



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.2380/PUN/2024

Assessment Year : 2022-23

Institute Management Committee of Government ITI Peth, Behind BSNL Office, Balsad Road, Peth, Dist. Nashik – 422 208 Maharashtra PAN : AAATI7391A	Vs	ITO, Ward-1(1), Nashik
Appellant		Respondent

Assessee by	:	Shri Piyush Bafna and Shri Aakash Parakh
Revenue by	:	Shri Vinod Pawar
Date of hearing	:	24.12.2024
Date of pronouncement	:	10.01.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This appeal by the assessee pertaining to Assessment Year 2022-23 is directed against the order dated 23.09.2024 passed by Addl./JCIT(A)-1, Lucknow u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') which inturn is arising out of the Intimation Order passed u/s.143(1) dated 11.07.2023.



*ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth*

2. Tersely the facts of the case are that the assessee claiming to be an Educational Institution namely Institute Management Committee Government Industrial Training Institute, Peth, Nashik. It is also claimed that the assessee institute is funded by the Central Government, Ministry of Labour and Employment. Return of income for the A.Y. 2022-23 was filed on 31.10.2022 claiming exemption u/s.10(23) (iiiab) of the Act at Rs.26,13,473/-. However, the CPC vide its Intimation order dated 11.07.2023 passed u/s.143(1)(a) of the Act denied the exemption u/s.10(23C)(iiiab) on the ground that the assessee institution is not substantially financed by the Government and therefore not eligible for the exemption claimed by it. Accordingly, the income of the institute was assessed at Rs.26,13,473/-.

3. Aggrieved assessee preferred appeal before the Id. Addl/JCIT(A) but failed to succeed. The Id. Addl/JCIT(A) observed that the assessee is not recognized as a university by the University Grants Commission and that the assessee has not received any Government grant during the year and therefore not eligible for the exemption u/s.10(23C)(iiiab) of the Act.



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

4. Now the assessee is in appeal before the Tribunal challenging the impugned order.

5. The ld. Counsel for the assessee at the outset submitted that the case of the assessee is squarely covered by the decision of Coordinate Bench, Jodhpur in the case of *IMC of ITI vs. ITO reported in (2017) 82 taxmann.com 120 (Judhpur-Trib) dated 16.09.2016* wherein also the assessee institute was financed by Central Government and the interest received on such grant from the Government was utilized for the purpose of the Institute as per the Memorandum of Association and Rules and Regulations of Society. He also submitted that the assessee institute in the instant case received Grant from the Central Government in the preceding years of Rs.2.50 crore during F.Y. 2008-09. The said grant has been applied for making Fixed Deposit and the interest earned thereon is utilized for the objects of the institute. He also referred to the Profit and Loss Account and Income and Expenditure Account stating that out of the total gross receipt of Rs.26,13,473/- sum of Rs.19,32,473/- is the interest on Fixed Deposit and Bank Account and the remaining is the Fees collected from the Students. Therefore, the Government Grant is more than 50% of the gross receipts



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

and the assessee deserves to succeed for getting exemption u/s.10(23C)(iiiab) of the Act.

6. On the other hand, the ld. Departmental Representative vehemently argued supporting the orders of the authorities below.

7. I have heard both the sides and perused the record placed before me. The only issue that arises for my consideration is whether the ld. Addl/JCIT(A) was justified in confirming the action of the CPC in denying exemption u/s.10(23C)(iiiab) of the Act. Admittedly, the assessee institute is a Government Education Institute, and in the past received Grant of Rs.2.50 crore from the Central Government, Ministry of Labour and Employment under the Institute Development Plan for Government ITI in the scheme “Upgradation of 1396 Government ITIs through Public Private Partnership” and the said Grant has been invested in Fixed Deposit with Scheduled Bank. The main aim of the institute is to assist in improvement of standard of vocational training and skill development in the country as a whole and it functions on the principle ‘no-profit no-loss’. It indicates under the Public Private Partnership model assessee is working under the Ministry of Labour and Employment. The said grant has been applied for the objects of the institute by making



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

Fixed Deposit during the year. The institute earned interest of Rs.19,32,473/- on such Fixed Deposit and Savings Account and the remaining amount is collected 'Fees' from the students.

8. Section 10(23C) of the Act provides that '*any income received by any person on behalf of 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*'. Admittedly, the interest received on such grant from the Central Government was utilized by the assessee institute for the purpose of the Institute as per the Memorandum of Association and Rules and Regulations of Society.

9. So far as the aspect of substantially financed by the Government, I notice that ostensibly the assessee received grant of Rs.2.50 crore during the period 2008-09 to 2011-12 and the said Grant received by the institute from the Central Government was utilized making Fixed Deposit. So far as the gross receipts during the year is concerned, out of total gross receipts of Rs.26,13,473/- the institute has received Rs.19,32,473/- on account of Interest from Fixed Deposit made from Govt. Grant and Saving Bank Account and the same



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

accounts for more than 50% of Grant receipts during the year. These facts reveal that the assessee institute is substantially funded by the Central Government and the assessee would be entitled to exemption by virtue of provisions of section 10(23C)(iiiab) of the Act.

10. I find the Jodhpur Bench of the Tribunal in the case of *IMC of ITI vs. ITO (supra)* had an occasion to decide an identical issue by holding as under :

"2.6.1 have heard the rival contentions and perused the materials available on record. It is noted from the assessment order wherein the AO observed that the assessee was not granted registration under s. 12A(2) of the Act for the year under consideration. Hence, the assessee was not entitled to claim exemption under ss. 11 and 10(23C) of the Act. The AO thus observed that the interest income of Rs.16,05,233 was wrongly claimed by the assessee as exempt income which escaped from assessment. In appellate proceedings, the learned CIT(A) confirmed the action of the AO. It is further noted from records available before me that this institution came into existence by memorandum of agreement signed by the Director/Joint Secretary for and on behalf of the President of India, Principal Secretary, Technical Education Deptt. of Government of Rajasthan, Chairman, IMC on behalf of the industrial partners. This agreement was executed on 20th Feb., 2008. This "Memorandum/ agreement" has a binding instruction which has to be followed by all the three pillars who had signed this agreement. It is further noted from, the records that the assessee is not free to utilize the funds allotted by the Government, but it is mandatory to follow the terms and Instructions as laid down in the memorandum of agreement. It is further noted that Rs. 2.50 crores was received from the Directorate General of Employment and training, Ministry of Labour and Employment, Government of India, New Delhi vide its letter dt. 12th March, 2008 and as per the terms of agreement the amount was deposited in the nationalized bank. This deposit earned interest from



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

the bank and this amount was utilized for the purpose of utilization of fund as per memorandum of association and rules and regulations of the society. It is also noted from the records that the society is having no other fund except the grant by the Central Government and interest earned from that fund. The assessee also submitted it had neither received a single paise from any private entity nor in the form of donation. I have also taken into consideration the case laws relied on by the learned Authorised Representative of the assessee in which the Hon'ble High Courts and Tribunal have given their verdicts relating to the issue in question in favour of the assessee which are reproduced as under:

(1) CIT v. National Law School of India University (IT Appeal No. 483 of 2009, dt. 18th July, 2016) (Karnataka H.C.). The Hon'ble Karnataka High Court in this case observed as under:

"4. In that view of the matter, the findings of the Tribunal that the assessee is subsequently financed by the Government and therefore, the assessee is entitled to the benefit of exemption under s. 10(23C)(iiiab) of the IT Act, cannot be found fault with. Therefore, the substantial question of law is answered in favour of the assessee and against the Revenue."

(2) Akali Baba Phool Singh Educational Trust v. Dy. Director of IT (Exemption) [2011] 43 SOT 700/9 taxmann.com 59 (Delhi). The Tribunal Delhi Bench in this case observed as under:

"(6) We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below. We find that penalty in the present case was imposed by the AO under s. 272A(e). As per the provision of s. 273B, any penalty' imposed by the AO under sub-s. (2) of s. 271A is not imposable if the assessee proves that there was reasonable cause for the said failure. Penalty under s. 272A(2)(e) is imposable if the assessee fails to furnish the return of income, which he is required to furnish under sub-s. (4A) of s. 139. It is the submission by the learned Authorised Representative for the assessee that the assessee was under the bona fide belief that its income is exempt under s. 10(23C)(iiiab) and for this reason, the assessee was not required to file the return of income and



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

the provisions of sub-s. (4A) of s, 189 are not applicable to the assessee. When we examine the provisions of sub-s. (4A) of s. 139, we find that there is no specific reference to those assesseees who are covered by the provision of s. 10(23C)(iiiab). In this section, reference has been made to ss. 11 and 12, In addition to this reference was made to those assesseees also, who have income from voluntary contributions referred to in sub-cl. (iia) of cl. (24) of s. 2 as has been pointed out by the learned Departmental Representative. When we examine the provisions of sub-s. (iia) of sub-s. (24) of s. 2, we find that reference has been made to various other clauses of sub-s. (23C) of s. 10. Under this factual position, we are of the considered opinion that it has to be accepted that there was reasonable cause on which the assessee might be having a bona fide belief that the provisions of s. 139(4A) are applicable to it and hence the penalty imposed by the AO is not justified. We, therefore, delete the same in both the years."

(3) CIT v. Indian Institute of Management, [2015] 370 ITR 81/[2014] 226 Taxman 301/49 taxmann.com 136. The Hon'ble High Court in this case observed as under:

"(7) The facts of this case and the material on record clearly establish that the assessee is wholly or substantially financed by the Government and therefore, the assessee is entitled to the benefit of exemption under s. 10(23C)(iiiab) of the Act. In that view of the matter, the substantial question of law which was framed is answered in favour of the assessee."

(4) DIT (Exemptions) v. Dhamapakasha Rajakarya Prasakta B.M. Sreesnivasaiyah Educational Trust [2015] 372 ITR 307 (Mag.)/232 Taxman 575/59 taxmann.com 33 (Kar.). The Hon'ble High Court in this case observed as under:

"(5) Insofar as the claim of the assessee under s. 10(23C)(iiiab) of the Act is concerned, the material on record discloses that Government has financed the institutions and their share is roughly about 25 per cent. It is 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



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

finance to the assessee institutions flows from the Government it constitutes the substantial finance and, therefore, it has satisfied all the legal requirements provided under s. 10(23C)(iiiab) of the Act. In fact, this Court had an occasion to consider the said question in the case of CIT v. Indian Institute of Management [2015] 275 CTR (Kar) 424: [2015] 115 DTR (Kar) 251: [2015] 370 ITR 81 (Kar) and a finance to the extent of more than 10 per cent of the total finance would constitute substantial finance and, therefore, the finding recorded by the Tribunal that the assessee is entitled to the benefit exempted under s. 10(23C) (iiiab) of the Act cannot be found fault with

6. In the light of the aforesaid findings, in our view, it is unnecessary to go into the question whether the assessing authorities were justified in reopening the assessment and there was sufficient reasons and whether the assessee is entitled to the benefit under s. 11 of the Act also. Accordingly, we pass the following order:

Appeals are dismissed.

(5) Ganapathy Educational Trust v. Asstt. Director of IT (Exemption) [2013] 144 ITD 509/37 taxmann.com 285 (Chennai-Trib.)-order dt. 25th June, 2013. In this case, Tribunal, Chennai Bench observed as under:

"(18) Since we have held that the assessee is eligible for claiming exemption under the provisions of s. 10(23C) (iiiab), it is not mandatory for the assessee to seek registration under the provisions of s. 10(23C) (vi). Be that as it may, the assessee had applied for registration in the year 2002. nothing was communicated to the assessee regarding the rejection or allowing application of the assessee for registration. The assessee cannot be held responsible for the inaction of the Department, if the Department is in slumber, the assessee cannot be faulted.

(19) Thus, in view of the aforesaid findings, the appeal of the assessee is partly allowed in the aforesaid terms."



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

(6) *Sikkim Manipal University v. Asstt. CIT [2013] 33 taxmann.com 663*. In this case, Tribunal, Kolkata Bench observed as under:

"As the institution is substantially financed by the Government of Sikkim (Rs. 23.37 crores) and by the Deptt of North-Eastern Council of India to the extent of Rs. 4.78 crores, the case of the assessee is covered by the provisions of s. 10(23C)(iiiab) of the IT Act. The application in Form No. 56D seeking approval under s. 10(23C)(vi) is misconceived as assesseees "other than those mentioned in sub-cl. (iiiab) or sub-cl. (iiiad)" only can apply.

We find from the above order of Chief CIT, who has not granted approval under cl. (vi) only because he found that the assessee was substantially financed by the Government and therefore, its case was covered under cl. (iiiab). On one hand, Chief CIT could not granted approval under sub-cl. (vi) because assessee was covered under sub-cl. (iiiab). on the other hand, the AO and CIT(A) have held that assessee is not covered under sub-cl. (iiiab). This has created a very anomalous situation. Revenue as a whole should not be permitted to blow hot and cold in the same breath"

(7) *Senate of Serampore College v. Jt. CIT [2014] 52 taxmann.com 223/[2015] 67 SOT 89*. In this case, Tribunal, Kolkata Bench observed as under:

"7. As regards to the second issue, it was the contention of the learned counsel that the Serampore College exists solely for the purpose of education and not for the purpose of profit. Even if running of an institution leads to some surplus but the said profit is accumulated or ploughed back for the purpose and objects of the institution, it is deemed as existing not for the purpose of profit. He argued that the Serampore College fulfils wholly, both these requirements as existing solely for the purpose of education and not for the purpose of profit. According to him therefore, the College is covered and entitled to exemption under s. 10(23C)(iiiab) of the IT Act, 1961 as the provisions of s. 10(23C)(iiiab). provides that any university or other institution education existing solely for educational purpose and not for the



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

purpose of profit, and which is wholly or substantially financed by the Government. We are of the view that the argument of learned counsel that "The Serampore College" will fall under the category of 'other educational institution under s. 10(23C) and will be exempt under cl. (iiiab), since it exists solely for educational purpose and not for the purpose of profit, as no part of the profit or surplus is diverted for private gain. But only, condition to be examined factually is that, whether, on consolidation of the income expenditure accounts of 4 units of the Serampore College for relevant assessment year, can it be held that the college was substantially financed by the Government during the year as per provisions of the Act or not. Thus only fact to be determined is that whether, the Serampore College is substantially financed by the Government or not? In case the finding comes that the college is financed substantially then it is covered by the s. 10(23C)(iiiab) of the Act and is eligible for exemption. The Serampore College will then legally be governed by s. 10(23C) (iiiab) of the Act for its entire income including income of 'Senate of Serampore College'. The CIT(A) as well as the AO has not examined the claim as regards to the source of finance i.e. substantially financing by the Government or not, so as to eligibility' of the claim of exemption under s. 10(23C)(imab) of the Act, even though Chief CIT rejected the application for registration under s. 10(23C)(via) of the Act. The CIT(A) as well as the AO both, totally failed to consider whether the assessee is covered under s. 10(23C)(iiiab) of the Act or not, as is both were duty- bound to consider the claim and examine the same. The mere rejection of application under s. 10(23C) (via) of the Act cannot be reason to reject the claim of exemption under s. 10(23C)(iiiab) of the Act. Learned counsel for the assessee relied on the proposition laid down by the Hon'ble Bombay High Court in the case of CIT v. Parle Plastic Ltd. [2010] 236 CTR (Bom) 382: (2010) 48 DTR (Bom)7: (2011) 332 ITR 63 (Bom)-Panaji Bench and referred the same for the meaning of 'Substantial'. He also relied on the, Bangalore Bench in the case of ITO v. National Educational Society in ITA Nos. 472 and 472/Bang/2009, of Mumbai Bench 'E' in Senate of Serampore College asst. yrs. 2009-10 to 2010-11, Tribunal in the case of Asstt. Director of IT (Exemption) v. Vivek Education Society in ITA No. 5896/Mum/2011, dt. 7th Dec, 2012, of Delhi Bench of this



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

Tribunal in the case of Jat Education Society v. ITO in ITA Nos. 2542 and 2543/Del/2011, dt. 19th July, 2013 and of Chennai 'B' Bench of this Tribunal in the case of Ganapathy Educational Trust v. Asstt. Director of IT (Exemption) in ITA No. 159/Mad/2013, dt. 25th June, 2013, wherein, in all orders, the meaning of 'substantially financed by the Government is discussed. The AO is directed to consider these case laws and also any other case law of Hon'ble Supreme Court or any High Court available at the point of decision, and decide the same, whether the assessee's case falls in the category of 'wholly or substantially financed by the Government. In terms of the above, these two appeals of assessee are set aside to the file of the AO. Appeals of assessee are allowed for statistical purposes."

2.7 Considering the entirety of the facts and circumstances of the case, it is noted that the assessee institute is financed by the Central Government, and the amount granted by the Government is deposited in the nationalized bank. The interest so received by the institute from the bank is utilised for the purpose of institute as per memorandum of association and rules and regulation of the society. Taking into consideration of the above decisions as well as facts of the case, it is observed that the assessee institute is covered and entitled to exemption under s. 10(23C)(iiiab) of the IT Act, 1961 as the provisions of s. 10(23C)(iiiab) provides that any income received by any university or other institution education existing solely for educational purpose and not for the purpose of profit, and which is wholly or substantially financed by the Government is not includable in the total income. In this view of the matter, the appeal of the assessee is allowed."

11. Since the facts of the above case are identical to that of the instant case before me and also in view of my observations made hereinabove, I hold that the assessee institute is entitled for exemption u/s.10(23C)(iiiab) of the Act. Thus, the ld.Addl/JCIT(A) is erred in affirming the action of CPC. The



ITA No.2380/PUN/2024
Institute Management Committee
of Government ITI Peth

impugned order is therefore reversed. Effective grounds of appeal raised by the assessee are allowed.

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

Order pronounced on this 10th day of January, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th January, 2025.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.