

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI H.L.KARWA, VICE PRESIDENT
AND MS. RANO JAIN, ACCOUNTANT MEMBER

ITA No.318/Chd/2013
(Assessment Year : 2009-10)

And

ITA No.380/Chd/2014
(Assessment Year : 2010-11)

The Income Tax Officer,
Ward VI(3)
Ludhiana.

Vs.

Shri Balaji Prem Ashram &
Nikhil Vidyalaya, Thakur Colony,
Near Sterling Resort,
Pakhawal Road, Ludhiana.

PAN:AAAHTS6196C

(Appellant)

(Respondent)

Appellant by : Shri Vivek Mongia
Respondent by : S/Shri Sudhir Sehgal
& Ashok Goyal

Date of hearing : 18.09.2015

Date of Pronouncement : 27.10.2015

ORDER

PER RANO JAIN, A.M. :

These two appeals filed by the Revenue are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-I, Ludhiana dated 4.1.2013 and 28.2.2014 for assessment years 2009-10 and 2010-11 respectively.

ITA No.318/Chd/2014 :

2. Briefly, the facts of the case are that the assessee had excess of income over the expenditure amounting to Rs.32,52,148/- on which the exemption had been claimed in the return of income without specifying the section thereof. Alongwith the return, the assessee had also filed Audit Report under section 12A(b) of the Income Tax Act, 1961 (in short 'the Act'). The Assessing Officer observed that the assessee had been granted registration under section 12A of the Act vide order dated 26.5.2011, which was meant for assessment year 2009-10 onwards, therefore, the assessee was not eligible for exemption under section 11 of the Act in the relevant assessment year. On being confronted by the Assessing Officer, the submission of the assessee was that the society was running a school and the receipts of the same were below Rs.1 crore. Therefore, it was eligible for exemption under section 10(23C)(iiiad) of the Act. However, the Assessing Officer did not agree with the said submission of the assessee. He was of the view that the trust deed of the assessee showed that it had objects which were not restricted to advancement of education alone and, therefore it could be said that it is not existing solely for the purposes of education. He further observed that for claiming exemption under section 10(23C)(iiiad) of the Act as per Rule 16CC of the Income Tax Rules, Audit Report in Form No.10BB is required to be furnished under the tenth proviso to clause (23C) of section 10 alongwith return of income which was not filed by

the assessee. In this way, the Assessing Officer held that the assessee was not eligible for exemption either under section 11 or even under section 10(23C)(iiiad) of the Act.

3. Further, the Assessing Officer asked the assessee to file particulars of all donations/grants/contributions received in excess of Rs.5000 giving therein name and address of the donor, date of donation, amount of donation and mode of receipt. However, the assessee expressed its inability to provide such details. In view of this, the Assessing Officer held that even otherwise in view of the proviso to section 10(23C) of the Act anonymous donations referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section are to be included in the total income of the assessee.

4. Aggrieved by the order of the Assessing Officer, the assessee went in appeal before the learned CIT (Appeals) and submitted that the assessee trust is running school and receipts of the trust are below Rs.1 crore and as such, exemption under section 10(23C)(iiiad) of the Act may be allowed to the assessee. In this respect, reference to the Board's Circular No.14(XL-35) dated 11.4.1955 was made. Further with regard to exemption under section 10(23C)(iiiad) of the Act, it was submitted that no exemption under section 10(23C)(iiiad) of the Act can be denied to the assessee just on this ground that multiple objects are included in the trust deed. It was stated that it is not the entirety of the income of the recipient but only the income from educational

institution that comes within the purview of the exemption. It is thus clear that if the income of any person falls in clause covered by clause (23C) of section 10 of the Act, then such income is not includible in the total income of that person. The exemption under section 10(23C)(iiiad) of the Act is not to be seen qua the assessee but relevant to the activity of educational institution being carried out by an assessee. The assessee trust in the current year has constructed the building for the school and no other income other than educational income was included in the income and expenditure account. When no other objects were operational in the year and even if other activity of the trust may be carried out at any time in future years, the assessee would be preparing separate accounts and records for the same. Reliance was placed on the following judgments :

- i) *Birla Vidhya Vihar Trust vs. CIT(1982)136 ITR 445(Cal-HC)*
- ii) *CIT vs St.Xaviers(1990) 184 ITR 284(Pat)*
- iii) *Director of IT(exemption) Vs.Institute of Franciscan Clarist Sister of the Most Blessed Sacrament (2005) 196 CTR (del)582.*
- iv) *CIT vs. Vidya Vikas Vihar(2004)265 ITR 489(BOM)*
- v) *U.S Srivastava educational memorial Society vs. Asstt.CIT(2004)82ITJ(luck-trib)471.*
- vi) *Digember Jain Society for child welfare Vs.Director General of Income Tax(Exemptions).*
- vii) *CIT vs St.Mary's Malankara Seminary.*
- viii) *ITO vs. Baba Dhall Educational Society of India(2009) 27 SOT 391(Del)(ITAT-F.Bench)*

5. After hearing the assessee at length, the learned CIT (Appeals) relying on the judgments cited by the assessee allowed the appeal of the assessee on the basis that the assessee trust is carrying out only educational activities during the year and since the receipts during the year are below Rs.1 crore, it is eligible for exemption under section 10(23C)(iiiad) of the Act. On the issue of filing of Audit Report, the learned CIT (Appeals) observed that the Audit Report in Form No.10B of the Act is not required to be filed in respect of assessee's claim of exemption under section 10(23C)(iiiad) of the Act. In view of these findings, the learned CIT (Appeals) deleted the addition made by the Assessing Officer.

6. Aggrieved by the said order of the learned CIT (Appeals), the Department has come up in appeal before us raising the following grounds of appeal :

1. *The Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer and granting exemption u/s 10 (23C) (iiiad) of the I.T. Act, 1961 as the assessee trust did not fulfill the condition for claiming exemption as the trust was not existing solely for education puposes, as required to claim exemption u/s 10 (23 C) (iiiad), but for other purposes also as per the aims and objects of the trust deed.*
2. *The Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer as the assessee has failed to file audit reportinformNo.10BBrequired to be furnished under the 10 proviso to clause (23C) of section 10*

along with return of income for claiming exemption u/s 10 (23 C)(iiiad), as per rule 16CC of I.T. Rule 1962.

3. *The Ld. CIT(A) has erred in not directing the Assessing Officer to charge tax u/s 115BBC(1) of the I.T. Act on donations received by the trust as the assessee has not produced the records of the identity indicating the name and address of the donors.*

4. *That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off.*

7. The learned D.R. while arguing before us relied upon the order of the Assessing Officer. His main argument was that the assessee itself has not claimed exemption under section 10(23C)(iiiad) of the Act while filing its return of income and in fact it intending to avail exemption under section 11 of the Act. Not having the registration under section 12A of the Act, neither exemption under section 10(23C) nor section 11 of the Act is available to the assessee. It was stressed before us that the assessee had filed report in Form No.10B of the Act alongwith return of income, which goes to prove that the assessee intended to claim exemption under section 11 of the Act while it was not having registration under section 12A of the Act. In this view, it was prayed that the order of the Assessing Officer be confirmed.

8. The learned counsel for the assessee reiterated the submissions made before the lower authorities. Our attention was invited to the trust deed, whereby one of the objects of the society of the assessee was to run schools, colleges,

library, gowshala, vridhashram, stay home, rehabilitation centers and dispensary, etc. for distressed general masses. This was shown to us to emphasize the fact that the running of educational institution is one of the objects of the assessee trust. It was stated that during the year 2009-10, the assessee had constructed school and during the year 2010-11, the assessee had started educational activities. No other activity had been carried out by the assessee during the year. Reliance was placed on a number of judgments to the effect that even if the assessee intended to claim exemption under section 11 of the Act while filing its return of income, it was not available to it due to the lack of registration under section 12A of the Act, the exemption available to it under section 10(23C)(iiiad) of the Act cannot be denied if it fulfills all the requirements of the said section. On the issue of filing of Audit Report as required by tenth proviso to clause (23C) of section 10 of the Act, it was submitted that the requirement of filing such Audit Report is only for institutions covered by clause (iv)(v)(vi) and (via) of section 10(23C) of the Act. Since the assessee is claiming exemption under section 10(23C)(iiiad) of the Act, there is no such requirement. Further, our attention was invited to the Remand Report dated 9.2.2014 filed by the Assessing Officer to the learned CIT (Appeals) during the appellate proceedings for assessment year 2010-11, whereby the Assessing Officer had physically verified the educational activity of the assessee, specially

mentioning that the assessee is running the schools for educating the deaf, dumb, mentally retarded and poor students approximately 252 in numbers. In this view, it was prayed that the assessee be held to be eligible for exemption under section 10(23C)(iiiad) of the Act.

9. We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. The undisputed facts of the case are that the assessee society does not possess registration under section 12A of the Act for relevant assessment year. From the perusal of return filed by it alongwith Form No.10B shows that it intended to claim exemption under section 11 of the Act, which it could not, since it did not have registration under section 12A of the Act at that time. However, it can claim exemption under any other provision of the Act provided it satisfies all the conditions given in that provision. Under section 10(23C)(iiiad) of the Act, any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of Rs.1 core can avail of this exemption. Undoubtedly, the annual receipt during the relevant assessment year of the assessee does not exceed Rs.1 crore. The only issue to be seen is whether the assessee is existing solely for educational purposes and not for the purpose of profit. Since the

assessee has been granted registration under section 12A of the Act in the future as on 26.5.2011, it cannot be denied that it did not exist for earning of profits. Now, the only question is whether the assessee is existing wholly for educational purposes. No doubt, the assessee has one of its objects the education activities as discussed hereinabove. From the perusal of balance sheet and other papers filed in the Paper Book, it is seen that the only activity carried on by the assessee during the year is relating to the education only. The fact of educational activities being carried out by the assessee has been confirmed by the Assessing Officer himself in the Remand Report dated 18.2.2014 filed by him before the learned CIT (Appeals) during the appellate proceedings for the assessment year 2010-11. In this report, the Assessing Officer confirmed that the assessee trust is running a school for educating the deaf & dumb, mentally retarded, physically handicapped and poor students. After enquiries, the Assessing Officer also found that there are 250 to 300 children approximately in the school to whom the assessee trust is providing all facilities i.e. food, clothing, hostel, conveyance and medical etc. for which no charges have been received by the assessee. The assessee may be having many other objects in its trust deed but during the year no other activity other than education has been pursued by it. The exemption under section 10(23C)(iiiad) of the Act is available on the educational activities of an assessee and if the assessee is carrying on only this sole activity during the year, the exemption cannot be denied to it on the basis that it has

other objects also in its trust deed. There is no allegation by the Assessing Officer that the assessee has deviated from its objects. If in any of the subsequent years, the assessee carries on any other activities other than educational, it has to maintain separate books of account and if it does not do the same, the Assessing Officer can take care of it during the course of assessment proceedings of that year. On the perusal of the order of the Assessing Officer, it appears that the charitable nature of the activities carried on by the assessee has not been doubted by him. Therefore the Assessing Officer cannot deny the benefit of exemption under section 10(23C) of the Act to the assessee on the ground that it has objects other than education also. In this regard, reliance placed by the learned counsel for the assessee on the judgment of Hon'ble Calcutta High Court in the case Birla Vidhya Vihar Trust Vs. CIT (1982) 136 ITR 445 (Cal) is not out of place, whereby it has been held that a trust may have income from several sources but the sole object is the educational and the income has not diverted for personal profit, the trust is entitled for the benefit under section 10(23C)(iiiad) of the Act. The contention of the Assessing Officer that the assessee itself has claimed exemption under section 11 of the Act while filing its return of income and not exemption under section 10(23C)(iiiad) of the Act cannot be the basis for disallowing the claim as it is a trite law by now that even if the assessee himself does not claim any benefit if

it is eligible for any such benefit and fulfills all the conditions provided under the Act, it incumbent on the authorities to give him such benefit. It has been very clearly provided in the Circular No.14(XL-35) dated 11.4.1995 (supra) issued by the CBDT, whereby it has been instructed that the officers of the Department must not take advantage of the ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. In this view, as the assessee is carrying on the educational activity only during the year, it has to be given exemption under section 10(23C)(iiiad) of the Act.

10. As regards the contention of the Assessing Officer that the exemption under section 10(23C)(iiiad) of the Act cannot be given to the assessee as it did not file the Audit Report alongwith the return of income as required by the tenth proviso to clause (23C) of section 10 of the Act. The tenth proviso to section 10(23C) of the Act reads as under :

Provided also that where the total income, of the fund or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-

clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

11. From the perusal of the said proviso, we see that the provisions of this proviso are applicable only to clause (iv), (v) (vi) and (via) of section 10(23) of the Act. Since the assessee is claiming exemption under section 10(23C)(iiiad) of the Act, there is no need to file Audit Report in Form No.10BB. In view of the above, the assessee has complied with all the conditions of section 10(23C)(iiiad) of the Act. We do not find any infirmity in the order of the learned CIT (Appeals) and confirm the same. The ground Nos. 1 and 2 raised by the Department are dismissed.

12. As regards ground No.3, with respect to the anonymous donations to be taxed under section 115BC(1) of the Act, we find that Assessing Officer had called for the details of donations received by the assessee, which the assessee failed to give. However, since the Assessing Officer denied the benefit of exemption under section 10(23C)(iiiad) of the Act to the assessee, he did not make any further addition under section 115BBC of the Act. The assessee has raised

this issue before the learned CIT (Appeals) by taking a specific ground. However, from the perusal of the order of the learned CIT (Appeals), we see that the learned CIT (Appeals) has not adjudicated the said issue. In view of this, we restore this issue to the file of the learned CIT (Appeals) to adjudicate the same as per law.

13. The ground of appeal No.4 raised by the Department is general and hence, needs no adjudication.

14. The appeal of the Revenue is partly allowed.

ITA No.380/Chd/2014 :

15. The grounds of appeal raised by the Revenue are as under :

- 1) *Whether on the facts and in the circumstances of cases the CIT(A) has erred in not considering the fact that the assessee is not existing solely for educational purpose as per the objectives in the Trust Deed.*
- 2) *That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off.*

16. It is relevant to observe here that the facts and circumstances of this case are similar to ground Nos.1 and 2 in ITA No.318/Chd/2013 and the findings given in ITA No.318/Chd/2013 shall apply to this case also with equal force.

17. The appeal of the Revenue is dismissed.

18. In the result, appeal of the Revenue in ITA No.318/Chd/2013 is partly allowed for statistical purposes, while the appeal of the Revenue in ITA No.380/Chd/2014 is dismissed.

Order pronounced in the open court on this 27th day of October, 2015.

Sd/-
(H.L.KARWA)
VICE PRESIDENT

Sd/-
(RANO JAIN)
ACOUNTANT MEMBER

Dated : 27th October, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh