing Officer's main objection was in regard to sharing of fees. Ld. counsel pointed out this objection is not germane to the issue because all institutes are sharing fees. Ld. counsel pointed out that since the assessee's gross receipts were less than one crore, therefore, it was not required to get registration from the prescribed authority. In this regard, he referred to CBDT Circular No.14/2005 dated 17.08.2015. The ld. counsel submitted that assessee is registering solely for educational purposes and not for purposes of profit. He pointed out that no finding has been recorded by the Assessing Officer that the assessee was not existing for educational purposes but for purposes of profit. Ld. counsel referred to page 12 wherein the societies registration is contained w.e.f. 31.12.2003 and renewed on 31.12.2008. He pointed out that in all earlier years, the assessee has been allowed exemption u/s 10(23C)(iiiad) and, therefore, following the principles of consistency also the assessee should have been allowed exemption u/s 10(23C)(iiiad) of the Act. Ld. counsel, further, referred to ld. CIT(A)'s order and pointed out that he did not accept the assessee's contention that it was not akin to that of IGNOU. He rejected the assessee's claim observing the assessee was basically providing services to IMT by teaching students of IMT. He, further, pointed out that as far as affiliation

and control of AICTE are concerned, it was not the assessee's society which was affiliated to AICTE or controlled by it. It was the IMT which was controlled by AICTE. He pointed out that the Id. CIT(A) primarily rejected the assessee's claim on the ground that assessee was a mere service provider and facilitating the IMT in its job of providing education. Ld. counsel relied on following case laws :-

1. *DELHI MUSIC SOCEITY V CIT [2013] 357 ITR 265(DEL)*
2. *Society For Participatory Research in Asia V ITO [2016] 71taxmann.com 321 (Delhi -G)*
3. *ITO V Science Olympaid Foundation [2014] 48 taxmann.com 382 (Delhi - Trib.)*
4. *ADIT V Hyderabad Study Circle (2015) 55 taxmann. Com 379 (Hyd-trib.)*
5. *OXFORD ACADEMY FOR CAREER OEV. V. CIT [2009] 315 ITR 382 (ALL)*
6. *Meritta Welfare Trust v CIT [2015] 56 taxmann.com 363 (Delhi-E)*
7. *DDIT V ICAI (2016) 159 ITD 573 : 70 taxmann.com 54 (Del-Trib.)*
8. *Queen's Educational Society V CIT [2015] 372 ITR 699 (SC)*
9. *CCIT V St. Peter's Educational Society [2016] 385 ITR 66: 70 taxmann.com 171 (SC)*
10. *THIAGARAJAR CHARITIES V. ADDL CIT 225 ITR 1010(SC)*
11. *ADDL CIT V. SURAT ART SILK CLOTH MFG. ASS. 121 ITR I(SC)*
12. *RADHASOAMI SATSANG V CIT (1992) 193 ITR 321 (SC)*
13. *CIT V NEO POLY PACK (P) LTD. (2000) 245 ITR 492 (DEL)*
14. *UNION OF INDIA V SATISH PANALAL SHAH (2001) 249 ITR 221 (SC).*

12. Ld. DR submitted that principles of *res-judicata* are not applicable to income tax proceedings and, therefore, the assessment order in the case of K. S. Memorial For Education and Research (supra) is not applicable to the facts of the present case. He further submitted that as far as the assessee's

plea for following the principles of consistency is concerned, the same is not applicable. He referred to section 10(23C)(iiiad) and pointed out that the educational institution should be like university and the study centre will not be covered under this section. He, further, pointed out that AICTE has no control over the assessee and relied upon the order of CIT(A). He relied on the orders of authorities below.

13. Ld. counsel, in the rejoinder, referred to the decision in the case of ADIT vs. Hyderabad Study Circle (2015) 55 taxmann.com 379 (Hyd-Trib) (Page 17 of Paper Book) and submitted that the institute has been held to be eligible for exemption u/s 10(23C)(iiiad). He pointed out that all the decisions relied upon by ld. DR are not with reference to the study centers.

14. I have considered the submissions of both the parties and perused the record of the case. Admittedly, the society was neither registered u/s 12AA nor u/s 80G. The assessee only sought exemption u/s 10(23C)(iiiad). From the narration of facts by ld. counsel for the assessee, as noted earlier, it cannot be disputed that the assessee was running an educational institute where it was primarily imparting distance learning course under contract as study centre on behalf of an estimated organization viz. IMT. Study Centre run by assessee is primarily an extension/limb of IMT. As a matter of fact, the assessee is imparting education to various students of the study centre governed by IMT. There is no dispute that IMT was approved by AICTE

and, therefore, the study centres of IMT stand governed by Regulations of AIECT. There is also no dispute that assessee was maintaining computer laboratories, classrooms, library and general student support services, etc. which were approved by the IMT. The institute was employing academic staff to teach students under the guidelines of IMT. Course material was designed and distributed to students and collection of tuition & other fees from the students was remitted to IMT. There is, further, no finding recorded by the lower authorities that the institute was existing for profit purposes. As a matter of fact, both the lower authorities have not disputed the various activities, as noted earlier, being carried out by assessee. In the course of his argument, ld. counsel drawn analogy from the various universities imparting education through affiliated colleges. He pointed out that certificates/degrees are not issued by schools/colleges but by universities does not mean that such colleges were not imparting education. I am in agreement with these submissions of ld. counsel for the assessee.

15. In the case of Delhi Music Society (supra) one of the reasons for denying registration u/s 10(23C)(iiiab) was that the society was not awarding in degree or certificate and was merely imparting coaching/training in India as per norms of foreign colleges; that it was not an institution recognized by the UGC or by any Board constituted by Government of India for imparting formal education in the field of western

music. The prescribed authority also observed that the assessee society could not be distinguished from any coaching or training institute preparing the students for appearing in any examination for obtaining a formal degree by a formally recognized institution. Negating all these objections, Hon'ble Delhi High Court, *inter-alia*, held as under :-

“16. Another aspect to be noticed is that normally coaching centres are run for shorter periods and they have no strict rules and regulations as an educational institution. There is no such thing as an academic year. Strict discipline and requirements of attendance are not enforced. Further they are run on commercial lines and with a profit motive.

17. In this paragraph the respondent has furnished the figures of fee receipts, surplus and what is described by him as percentage of profit in respect of three financial years, namely, 2006-07, 2007-08 and 2008-09. After setting out these figures in the form of a table, it has been stated that the petitioner exists solely for the purpose of profit making and that the activity of training or coaching the students to undergo the examinations conducted by the foreign institutions is a commercial activity. This objection/ reason has not been stated in the impugned order.”

16. In the present case also it cannot be disputed that the study centre was like any school or educational institution imparting education in a systematic manner with regular classes and, therefore, clearly satisfied the conditions laid down in the judgement of the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust (supra). It is not necessary for an institution to be recognized as imparting education that it should also award degrees. If, the degree is awarded by ultimate controlling body under Rules and Regulations then also it fulfills the conditions of educational institution.

17. In the case of Society For Participatory Research in Asia (supra), it was, *inter-alia*, held that the conclusion of Assessing Officer that activities of assessee were not in nature of education only on pretext that income from education was confined to Distance Learning Course fee of Rs.20.65 lakhs out of total receipts of Rs.21.45 crores was held to be incorrect.

18. In the case of Science Olympiad Foundation (supra), *inter-alia*, following two grounds read as under :-

“(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is not imparting education to the students and its activities are not within the ambit of charitable purpose as per section 2(15) of the Income Tax Act, 1961.

(ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is an educational institution within the meaning of the section 2(15) of the Income Tax Act, 1961 and directing the Assessing Officer to allow exemption as claimed by the assessee.”

19. The Tribunal, *inter-alia*, held as under :-

- *The Assessing officer has taken a divergent view on the assessee educational activities by holding that they are no more educational activities as regular classes are not held. Delhi High court in the case of Council for the Indian Schools Certificate Examinations v. DGIT [2012] 206 Taxman 466/20 taxmann.com 505, has squarely held that assessee though being only in conducting examinations is still to be regarded as educational institution.*
- *Supreme court in Assam State Text Book Production & Publication Corpn. Ltd. v. CIT [2009] 319 ITR 317/185 Taxman 58 held that board though being only in the publication of books falls within the meaning of educational institution.*
- *In view of these clear judgments there is no merit in the order of Assessing Officer to give a restricted meaning to the scope of meaning of term educational activities.*
- *It is a settled law that a charitable or educational institution can charge fees for rendering services, it is so as the surplus is accumulated which is*

further to be applied for charitable objects of the institution. In case of winding up, surplus has not dwell upon shareholders or relatives, therefore, the Assessing Officer's allegations in this behalf could not be sustained. Consequently adverse inference drawn by Assessing Officer is without any basis.

20. In the case of Hyderabad Study Circle (supra), the facts were that assessee was running a coaching institute giving coaching to students for various competitive examinations. The Assessing Officer held that assessee was not imparting a systematic education and, therefore, relying on the decision of the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust (supra) held that the assessee was not imparting education. The Tribunal held that assessee society was eligible for exemption u/s 10(23C)(iiiab).

21. In the case of Oxford Academy For Career Development (supra) held as under :-

“the assessee was preparing students by providing coaching/guidelines to get admissions in professional institutions to pursue their studies. The sense in which the word ‘education’ has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. Similarly, extending financial assistance/scholarships, etc., to the students for their educational purpose would squarely and fairly fall within the connotation of ‘education’. Thus, the assessee was engaged in ‘educational activities’ which fell under charitable purpose.”

22. In the case of Meritta Welfare Trust (supra), the Commissioner noticed that the assessee trust had entered into the franchise agreements with ‘Z’ Ltd., whereby it had given commercial. The Tribunal, *inter-alia*, held

that the conditions of franchiser under franchisee agreement could not be a ground to assume that income of trust would not be applied for educational activity and, therefore, set-aside the Commissioner's order. In the present case, the assessee was running study centre of IMT under a fee sharing agreement and, therefore, the facts of this case are similar to the present case.

23. In the case of Institute of Chartered Accountants of India (supra), the facts were that the Assessing Officer denied exemption u/s 11 mainly on the ground that ICAI was involved in commercial activities as it received coaching fees from students of CA while giving coaching to CA students. It was held that ICAI was an educational institution and its coaching activities fell within meaning of charitable purpose u/s 2(15), hence it was entitled to exemption u/s 11.

24. In view of the aforementioned case laws, I am of the considered opinion that the assessee comes within the ambit of section 10(23C)(iiiad) as educational institution existing solely for educational purposes and not for purposes of profit and, therefore, entitled for exemption u/s 10(23C)(iiiad) of the Act. In the result, the ground nos.2 and 3 are allowed.

25. As far as ground no.4 regarding disallowance of depreciation of Rs.2,17,800/- is concerned, I find that the said issue is covered by the decision of Hon'ble Delhi High Court in the case of Indraprastha Cancer

Society (supra) wherein it has been held that a charitable institution which has purchased a capital asset and treated amount spent on purchase of capital asset as application of income is entitled to claim depreciation on said capital asset utilized for its objects. Respectfully following the aforementioned decision of Hon'ble Jurisdictional High Court, this ground is allowed.

26. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 19th day of January, 2017.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated : 19-01-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi;

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi