

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No. 1065/CHD/2011

Assessment Year: 2003-04

The ACIT,
Circle 2(1),
Phase -VI,
Chandigarh.

Vs

M/s Amar Shaheed Baba Ajit Singh
Jujhar Singh Memorial College,
Bela (Ropar).

PAN: AACTA2270N

(Appellant)

(Respondent)

Appellant by : Shri Sushil Kumar
Respondent by : Shri Sudhir Sehgal

Date of Hearing : 13.07.2016
Date of Pronouncement : 20.07.2016

ORDER

This appeal by revenue has been directed against the order of ld. CIT(Appeals) Chandigarh dated 23.08.2011 for assessment year 2003-04 on the following grounds :

1. *The Ld. CIT(A) has erred in holding that the grant-in-aid, vocational grant and donation from Hansali Wale Santji were not to be treated as receipts for computing the cap of Rs1 Crore and that the provisions of Section 10(23C)(iiiad) of the Income Tax Act were applicable in the case of the assessee.*
2. *The Ld. CIT(A) has erred in holding that the income of the assessee was exempt and that the provisions of Section 10(23C)(iiiab) of the Income Tax Act were applicable in the case of the assessee as the assessee*

was substantially financed by the Government whereas the total finance received from Government was only 25.6% of the total receipts .

3. Briefly the facts of the case are that assessee society was running educational institution and claimed its income as exempt under section 10(23C)(iiiab), 10(23C)(iiiad) and 10(23C)(vi) of the Act. The assessee claimed before Id. CIT(Appeals) that Assessing Officer failed to deduct the grant-in-aid and other receipts which are not includible in the total income. The assessee filed written submissions before Id. CIT(Appeals) which are reproduced as under :

"The society was setup in the year 1975 with the object of imparting education. A school and art college was setup. The government gave grant in-aid of 95% to run the school and college. Till 2000, the expenditure was more than the receipts and upto 2002, the receipts were also less than one crore, as such there was no need to file any application for exemption.

The Commissioner of Income Tax-I has passed order on 25.09.2008 u/s 12AA of the IT. Act, 1961 granted registration u/s 12AA(l)(b) of the I. T. Act, 1961. Similarly, Chief Commissioner of Income Tax has also passed the order on 17.09.2010 u/s 10(23C)(vi) of IT Act, 1961. Exemption has been granted from 2003-04 onwards relevant to the assessment year 2004-05 onwards.

In the present appeal fixed before your honour, the receipts were less than Rs. 1 Crore though in the accounts the total receipts have been shown Rs. 1,48,31,595.30 but items of income which do not form part of the total receipts if deducted the net receipt from education Rs.

82,60,646/- . Some of the major head are reproduced as under:

i)	5%M.C.share	Rs. 66,000/-
ii)	95% Grant in aid	Rs. 40,01,416/-
iii)	Scholarship Received	Rs. 48,883/-
iv)	Donation	Rs. 4,87,085/-
v)	Vocational course grant	Rs. 9,00,000/-
(vi)	Sports Equipment Grant	<u>Rs. 25,250/-</u>
	Total	<u>Rs. 55,28,634/-</u>

The school when established was sanctioned 95% grant in aid for meeting the expenditure on salary etc. Scholarships were given by the university for disbursement to the student. Similarly donations have been given by Hansali Wale Sant for education purposes. So all these amounts do not form part of the total receipts. A letter of the govt. regarding financial grant of 95% granted to the institution is enclosed and a letter dated 20.03.2002 of the University Grant Commission regarding Vocational Course grant of Rs. 9,00,000/- is also enclosed and a letter dated 29.01.2003 regarding scholarship to schedule caste student is enclosed. Details of donation receipts from Hansali Wale Sant Baba Ji on different dates amounting to Rs. 4,87,085/- is also enclosed. These details were called for in the last hearing as per order sheet entry.

It is also covered u/s 10(23C)(iiiab), any university or other educational institution existing solely for educational purposes and not for purposes of profit and which is wholly or substantially financed by the government. Grant in aid, donations and vocational course grant does not form part of the total receipts. The receipts being less than Rs. 1 crore and the society was setup with the object of imparting

education without any motive of profits and the receipts being less than 1 crore is exempt from tax."

4. The 1d. CIT(Appeals) allowed the appeal of the assessee. His findings are reproduced as under :

4.2 I have considered the submission of the Ld. Counsel for the appellant and perused the various documents filed by the Ld. Counsel. The appellant had applied for exemption u/s 10(23C)(vi) to the Ld. Chief Commissioner of Income Tax, N.W. Region, Chandigarh from A.Y. 2004-05 onwards and the same was granted. The Ld. Counsel for the appellant has argued before me that application for exemption u/s 10(23C)(vi) for A.Y. 2003-04 was not made before the Chief Commissioner of Income Tax, N.W. Region, Chandigarh because the receipts of the appellant were less than Rs. 1 crore in F.Y. 2002-03, pertaining to A.Y. 2003-04 and further it was substantially financed by the government.

4.2.1 For the sake of ready reference, provisions of section 10(23C)(iiiad) are reproduced below :

"10- Incomes not included in total income *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-*

(23C) any income received by any person on behalf of-

(iiiad) 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 annual receipts as may be prescribed;"

4.2.2 Thus, the annual receipts of the educational institution have to be taken into account for calculation u/s 10(23C)(iiiad) and the grant-in-aid and the amounts received for specific purposes are not to be included in total receipts. A perusal of the income expenditure account of the appellant reveals that appellant's total receipts were of Rs.1,48,31,595/-. out of which 95% grant-in-aid was Rs. 40,01,416/-, vocational course grant was Rs. 9,00,000/- and donation from Hansali Wale Santji was Rs. 4,87,085/-. 95% grant-in-aid given by the Punjab Government is towards payment of salary and cannot be said to be part of receipts of the appellant, since it is for a particular purpose. Similar is the case with vocational course grant receipt from UGC which is also for running the vocational course and cannot be said to be part of receipts. Donation was for building purposes and so the amount of donation

can also not be treated as receipts of the appellant. These three items itself, if totaled, amount to Rs. 53,88,501/- and if this amount is reduced from gross receipts, the effective receipts would be only Rs. 94,43,094/-. Apart from these, there are some other receipts, which are for particular purposes and cannot be included for the purposes of calculation of receipt u/s 10(23C)(iiiad) of the Act. Thus, receipts of the appellant, which should be taken for the purposes of section 10(23C)(iiiad) would be less than Rs, 1 crore and so the case of the appellant was duly covered by section 10(23C)(iiiad) of the Act. Alternate submission of the appellant is that the appellant society is substantially financed by the government, which is also correct because Punjab Govt. has been financing almost entire salary of the teachers employed by the society. Thus, the case of the appellant is also covered by Section 10(23C)(iiiab) of the Act. In view of this discussion, it is held that the Assessing Officer was not right in taxing the surplus of income over expenditure in the case of the appellant, as appellant's case was covered u/s 10(23C)(iiiab)/(iiiad) of the Act. Grounds of appeal No. 2 to 5 are allowed”.

5. The 1d. DR relied upon order of the Assessing Officer. The 1d. DR submitted that Section 10(23C)(iiiad) nowhere specifies as to what constitutes aggregate annual receipt. He has submitted that no words have to be added in the statute. He has referred to Rule 2BBB of the IT Rules and submitted that as per this rule, the substantial finance by the Government would be considered in favour of the assessee if the Government grant to such University or other educational institution etc. exceeds 50% of the total receipts including any voluntary contributions. The 1d.DR, therefore, submitted that assessee, would not be entitled for deduction under both the provisions.

5(i) On the other hand, 1d. counsel for the assessee relied upon order of the 1d. CIT(Appeals) and reiterated the submissions made before him. He has submitted

that it is not in dispute that assessee society is existing solely for imparting education and assessee is substantially financed by the Punjab Government. He has submitted that Assessing Officer at the time of passing of the order held that assessee was receiving only 25.6% of the total receipts as grants from Government, therefore, same cannot be covered under wholly or substantially financed by the government. He has submitted that Assessing Officer has not doubted that assessee society exists solely for educational purposes. The only issue was regarding total receipts and substantial funding by the government. He has submitted that the grant-in-aid and other grants received from the others when taken up totally, same would come to 34.56% and the same would not partake character of receipts of educational institution. If the same amount is excluded, total receipts of the assessee would be less than Rs. 1 Crore, therefore, assessee would be entitled for deduction under both the provisions. He has submitted that 95% grant-in-aid by Punjab Government was for expenditure on salary etc. and vocational course grant is received from the UGC for running vocational course. Donation from Hansaliwale Santji was meant for building purposes and other donations have been received for specific purposes, therefore, there is no infirmity in the order of ld. CIT(Appeals) in allowing relief to the assessee.

6. I have considered rival submissions. The total receipts of the assessee have been considered by the Assessing Officer after considering the grants received by assessee, the Assessing Officer found that the grant received by the assessee is only 25.6% of the total receipts. Therefore, Assessing Officer did not allow benefit to the assessee under section 10(23C)(iiiab) of the Act. The ld. DR referred to the provisions of Rule 2BBB of the IT Rules in which 50% of the total receipts have been prescribed for considering whether assessee is substantially financed by the Government for any previous year. The ld. DR admitted that the said rule is applicable and inserted into Act w.e.f. 12.12.2014, therefore, this rule would not apply to the assessment year under appeal i.e. 2003-04. Even in the ground of appeal, the revenue has contended that the total finance received from the Government was only 25.6% of the total receipts as is mentioned by the Assessing Officer in the assessment order as well. Hon'ble Karnataka High Court in the case of DIT(Exemptions) Vs Dhamapakasha Rajakarya Prasakta B.M. Sreenivasaiah Educational Trust 372 ITR 307 held as under :

“The assessee was running a number of educational institutions. The Assessing Officer, for the assessment years 2003-04 and 2005-06, held that the assessee was not entitled to the benefit claimed under section 11 of Income-tax Act, 1961. He did not go into the question of exclusion claimed by the assessee under section

10(23C)(iiiab). The Commissioner (Appeals) granted the relief to the assessee but he declined to grant the relief under section 10(23C)(iiiab). The Tribunal granted relief to the assessee. On appeals:

Held, dismissing the appeals, that the material on record disclosed that the Government has financed the assessee-institutions and its share was 25 cent. It was not in dispute that the assessee is carrying on its activities of imparting education. It is not existing for the sake of profit-making. When 25 per cent, of the finance to the assessee-institutions flowed from the Government it constituted substantial finance and, therefore, it satisfied all the legal requirements provided under section 10(23C)(iiiab)".

7. In this judgement, Hon'ble High Court considered that when 25% of the finance to the assessee institution is received from the government, it constitute substantial finance and satisfied the requirements of Section 10(23C)(iiiab) of the Act. It is not in dispute that assessee solely exists for educational purposes. Therefore, assessee is entitled for deduction/exemption under section 10(23C)(iiiab) of the Act. Further, the ld. CIT(Appeals) found that assessee's total receipts were of Rs. 1.48 Cr out of which 95% grant-in-aid was Rs. 40,01,416/-, vocational course grant was Rs. 9 lacs. Grant-in-aid received from the government and from UGC would not constitute the receipts of educational institution. Further, donations are meant for specific purposes i.e. for building purposes and other donations

were also specific towards the corpus of the assessee. Therefore, grant-in-aid given by the Punjab Government towards payment of salary could not be constituted as part of the receipts of the assessee. Similarly, receipts from UGC for running vocational course would not be receipt of the assessee. Donations are meant for specific building purposes, therefore, ld. CIT(Appeals) was justified in holding that these are not receipts of the assessee educational institution. When these amounts are reduced from the total receipts of the assessee, the total receipts from educational institution would be less than Rs. 1 Crore. Therefore, assessee would be entitled for deduction/exemption under section 10(23C)(iiiad) of the Income Tax Act. I do not find any infirmity in the order of the ld. CIT(Appeals). I confirm his findings and dismiss appeal of the revenue.

7. In the result, departmental appeal is dismissed.

Order pronounced in the Open Court.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated : 20th July, 2016.

'Poonam'

Copy to:

The Appellant, The Respondent, The CIT(A), The CIT, DR

Assistant Registrar, ITAT
Chandigarh.