

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 145/Kol/2022**  
**Assessment Year: 2017-18**

Shri Venkateshwara Educational Institute (PAN: AABTS 6052 K)	Vs.	ITO(Exemption), Ward-1(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	22.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.02.2023
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, FCA
For the Respondent/ राजस्व की ओर से	Shri Biswanath Das, CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Exemption)-Kolkata (hereinafter referred to as the Ld. CIT(E)"] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 27.01.2022 for the AY 2017-18.

2. The only common issue raised in various grounds of appeal by the assessee is against the order of Ld. CIT(E) holding the assessee has not fulfilled the requirements

of Section 10(23C)(iiiad) of the of the Act by ignoring the fact that the assessee is existing solely for educational purposes and not for purpose of profit and its annual receipts during the year is less than Rs. 1 crore.

3. Facts in brief are that the assessee filed return of income on 31.08.2017 declaring total income of Rs. 3,33,900/-. The case of the assessee was selected for complete scrutiny and statutory notices were duly issued and served on the assessee. In response to the notice, the assessee furnished the details in the E-proceedings in consonance with the requisition/directions made in the notice issued u/s 142(1) of the Act. Pertinent to mention that the assessee is engaged in running an educational institution and registered u/s 12A/12AA of the Act vide order No. DIT(E)/186/8E/86-87 dated 25.06.2007. Finally the AO framed the assessment u/s 143(3) of the Act accepting the returned income thereby accepting the claim of the assessee u/s 10(23C)(iiiad) of the of the Act.

4. The Ld. CIT(E) observed from the assessment records that during the year the assessee has derived gross total income of Rs. 1,09,82,810/- from dividend, interest and surplus from sale of investments and has also incurred an expenses amounting to Rs. 41,83,984/- on running of school and thus ,after claiming deduction of other miscellaneous expenses , has declared a surplus of Rs. 58,92,648/-. The Ld. CIT(E) further observed that though there was no receipt from any school, it has claimed the surplus as exempt u/s 10(23C)(iiiad) of the Act. The Ld. CIT(E) observed that since there is no receipt from educational institution/activities , the exemption u/s 10(23C)(iiiad) of the Act has wrongly been allowed thereby rendering the said assessment framed as erroneous and prejudicial to the interest of the revenue and accordingly exercised the revisionary power u/s 263 of the Act by issuing notice u/s 263 of the Act dated 21.12.2021 which was replied by the assessee vide letter dated 29.12.2021 submitting therein that the assessee is running and operating an educational institutions. The assessee also submitted that assessment was framed u/s 143(3) of the Act by the AO and the issue has been examined and only after through

scrutiny the exemption claimed 10(23C)(iiiad) of the Act has been accepted. The assessee has relied and referred to the decision of Hon'ble Apex Court before the Id CIT€ in the case of Malabar Industrial Co. Ltd. vs. CIT [2000] 109 Taxmann 66 (SC) explaining that the provisions of Section 263 of the Act is not applicable in a case of non-satisfaction of one of the two conditions. The assessee has submitted that for determining eligibility of exemption u/ s 10(23C)(iiiad) of the Act aggregate annual receipt from the educational activities was to be considered in lieu of gross receipts. The Ld. CIT(E) after considering the reply of the assessee and after analyzing the provision of Section 10(23C)(iiiad) came to the conclusion that AO has wrongly allowed the exemption u/s 10(23C)(iiiad) of the Act which has rendered the assessment order erroneous as well as prejudicial to the interest of the revenue and accordingly directed the AO to assess the income without allowing exemption u/s 10(23C)(iiiad) of the Act.

5. After hearing the rival contentions and perusing the material on record, we observe that undisputedly the assessee is engaged in running educational institution. The assessee trust is registered u/s 12A/12AA of the Act and has claimed exemption u/s 10(23C)(iiiad) of the Act. During the year, the assessee has derived gross income of Rs. 1,09,82,810/- by way of dividend, interest income and capital gain on sale of shares on mutual funds. The assessee has not charged any fee from the students who are studying in this school as the school is running in a very remote and backward area and assessee is imparting education to only uplift the educational standard of the students of that area. The assessee is also incurred expenses of Rs. 41,83,984/- for the purpose of running school and has surplus of Rs. 58,92,648/-. The Ld. CIT(E) also observed that the expenses were incurred to the extent of 38% on the educational activities by the trust while the surplus was 53.65% of total receipt and therefore held that society is not existing solely for the purpose of education. We observe from the trust deed of the assessee that the assessee is solely formed for the purpose of establishing schools and educational institutions. We also observe that there is not in dispute that it has engaged in running an educational institution. As a matter of fact

that the assessee is engaged in running school in which no fee is being charged from the students due to severe poverty and backwardness and the local residents are not sending their children to schools. We further note that the assessee has also incurred a sum of Rs. 41,83,982/- on various expenses connected with running and maintenance of the school. Considering these facts, we find merit in the contentions of the Ld. A.R. that the assessee is engaged in solely for educational purposes and not for the purpose of profit. The mere fact that the receipt of the assessee from sources other than the educational activities is more than Rs. 1.00 is not relevant and material. We are very clear in our understanding that the case of the assessee is squarely covered by the provisions of Section 10(23C)(iiiad) of the Act which provide that where the university and other educational institution existing solely for educational purposes and not for purposes of profit and if the aggregate annual receipts of such university or educational institution does not exceed Rs. 1 crore, the income would be exempt. In this case also, the receipt from the aggregate annual receipt from educational institution is less than Rs. 1 crore and therefore the provisions of Section 10(23C)(iiiad) of the Act are applicable and consequently the income of the institution is exempt from tax. We note that though the assessee trust has total receipt of Rs. 1,09,82,810/- by way of dividend, interest and capital gain on sale of shares on mutual fund but the funds are being accumulated in order to improve the infrastructure of the school and also to construct the new schools in accordance with the aims and objectives of the assessee trust. The case of the assessee is squarely covered by the decision of Co-ordinate Bench of Kolkata in the case of Swasthya Sewa Sansthan vs. CIT(E), Kolkata in ITA NO. 363/Kol/2020 for AY 2017-18 dated 09.02.2022 wherein the Co-ordinate Bench has held that the income earned by the said trust out of interest income from investments, has been accumulated to the extent of 88% and only 12% were applied for these activities and further held that the provisions of Section 10(23C)(iiiad) of the Act would be applicable to the said trust as the institution is engaged in running medical dispensary and providing free medical treatment of patients as aggregate annual receipt does not exceed Rs. 1 crore. The operative part is reproduced as under:

4. We have heard the rival contentions of both the parties and gone through the record. Before proceeding further, it will be appropriate to firstly reproduce the relevant provisions of Section 10(23C)(iii)ae of the Act, which reads as under:

"[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—

(iii)ae] any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed.]"

4.1. A perusal of the above relevant provision of the Act would show that there is no requirement under the aforesaid provision that the income/receipt of the Trust/Society should come from the charitable/philanthropic activity itself. The only requirement is that the hospital/institution should exist solely for philanthropic purposes and not for purposes of profit and the aggregate annual receipt of such hospital/institution should not exceed the amount of annual receipt as may be prescribed, which is Rs. 1 crore for the relevant assessment year under consideration. Admittedly, the income of the institution for the assessment year under consideration was less than Rs. 1 crore. There was no allegation that the institution/appellant Trust exist for any other purposes. There is no allegation that the institution/appellant Trust is existing for any purpose of profit, or is doing any activity for the purpose of profit. As per the facts on the file, the appellant Trust is running a dispensary wherein the doctors from both Allopathy and Homoeopathy discipline of medicine visit the dispensary and the treatment is free of charge and even medicines are also given free of cost to patients. There is no denial of the fact that the appellant Trust is running the dispensary purely on philanthropic purposes. Since, the aforesaid medical treatment is given free of charge, hence there is no question of earning of any income from such activity. As observed above, there is no requirement of provision Section 10(23C)(iii)ae] of the Act that the income should be earned from such philanthropic activity, rather it is otherwise that the institution/Trust has done such an activity purely for charitable/philanthropic purposes and under such circumstances expectation of income from such activity will be against the spirit of the aforesaid statutory provision. There is no allegation that the institution is doing any activity other than the aforesaid medical dispensary. The annual income of the appellant Trust is out of the interest income from the investment has been made of surplus lying with it. However, there is no allegation that such surplus is applied for any purpose other than the charitable activity. Now, the only allegation is that the appellant Trust has applied only 12% of its receipts and accumulated 88%. We find that under the provision of Section 10(23C)(iii)ae of the Act, there is no limit prescribed for application of receipts and accumulation of receipts. Therefore, the appellant Trust is within its rights to accumulate the receipts as per its requirement. It had been explained by the assessee Trust to the Ld. CIT(E) that the surplus of investment was being accumulated for spending in future years for the objects and purposes of the Trust like building of hospital, nursing home or any other similar medical institution.

5. In our view, all the conditions as prescribed u/s 10(23C)(iii)ae of the Act, have been fulfilled by the appellant Trust and there is no allegation that the appellant Trust is involved in any other activity for profit or does not exist for philanthropic purposes. Even in this case,

*all the facts are on the file, therefore there was no need for any further investigation by the AO as alleged by the Ld. CIT(E).*

6. *In view of the above discussion, the action of the Ld. CIT(E) in directing the AO to disallow the exemption granted u/s 10(23C)(iii) of the Act was not justified. The impugned order of the Ld. CIT(E) is, therefore quashed."*

In the present case also, the assessee has surplus approximately 53.65% of receipts for the purpose of future application which was accumulated in order to set up schools and educational institutions after applying 38% of the gross receipt in running and maintenance of the educational institution. Under these facts and circumstances, we are of the view that the provisions of Section 10(23C)(iii) are applicable and consequently the income of the institution is exempt as the assessee trust has satisfied all the conditions as prescribed under the provisions of Section 10(23C)(iii) of the Act. Besides there is no allegation by the Ld. CIT(E) that the assessee is involved in any other activity for profit and not for educational purposes. Accordingly we set aside the order of Ld. CIT(E) and allow the appeal of the assessee.

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

Order is pronounced in the open court on 17<sup>th</sup> February, 2023

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 17<sup>th</sup> February, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Venkateshwara Educational Institute, 78, Syed Amir Ali Avenue, Kolkata-700019
2. Respondent – ITO(Exemption), Ward-1(3), Kolkata
3. Ld. CIT(E)-Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata