

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SMT KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA Nos.1082/Mum/2022 to 1086/Mum/2022  
(Assessment Year :2013-14 to 2017-18)**

M/s. Institute of Chemical Technology University of Mumbai Nathalal Parikh Marg Matunga, Mumbai-400019	Vs.	National Faceless Assessment Centre(NFAC) Delhi-DS Commissioner of Income Tax (Appeals), Income Tax Department 1 Delhi
<b>PAN/GIR No.AAATI4951J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Yogesh Thar
Revenue by	Shri Ujjawal Chavan
<b>Date of Hearing</b>	<b>10/11/2022</b>
<b>Date of Pronouncement</b>	<b>28/11/2022</b>

**आदेश / O R D E R**

**PER BENCH:**

These appeals in ITA No.1082/Mum/2022 to 1086/Mum/2022 for A.Yrs.2013-14 to 2017-18 arise out of the order by the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) in appeal Nos.CIT(A)-1, Mumbai/10496/2016-17, CIT(A)-1, Mumbai/10731/2016-17, CIT(A)-1, Mumbai/10350/2017-18, CIT(A)-1, Mumbai/10522/2018-19 & CIT(A)-1, Mumbai/10651/2019-20 dated 16/03/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/02/2016, 28/11/2016,15/12/2017 & 9/12/2018 respectively by

the Id. Asst. Commissioner of Income Tax (Exem)-1 (1), Mumbai (hereinafter referred to as Id. AO).

1.1. Identical issues are involved in all these appeals and hence, they are taken up and disposed of by this common order for the sake of convenience.

1.2. Both the parties mutually consented to take A.Y.2013-14 as the lead case and the decision rendered thereon would apply with equal force for other assessment years also in view of the identical facts except with variance in figures.

2. The assessee has raised the following grounds of appeal for 2013-14:-

*“The below-mentioned grounds of appeal are taken without prejudice to one another:*

- 1. On the facts and circumstances of the case. The DS Commissioner of Income Tax (Appeals), Income Tax Department 1 (NFAC), Delhi has erred in concluding net consultancy fees amounting to Rs 36,59,627/- through its professors to various organizations is not exempt from tax.*
- 2. The DS Commissioner of Income Tax (Appeals), Income Tax Department 1 (NFAC), Delhi failed to appreciate that the activity in question is not covered by the definition of business.*
- 3. The DS Commissioner of Income Tax (Appeals), Income Tax Department 1 (NFAC), Delhi has failed to appreciate that the case of the appellant is covered u/s 10(23C) of the Income Tax Act.*
- 4. The DS Commissioner of Income Tax (Appeals), Income Tax Department 1 (NFAC), Delhi has erred in concluding that the earning of Rs. 36,59,627/- is not incidental to the objectives for which the appellant (ICT) is formed.*

5. *The DS Commissioner of Income Tax (Appeals), Income Tax Department 1 (NFAC), Delhi has erred in concluding that the consultancy fees earned for research purpose is not charitable in nature.*

6. *The DS Commissioner of Income Tax (Appeals), Income Tax Department 1 (NFAC), Delhi has failed to appreciate the fact that the appellant is a deemed university and well known research institute in the country and is not a business organization.*

7. *Notwithstanding the above the DS Commissioner of Income Tax (Appeals), Income Tax Department 1 (NFAC), Delhi in not considering the fact that consultancy projects is one of the parameters considered by the NAAC while granting accreditation to any University.*

8. *The Appellant is entitled to exemption under section 10(23C)(iiiab) and/or section 10(23C)(vi). However, when the appellant applied for the said exemption, it was refused inter-alia on the ground that the Appellant/applicant was entitled to exemption u/s 10(23C)(iiiab).*

9. *The Appellant prays that relief be granted by not treating the fees received as business income but income which is exempt under 11(a) of the Income tax Act, 1961 or grant such other relief as maybe deemed just and fit under the facts and circumstances of the case*

10. *The Appellant craves leave to add, alter any ground of appeal at the time of hearing of the appeal”*

3. We have heard rival submissions and perused the materials available on record. Though the assessee has raised several grounds, we find that the effective issue to be decided is with regard to disallowance of claim of exemption u/s.11 of the Act in respect of consultancy fee received by the assessee. The assessee has also raised the alternative ground claiming exemption u/s.10(23C) of the Act. The assessee was established as a Department of Chemical Technology on 01/10/1933 by University of Mumbai. The assessee Institute is basically undertaking research in the field of chemical engineering and providing training. With paucity of time, assessee was granted autonomy under University Grants Commission (UGC) Regulations and converted into an independent Institution on 26/01/2002. Subsequently, on the recommendation of

Government of Maharashtra and University of Mumbai, the assessee was granted deemed university status by the University of Human Resource Development, Government of India on 12/09/2008, with all the provisions of UGC for funding and support as the state owned deemed university. When the assessee was part of Mumbai University, the income earned by it formed part of income of the Mumbai University and was exempt u/s.10(23C) of the Act. For the A.Y.2013-14, the assessee filed its return of income u/s.139 of the Act on 10/01/2014 declaring 'nil' income after claiming exemption u/s.11 of the Act. The assessee is registered u/s.12A of the Act vide order of Director of the Income Tax (Exemptions) Mumbai granting Registration vide Registration No.39711 dated 28/06/2005 and also has approved for exemption u/s.80G of the Act. The Id. AO, in the course of assessment proceedings, noticed that during the year under consideration, the assessee received consultancy fee. The Id. AO called upon the assessee to explain why the consultancy fee received should not be treated as business income and brought to tax u/s.11(4A) of the Act. The assessee in response submitted that certain projects were undertaken with a view to carry out research and helped the students/fellows of the Institution to gain actual working experience in live projects in the subject during the course of their studies. The training session helps in imparting the results of the research to the industry, hence, serves as a practical experience and at the same time it helps the Institute in giving research in new projects. It was submitted, out of the total fee received from such projects, only 1/3<sup>rd</sup> is taken by the assessee and the balance amount is paid to the faculty who undertakes the research project. It was also submitted, the Institution's share is mainly to cover the cost of infrastructure, laboratory facilities provided by the institution for undertaking the research and administrative expenditure. Thus, it was submitted, the activities undertaken by the assessee is not in

the nature of business but only for research and training purpose and therefore is part of its main activity of imparting education on the latest technical development in the field of chemical technology being a leading training Institution. The Id. AO however, did not heed to the aforesaid submissions of the assessee. He observed, nowhere in the objects of the Institution the assessee is required to provide consultancy service. Further, he observed, while making payment of consultancy fee, major companies have deducted tax under section 194C and 194J of the Act. Out of the receipt of consultancy fee, the assessee has shown payment to two professors which indicates that professionals were engaged in the activity of consultancy under the roof of the Institution and there is no major role of students for education purpose. The Id. AO concluded that the intention of the assessee is to make profit which is further strengthened from the fact that the assessee is not maintaining any separate accounts as envisaged under section 11(4) and (4A) of the Act and accordingly, the revenue earned from consultancy activity cannot be regarded as charitable in view of the provisions of section 2(15) r.w.s 11 and 12 of the Act. Accordingly, the Id. AO disallowed assessee's claim of exemption only with regard to its share in consultancy fee received, though, he allowed assessee's claim of exemption under section 11 of the Act in respect of balance income. The Id. AO while making this observation also placed reliance on the decision of this Tribunal in assessee's own case for A.Y.2010-11 in ITA No.3808/Mum/2015 dated 28/10/2015 wherein the said receipt was held to be taxable u/s.11(4A) of the Act. This action of the Id. AO was upheld by the Id. CIT(A).

3.1. Though the Id. AO had placed reliance on the decision of this Tribunal for A.Y.2010-11 in assessee's own case, we find that this Tribunal for A.Yrs.2011-12 and 2012-13 in assessee's own case in ITA

Nos. 6111& 6922/Mum/2016 respectively dated 15/01/2020 had addressed the very same issue and restored the matter to the file of the Id. AO by observing as under:-

6. We have considered rival submissions and perused the material on record. As regards the assessee's claim of exemption under section 11 of the Act, in respect of 1/3rd share received from consultation fee, we must observe that while deciding identical issue in its own case in assessment year 2010-11, the Tribunal has upheld the decision of the Departmental Authorities in disallowing assessee's claim of exemption under section 11 of the Act in respect of consultancy fee. On a perusal of the aforesaid order of the Tribunal passed in ITA no.3808/Mum./Institute of Chemical Technology 2015, dated 28th October 2015, for the assessment year 2010-11, it is observed that the Tribunal has mainly proceeded on the basis that the consultancy fee received by the assessee is an activity in the nature of trade, commerce or business or an activity of rendering any service in relation to any trade, commerce or business for a fee, hence, is covered under the proviso to section 2(15) r/w section 11(4) and 11(4A) of the Act. To overcome the effect of the aforesaid decision the contention of the assessee is, the proviso to section 2(15) of the Act is not applicable to the activity of education. It is relevant to observe, in the course of hearing before us, the assessee has filed certain additional evidences, such as, approval of AICTE, approval of Government as deemed university, order passed by the learned Chief Commissioner of Income Tax under section 10(23C)(vi) of the Act etc. In our opinion, the additional evidences filed by the assessee will have a crucial bearing on the issue, hence, we are inclined to admit them. On a perusal of the additional evidences filed before us, prima facie, we are of the view that the assessee has been recognized as a deemed university, hence, falls within the category of university/other educational institution covered under section 10(23C)(iiib) or 10(23C)(vi) of the Act. Further, it has been recognized as an educational institution by competent authorities of the Government. Now it is fairly well settled that the proviso to section 2(15) of the Act applies only to the activity of "the advancement of any other object of Institute of Chemical Technology general public utility" as per the definition of charitable purpose under section 2(15) of the Act. It is the contention of the assessee that since it is engaged in the activity of providing education, the proviso to section 2(15) of the Act is not applicable. The aforesaid aspect has not been examined or dealt with by the Tribunal in assessment year 2010- 11 probably because no pleading to that effect was taken by the assessee. Be that as it may, in our considered opinion, the contention of the assessee regarding applicability of the proviso to section 2(15) of the Act requires examination keeping in view the decision of the Hon'ble Jurisdictional High Court in DIT (E.) v/s Lala Lajpatrai, [2016] 383 ITR 345 (Bom.), wherein, the Hon'ble Jurisdictional High Court has held that the test to determine as to what would be a charitable purpose within the

*meaning of section 2(15) of the Act is to ascertain what is the dominant object/activity. The Court has observed that if the dominant object is the activity of providing education, it will be charitable purpose under section 2(15) of the Act, even though, some profit arises from such activity. Therefore, assessee's contention regarding applicability of proviso to section 2(15) of the Act requires examination. Further, assessee's claim of exemption u/ 10(23C)(iiiab) or 10(23C)(vi) of the Act also requires examination keeping in view the orders passed by the learned Chief Commissioner of Income Tax, Mumbai, under section 10(23C)(vi) of the Act and also considering the fact that the assessee has been recognized as a deemed university Institute of Chemical Technology and receiving substantial grant from the Government. Since the aforesaid claim of the assessee has not at all been examined by the Departmental Authorities, we are inclined to restore the issue to the file of the Assessing Officer for re-examination and direct him to adjudicate the issue keeping in view the additional evidences filed by the assessee and the decisions to be cited before him. We make it clear that the Assessing Officer must consider all the contentions of the assessee with regard to the applicability of the proviso to section 2(15) of the Act as well as the claim of exemption under section 10(23C)(iiiab) or under section 10(23C)(vi) of the Act. Needless to mention, the Assessing Officer must provide reasonable opportunity of being heard to the assessee before deciding the issue through a speaking order. Grounds are allowed for statistical purposes.*

*7. In the result, assessee's appeals are allowed for statistical purposes.*

3.2. The Id. AR also drew our attention to the objects of the University Grants Commission Scheme imposing guidelines of Incentives for Resource Mobilisation which is enclosed in pages 84-87 of the paper book. In the said guidelines under the caption 'objectives of the scheme', we find that UGC had specifically provided in encouraging University to provide consultancy on payment basis not only to the industries but to the Government and other bodies and society at large on vital issue of national importance. This categorically goes to prove that the assessee institution is mandated / advised to provide consultancy on payment basis. Further, we find from the notification issued by All India Council for Technical Education (AICTE) dated 05/03/2010, it also provides for consultancy training for which AICTE shall work out suitable model for the purpose of revenue sharing between Institutions and consultant teachers

providing in the Indian Institution of Technology, Indian Institute of Management and other Institutions may be taken into consideration. The copy of said notification is enclosed in pages 88-118 of the paper book.

3.3. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove in assessee's own case for A.Yrs.2011-12 and 2012-13 referred to supra, we deem it fit to restore this appeal to the file of the Id. AO to decide the issue. In the light of the aforesaid guidelines of UGC and AICTE notification and in accordance with law. The assessee is also at liberty to furnish further evidences, if any, in support of its contentions. Needless to mention that the assessee be given reasonable opportunity of being heard. Accordingly, the grounds raised by the assessee for A.Y.2013-14 are allowed for statistical purposes.

3.4. As stated supra, the decision rendered for A.Y.2013-14 shall apply with equal force for A.Yrs. 2014-15, 2015-16, 2016-17 and 2017-18 in view of the identical facts except with variance in figures.

**4. In the result, appeals of the assessee are allowed for statistical purposes.**

Order pronounced on 28/11/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
JUDICIAL MEMBER

Mumbai; Dated 28 /11/2022  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**



1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
**ITAT, Mumbai**