

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" "A" BENCH: BANGALORE**

SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.911/Bang/2023
Assessment Year: 2016-17

M/s. D. Banumaiah's Educational Institutions New Sayyaji Rao Road Mysuru 570 024 PAN NO : AAATD5184E	Vs.	ITO Exemption Ward Mysore
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, A.R.
Revenue by	:	Sri Ganesh R. Ghale, Standing Counsel for Department

Date of Hearing	:	09.01.2024
Date of Pronouncement	:	09.01.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of NFAC passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") dated 10.10.2023 for the assessment year 2016-17. The assessee has raised following grounds of appeal:

- The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- The learned CIT[A] is not justified in upholding the refusal of the learned A.O. to rectify the Intimation u/s. 154 of the Act on the ground that the return of income filed by the appellant was not a valid one and hence, the CPC was correct in processing the same and determining taxable income without giving benefit of exemption that was available to the appellant either u/s. 10[23c][iiid] or for that matter u/s. 11 of the Act, under the facts and in the circumstances of the appellant's case.*
- The learned CIT[A] ought to have appreciated that the appellant had filed a valid return of income indicating that it was claiming exemption u/s. 10[23C][iiid] of the Act and thus, the intimation u/s. 143[1] of the Act*

ought to have been rectified considering the application of the appellant u/s. 154 of the Act by the learned AO.

- 4. Without prejudice to the above, the learned CIT[A] ought to have noted that the learned A.O. had refused to rectify the intimation by holding that the 12 educational institutions run by the appellant have to be considered as a single unit for purposes of grant of exemption u/s. 10[23C][iiia] of the Act, which view taken in the rectification proceedings is contrary to the binding judgement of the Hon'ble High Court of Karnataka in the case of Childrens Educational Society reported in 358 ITR 373 [Kar] and consequently, the order refusing rectification was opposed to law and facts of the appellant's case and thus, the learned A.O. ought to have been directed to allow the benefit of exemption u/s. 10[23C][iiia] of the Act under the facts and in the circumstances of the appellant's case.*
- 5. Without prejudice to the above, the learned CIT[A] ought to have noted that the appellant had secured registration u/s. 11 of the Act and in any case, the appellant had filed the audit report in Form 10B on 10.01.2019, which is before the order u/s. 154 of the Act, dated 05.02.2019 was passed and hence, the appellant was entitled to exemption u/s. 11 of the Act in the alternate having regard to the provisions of section 12A[i][b] as it stood for the year under appeal.*
- 6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

2. Facts of the issue are that the assessee claimed that they are a registered charitable trust running as many as 12 educational institutions and maintaining separate books of accounts for each institution. The assessee is registered u/s 12A of the Act vide Certificate No.GB-17/17/06/2005 issued by the CIT, Mysore. The return of Income for the A.Y. 2016-17 was filed on 30.03.2017 admitting 'Nil' income after claiming exemption to the tune of Rs.38,94,690/-. The return was processed u/s 143(1) of the Act on 02.02.2018 and CPC did not allow the exemption claimed u/s 10(23C)(iiia) of the Act. Hence, the assessee sought for rectification u/s 154 of the Act vide letter dated 18.01.2019. However, the AO noted that in the relevant assessment year, their gross receipt was more than Rs.1 crore and for claiming exemption u/s 10(23C)(iiia) of the Act, filing of Audit report along with tax return in

Form 10BB is mandatory w.e.f. 01.04.2016. It is also stated by the AO that Audit Report u/s 10(23C) of the Act in case of any fund or trust or institution or any University or other educational institution or any hospital or other medical institution referred to in sub-clause sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of Sec.10(23C), Form No.10BB (Rule 16CC), along with the return of income has to be uploaded, if the gross receipt exceeds Rs.1 crore. As per the AO, in the present case, it is noticed that the assessee trust has filed Form 10B electronically after receipt of rectification order dated 10.01.2019. It shows that the assessee already filed a rectification application and that was disposed of by the CPC and later, they filed present rectification application before the AO. The AO noted that total receipts of all 12 institutions is Rs.2,50,44,219/- as per the consolidated statements as furnished by the assessee as there was gross violation of the provisions of Sec.10(23C)(iiiad) of the Act, the AO passed the rectification order u/s 154 of the Act on 05.02.2019 by denying the claim of the assessee on the ground that Form 10BB has not been filed. The NFAC has confirmed the order of the Id. AO. Against this assessee is in appeal before me.

3. The Id. A.R. submitted that that while filing their return of Income on 30/03/2017, they had claimed exemption under Section 10(23C) of the Act without further mentioning the sub-sections under which the exemption was claimed. While filing the return the column pertaining to the Name of the Institutions run, grant received, aggregate turnover etc. had been left blank due to an inadvertence. Be that as it may, the legitimate claim of the assessee for exemption u/s. 10(23)(c)(iiiab) or (iiiad) of the Act cannot be denied on this count. In view of the above, he submitted that the CPC is not justified in denying the exemption claimed by the assessee by treating the aggregate annual receipts of all educational institutions together. He submitted that the denial of exemption is therefore opposed to law and facts of the assessee's case and the same deserves to be vacated.

3.1 The Id. A.R. further submitted that the learned A.O. in the order passed u/s 154 of the Act dated 05/02/2019, has denied the claim of the

assessee on the ground that Form No. 10BB has not been filed. He submitted that the assessee is not required to file Form No. 10BB at all in as much as the audit report in Form No. 10BB has to be filed only when exemption is being claimed u/s 10[23C][iv]/10[23C][v]/10(23C)[vi]/10[23C][via], which is not being claimed in the assessee's case. Thus, he submitted that viewed from this angle of the matter as well, the denial of exemption is opposed to law and facts of the assessee's case and the same deserves to be vacated.

4. On the other hand, ld. D.R. submitted that similar issue came for consideration before this Tribunal in the case of Navodaya Education Trust in ITA No.49/Bang/2021 dated 15.7.2021, wherein held that “when the assessee has not filed appeal against the intimation sent u/s 143(1) of the Act when the exemption u/s 11 is denied for non-filing the Form No.10 along with return of income and rectification proceedings u/s 154 of the Act is not possible.”

5. I heard the rival submissions and perused the materials available on record. In the present case, assessee has filed all the documents along with return of income stating that assessee is having 12 Educational institutions and the gross receipts was Rs.2,50,44,219/- as Annexure – 1 to the Income & Expenditure account. Further, it also made it clear in the return of income ITR – 7 under the head “Details of the Projects/Institutions run by you” as follows:

FORM ITR-7		INDIAN INCOME TAX RETURN <small>[For persons including companies required to furnish return under sections 130(4A) or 130(4B) or 130(4C) or 130(4D) or 130(4E) or 130(4F)] (Please see rule 12 of the Income-tax Rules, 1962) (Also see attached instructions for guidance)</small>		Assessment Year 2016-17	
Part A-1		Name (as mentioned in deed of creation/establishing/incorporation/formation) D BANUMALAI'S EDUCATIONAL INSTITUTIONS		PAN AAATD5184E	
Flat/Door/Block No		Name Of Premises/Building/Village		Date of formation/incorporation (DD/MM/YYYY) 02/10/1919	
Road/Street/Post Office		Area/Locality NEW SAYYAJI RAO ROAD		State KARNATAKA	
Town/City/District Mysuru		Pin code 570024		Income Tax Ward/Circle	
Office Phone Number with STD code 01 - 9880236923		Mobile No.1 9880236923		Fax Number	
Email Address 1 sasa@rediffmail.com					
Email Address 2					
Details of the projects/institutions run by you		Classification code (see instructions para 11d)		Approval/Notification/Registration No.	Approving/ registering Authority
Sl.No/Name of the project/ institution	Nature of activity (see instructions para 11d)				Section under which exemption claimed, if any (see instruction para 11e)
1 EDUCATION INSTITUTION	Charitable	Education	GB-17/17/06/2005	INCOME TAX	Section 10(23C)(iiiad)

***Section under which exemption claimed, if any (see instruction para 11c) Section 10(23C)(iiiad)**

FILING STATUS	(a)	Return filed [Please see instruction no.6]	12		
	(b)	Return furnished under section	139-4A		
	(c)	If revised/in response to defective, then enter Receipt No and Date of filing original return (DD/MM/YYYY)	Date of filing original return (DD/MM/YYYY)		
	(d)	If filed, in response to a notice u/s 139(9)/142(1)/148/153A/153C enter date of such notice, or u/s 92CD enter date of advance pricing agreement			
	(e)	Residential status?	RES - Resident		
	(f)	Whether any income included in total income for which for which claim under section 90/90A/91 has been made?	NO		
	(g)	Whether any transaction has been made with a person located in a jurisdiction notified u/s 94A of the Act?	NO		
	(h)	In the case of non-resident, is there a permanent establishment (PE) in India			
	(i)	Whether this return is being filed by a representative assessee? If yes, please furnish following information	No		
	OTHER DETAILS	(1)	Name of the representative		
(2)		Address of the representative			
(3)		Permanent Account Number (PAN) of the representative			
A		i	Where, in any of the projects/institutions run by you, one of the charitable purposes is advancement of any other object of general public utility then,-	No	
		a	i	whether there is any activity in the nature of trade, commerce or business referred to in proviso to section 2(15)?	
			ii	If yes, then percentage of receipt from such activity vis-à-vis total receipts	
		b	i	whether there is any activity of rendering any service in relation to any trade, commerce or business for any consideration as referred to in proviso to section 2(15)?	
			ii	If yes, then percentage of receipt from such activity vis-à-vis total receipts	
		ii	If 'a' or 'b' is YES, the aggregate annual receipts from such activities in respect of that institution		
		SLNo	Name of the project/institution	Amount of aggregate annual receipts from such activities	
B			University/ Educational Institution/ Hospital/ Other Institution eligible for exemption u/s 10(23C)(iiab), 10(23C)(iiac) 10(23C)(iiad) and 10(23C)(iiac)	No	
		SLNo	Section	Name of the University/ Educational Institution/ Hospital/ Other Institution	Aggregate annual receipts (Rs.)
C		i	Whether Registered u/s 12A/12AA?	Yes	
		ii	If yes, then enter Registration No.	B17	
		iii	Commissioner/Director of Income-tax (Exemptions) who granted registration	Karnataka	
		iv	Date of Registration (DD/MM/YYYY)	05/12/2008	
		v	Whether activity is,-	Charitable	
D		i	Whether approval obtained under section 35?	No	
		ii	If yes, then enter the relevant clause of section 35 and Registration No.		
		iii	Date of Approval (DD/MM/YYYY)		
		iv	Approving Authority		
		v	Whether research is,-		
		vi	In case of business activity in research, whether it is		
E		i	Whether approval obtained u/s 80G?	No	
		ii	If yes, then enter Approval No.		
	iii	Date of Approval (DD/MM/YYYY)			
F	i	Is there any change in the objects/activities during the Year on the basis of which approval/registration was granted?	No		
	ii	If yes, date of such change (DD/MM/YYYY)			
G	i	Whether a political party as per section 13A?	No		
	ii	If yes, then whether registered?			
	iii	If yes, then enter registration number under section 29A of the Representation of People Act, 1951			
H	i	Whether an Electoral Trust?	No		
	ii	If yes, then enter approval number?			
	iii	Date of Approval (DD/MM/YYYY)			
I	i	Whether registered under Foreign Contribution (Regulation) Act, 2010 (FCRA)?	No		
	ii	If yes, then enter Registration No.			
	iii	Date of Registration (DD/MM/YYYY)			

AUDIT DETAILS	iv	a	Total amount of foreign contribution received during the year, if any		
		b	Specify the purpose for which the above contribution is received		
	J	Whether liable to tax at maximum marginal rate under section 164?			No
	K	Is this your first return?			No
	Are you liable for audit?				Yes
	SLNo.	Section under which you are liable for audit		Date of audit report	
	i	12A(1)(b)		30/03/2017	
	a	Name of the auditor signing the tax audit report		NAGABHUSHANA ARADHYA	
	b	Membership no. of the auditor		203949	
	c	Name of the auditor (proprietorship/ firm)		ARADHYA & ASSOCIATES	
d	Permanent Account Number (PAN) of the proprietorship/ firm		ABVPA7902P		
e	Date of audit report		30/03/2017		
f	Date of furnishing of the audit report (DD/MM/YYYY)		30/03/2017		

Part B - II STATEMENT OF INCOME FOR THE PERIOD ENDED ON 31ST MARCH 2016						
STATEMENT OF INCOME	1	Income from house property [3c of Schedule HP] (enter nil if loss)			1	0
	2	Profits and gains of business or profession [as per item no. E 35 of schedule BP]			2	3894685
	3	Income under the head Capital Gains				
		a	Short term (A5 of schedule CG)	3a	0	
		b	Long term (B3 of schedule CG) (enter nil if loss)	3b	0	
		c	Total capital gains (3a + 3b) (enter nil if loss)	3c	0	
	4	Income from other sources [as per item no. 5 of Schedule OS]			4	0
	5	Voluntary Contributions (C of schedule VC)			5	0
	6	Gross income [1 + 2 + 3c + 4 + 5]			6	3894685
	If registered under section 12A/12AA, fill out items 7 to 13					
	7	Aggregate of income referred to in section u/s 11 and 12 derived during the previous year to the extent that is included in 6 above			7	0
	8	Voluntary contribution forming part of corpus as per section 11(1)(d) [(A1 + B1) of schedule VC]			8	0
	9	Application of income for charitable or religious purposes				
		i	Amount applied to charitable purposes in India during the previous year - Revenue Account	9i	0	
		ii	Amount applied to charitable purposes in India during the previous year - Capital Account [Excluding application from Borrowed Funds and amount exempt u/s 11(1A)]	9ii	0	
		iii	Amount applied to charitable purposes in India during the previous year - Capital Account (Repayment of Loan)	9iii	0	
		iv	Amount deemed to have been applied to charitable or religious purposes in India during the previous year as per clause (2) of Explanation to section 11(1)	9iv	0	
		a	If (iv) above applicable, whether option Form No. 9A has been furnished to the Assessing Officer			
		b	If yes, date of furnishing Form No. 9A (DD/MM/YYYY)			
		v	Amount accumulated or set apart for application to charitable purposes to the extent it does not exceed 15 per cent of income derived from property held in trust/ institution under section 11(1)(a)/11(1)(b) [restricted to the maximum of 15% of (7-8) above]	9v	0	
	vi	Amount in addition to amount referred to in (iv) above, accumulated or set apart for specified purposes if all the conditions in section 11(2) and 11(5) are fulfilled (fill out schedule I)	9vi	0		
	vii	Amount applied for charitable purpose outside India as per section 11(1)(c)	9vii	0		
	a	Approval number and date of approval by the Board	and			
	viii	Total [9i+9ii+9iii+9iv+9v+9vi+9vii]	9viii	0		
10	Additions					
	i	Income chargeable under section 11(1B)	10i	0		
	ii	Income chargeable under section 11(3)	10ii	0		
	iii	Income in respect of which exemption under section 11 is not available by virtue of provisions of section 13				
	a	Being anonymous donation at DIII of schedule VC to the extent applied for charitable purpose	10iia	0		
	b	Other than (a) above	10iiib	0		
	iv	Income chargeable under section 12(2)	10iv	0		
	v	Total [10i + 10ii + 10iia + 10iiib + 10iv]	10v	0		
11	Income chargeable u/s 11(4) [as per item no. E36 of Schedule BP]			11	0	
12	Total (6 - 8 - 9viii + 10v + 11)			12	3894685	
13	Amount of income exempt under any clause of section 10, to the extent that is included in 12 above			13	3894685	

***Amount of income exempt under any clause of section 10, to the extent that is included in 12 above - Rs.38,94,685/-**

14	Amount eligible for exemption under section 10(21), 10(22B), 10(23A), 10(23B), 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(vii)	14	
15	Amount eligible for exemption under section 10(23C)(iiia), 10(23C)(iiib), 10(23C)(iiic), 10(23C)(iiid), 10(23C)(iiie), 10(24), 10(46), 10(47)	15	3894685
16	Amount eligible for exemption under any clause, other than those at 14 and 15, of section 10	16	0
17	Income chargeable under section 11(3) read with section 10(21)	17	
18	Income claimed/ exempt under section 13A or 13B in case of a Political Party or Electoral Trust (fill Schedule LA or ET)	18	
19	Income chargeable to tax (6 - 8 - 9viii + 10v + 11 - 13 - 14 - 15 - 16 + 17 - 18)	19	0
20	Losses of current year to be set off against 19 (total of 2ix, 3ix and 4ix of Schedule CYLA)	20	0
21	Gross Total Income (19 - 20)	21	0
22	Income chargeable to tax at special rate under section 111A, 112 etc. included in 21	22	0
23	Deduction u/s 10A or 10AA	23	
24	Deductions under chapter VIA (limited to 21 - 22)	24	
25	Total Income [21-23-24]	25	0
26	Income which is included in 25 and chargeable to tax at special rates (total of (i) of schedule SI)	26	0
27	Net Agricultural income for rate purpose	27	
28	Aggregate Income (25-26+27) [applicable if (25-26) exceeds maximum amount not chargeable to tax]	28	0
29	Anonymous donations, included in 28, to be taxed under section 115BBC @ 30% (DIII of schedule VC)	29	0
30	Income chargeable at maximum marginal rates	30	

Schedule OA General

Do you have any income under the head business and profession?		Yes		
1 Nature of Business or profession (refer to the instructions)				
Sl.No.	Code	Tradename1	Tradename2	Tradename3
1	0705- 0705-Computer training/educational and coaching institutes	D BANUMAIAH'S EDUCATIONAL INSTITUTIONS		
2 Number of branches		2		12
3 Method of accounting employed in the previous year		3	Mercantile	
4 Is there any change in method of accounting		4	No	
5 Effect on the profit because of deviation, if any, in the method of accounting employed in the previous year from accounting standards prescribed under section 145A		5		
6 Method of valuation of closing stock employed in the previous year				
a	Raw Material (if at cost or market rates whichever is less write 1, if at cost write 2, if at market rate write 3)			
b	Finished goods (if at cost or market rates whichever is less write 1, if at cost write 2, if at market rate write 3)			
c	Is there any change in stock valuation method			
d	Effect on the profit or loss because of deviation, if any, from the method of valuation prescribed under section 145A	6d		

***Number of branches – 12**

Schedule BP Computation of income from business or profession			
INCOME FROM BUSINESS OR PROFESSION	A	From business or profession other than speculative business and specified business	
	1	Profit before tax as per profit and loss account	1 3894685
	2	Net profit or loss from speculative business included in 1 (enter -ve sign in case of loss)	2 0
	3	Net profit or loss from Specified Business u/s 35AD included in 1 (enter -ve sign in case of loss)	3 0
	4	Profit or loss included in 1, which is referred to in section 44AD/44AE	4 0
	5	Income credited to Profit and Loss account (included in 1) which is exempt	
	a	share of income from firm(s)	5(a) 0
	b	Share of income from AOP/ BOI	5(b) 0
	c	Any other exempt income	5(c) 0
	d	Total exempt income	5(d) 0
	6	Balance (1- 2 - 3 - 4- 5d)	6 3894685
	7	Expenses debited to profit and loss account considered under other heads of income	7 0
	8	Expenses debited to profit and loss account which relate to exempt income	8 0
	9	Total (7 + 8)	9 0
	10	Adjusted profit or loss (6+9)	10 3894685
	11	Deemed income under section 33AB/33ABA/35ABB	11 0
	12	Any other item or items of addition under section 28 to 44DA	12 0
	13	Any other income not included in profit and loss account/any other expense not allowable (including income from salary, commission, bonus and interest from firms in which company is a partner)	13 0
	14	Total (10 +11+12+13)	14 3894685
	15	Deduction allowable under section 32(1)(iii)	15 0
	16	Any other amount allowable as deduction	16 0
	17	Total(15 +16)	17 0
	18	Income (14 - 17)	18 3894685
	19	Profits and gains of business or profession deemed to be under -	
	i	Section 44AD	19i 0
	ii	Section 44AE	19ii 0
	iii	Total (19i to 19ii)	19iii 0
	20	Net profit or loss from business or profession other than speculative and specified business (18+19iii)	20 3894685
	21	Net Profit or loss from business or profession other than speculative business and specified business after applying rule 7A, 7B or 7C, if applicable (If rule 7A, 7B or 7C is not applicable, enter same figure as in 20)	A21 3894685
	B	Computation of income from speculative business	
	24	Net profit or loss from speculative business as per profit or loss account	24 0
	25	Additions in accordance with section 28 to 44DA	25 0
	26	Deductions in accordance with section 28 to 44DA	26 0
	27	Profit or loss from speculative business (24+25-26) (enter nil if loss)	B27 0
	C	Computation of income from specified business under section 35AD	
	28	Net profit or loss from specified business as per profit or loss account	28 0
	29	Additions in accordance with section 28 to 44DA	29 0
	30	Deductions in accordance with section 28 to 44DA (other than deduction under section,- (i)35AD, (ii)32 or 35 on which deduction/s 35AD is claimed)	30 0
	31	Profit or loss from specified business (28+29-30)	31 0
	32	Deductions in accordance with section 35AD(1) or 35AD(1A)	32 0
	33	Profit or loss from specified business (31-32) (enter nil if loss)	33 0
	D	Income chargeable under the head "Profits and gains" (A21+B27+C33)	
			D34 3894685
	E	Computation of income chargeable to tax under section 11(4)	
	35	Income as shown in the accounts of business under taking [refer section 11(4)]	E35 3894685
	36	Income chargeable to tax under section 11(4) [D34-E35]	E36 0

5.1 Thus, the assessee is having 12 units and gross receipts at Rs.2,50,44,219/- is already on assessment records. Now the assessee counsel's plea is that the assessee's case is to be examined in the light of judgement of jurisdictional High Court in the case of

CIT Vs. Children's Education Society reported in 358 ITR 373 (Karn.)
wherein held as follows:

"Held....(ii) That the Tribunal was correct in holding that the exemption in terms of the provisions of section 10(23C)(iiiad) was available to the assessee as annual receipts of each of the institutions of the assessee was less than the prescribed limit under the provision."

5.2 In my opinion, the mistake pointed out by the assessee in its petition filed u/s 154 of the Act on 5.2.2019 cannot be said to be debatable issue as this was covered by the judgement of jurisdictional High Court and the ratio laid down by that judgement to be applied to the facts of the case and ld. AO is directed to give effect to the petition filed by the assessee u/s 154 of the Act on 5.2.2019. Ordered accordingly.

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

Order pronounced in the open court on 9th Jan, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 9th Jan, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.