

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 133 of 2014 (O&M)

Date of Decision: 17.9.2015

The Commissioner of Income Tax, Rohtak

....Appellant.

Versus

Jat Education Society, Rohtak

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Inderpreet Singh, Advocate for the appellant.

Mr. Pankaj Jain, Senior Advocate with
Mr. Madhur Sharma, Advocate,
Mr. Divya Suri, Advocate,
Mr. Deepanshu Jain, Advocate and
Mr. Sachin Bhardwaj, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of ITA Nos. 133 and 140 of 2014 as according to the learned counsel for the appellant, the issue involved therein is identical. For brevity, the facts are being taken from ITA No. 133 of 2014.
2. ITA No. 133 of 2014 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 19.7.2013 (Annexure A-III) passed by the

Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 2543/Del/2011, relating to the assessment year 2007-08, claiming the following substantial questions of law:-

- a. Whether Hon'ble ITAT is justified in law in deleting the addition of Rs.21,04,921/- made by the Assessing Officer by taxing the surplus as the assessee society viz. The Jat Education Society, which is the parent body of all the institutions, has not been granted registration u/s 12AA of the Act and thus was not eligible for exemption u/s 11; the Hon'ble ITAT on the other hand did not specifically adjudicate on this issue and erroneously held that the society is covered under provision of Section 10(23C)(iiiab) of the Act?
- b. Whether Hon'ble ITAT is justified in law in deleting the addition of Rs.72,20,522/- made by Assessing Officer by withdrawing the exemption u/s 10(23C)(iiiab) of the Act to one of institutes run by the society viz. All India Jat Heroes Memorial College as this institute received grant of 45.95% of the gross aggregate receipts which fell far short of 'substantially' financed by the Government; the Hon'ble ITAT allowed the exemption u/s 10(23C)(iiiab) by relying upon the judgment of Hon'ble Karnataka High Court in

ITA No. 1133 of 2008 wherein the grant of 34.33% was considered 'substantial' but the Revenue has not accepted this judgment and has filed appeal against the order in Hon'ble Supreme Court?

3. An application bearing CM No. 26348-CI of 2014 was filed by the learned counsel for the revenue for framing additional substantial question of law. This Court vide order dated 27.11.2014 allowed the said application and the additional substantial question of law was taken on record which is to the following effect:-

c. Whether the Hon'ble ITAT is justified in law in deleting the addition of Rs.7,16,023/- enhanced by the Ld. CIT(A) by withdrawing the exemption under Section 10(23C)(iiiab) of the Act to All India Jat Heroes Memorial College, an institution run by the assessee, by relying on an ispo facto erroneous non-contextual interpretation of the definition of the term 'Substantially financed by the Government' of the above section, by relying on unrelated statutory provisions of the Banking Regulation Act, 1949 and Section 40A(2)(a) of the Income Tax Act wherein the interpretation is qua an absolutely dis-similar fact of substantial interest of a person in a company or firm?

4. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein are that the assessee filed its return

on 31.10.2007 for the assessment year 2007-08 declaring nil income. The assessment was completed under Section 143(3) of the Act by the Assessing Officer vide order dated 29.12.2009 (Annexure A-I). The assessee was granted registration under Section 12AA of the Act from the financial year 2008-09 and, therefore, for the assessment year 2007-08, the exemption under Section 11 of the Act was not applicable. The assessee had claimed exemption under Section 10(23C)(iiiab) of the Act on the entire income as per the return of income. Accordingly, the assessee was assessed at an income of ₹ 93,25,443/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 10.3.2011 (Annexure A-II) dismissed the appeal holding that the assessee was not eligible for exemption under Section 10(23C)(iiiab) of the Act. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 19.7.2013 (Annexure A-III) allowed the appeal by relying upon its earlier order in the case of the assessee for the assessment years 2003-04 and 2004-05. The Tribunal further, *inter alia*, held that the institution/society run by the assessee had received substantial Government aid for the purpose of claiming exemption under Section 10(23C)(iiiab) of the Act. Hence, the present appeals.

5. We have heard learned counsel for the parties and perused the record.

6. After hearing learned counsel for the parties, in our opinion, the issue that arises for consideration in these two appeals is whether the Institution/Society run by the assessee received substantial contribution towards the corpus of the assessee or not so as to claim exemption under Section 10(23C)(iiiab) of the Act?

7. It would be expedient to reproduce clause (iiiab) of sub-section (23C) of Section 10 of the Act which reads thus:-

“Income not included in total income.

10. 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-

(1) to (23BBC) XX XX XX

(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.

(23D) onwards XX XX XX”

8. A plain reading of the said clause shows that any university or other educational institution existing for educational purposes and not for profit and is wholly or substantially financed by the Government is entitled to claim exemption from income tax under the Act.

9. Learned counsel for the assessee has relied upon the judgments of the Karnataka High Court in **Commissioner of Income Tax v. National Education Society, ITA No. 808 of 2009, Commissioner of Income Tax v. Indian Institute of Management (2011) 196 Taxman 276 (Kar.)** against which Special Leave Petitions have been dismissed by the Supreme Court and **Commissioner of Income Tax v. Deshiya Vidya Shala Samithi, ITA No. 1133 of 2008** decided on 8.2.2011 to urge that the assessee was substantially financed by the Government and was, therefore, entitled to benefit under Section 10(23C)(iiiab) of the Act.

10. The Karnataka High Court in **Indian Institute of**

Management's case (supra) applying its earlier decision in **National Education Society's case (supra)** where there was financing of 37.85% by the Government held the assessee to be entitled to eligible for exemption under Section 10(23C)(iiiab) of the Act with the following observations:-

“3. Learned counsel for the appellant assailing the impugned order contends that, admittedly, out of total receipt of ₹ 20.61 lakhs the grant from the Central Government is only ₹ 7.80 lakhs which works out to hardly 37.85 per cent. It does not exceed 50 per cent and, therefore, the assessee is not entitled to exemption. The Tribunal committed serious error in interfering with the order of assessment and, therefore, he submits that case for interference is made out.

4. This Court had an occasion to consider s. 10 (23C)(iiiab) in the case of CIT vs. National Education Society (IT Appeal No. 808 of 2009), where it was held as under:-

“Para 4. The word 'substantial' has not been defined under the IT Act. However, it has been the subject-matter of interpretation by various Courts in various contexts. The authorities in deciding what constitutes a 'substantial' portion of the finance have taken note of the statutory provisions contained in the Banking Regulation Act, 1949, where a person who has the

beneficial interest of more than 10 per cent of the total capital subscribed by all the partners of the firm has been held to be having substantial interest. Similarly, 'substantial interest' has also been defined in Explanation to s. 40A(2)(a) of the IT Act, where a person who is having voting power of not less than 20 per cent in the case of the company, is deemed to have substantial interest in the business of the company.

Para 5. In the case of assessee itself, when the grant was more than 50 per cent, exemption has been extended to the assessee. It is in this context, in the absence of any definition for the word 'substantial' in the Act, what is to be seen is, what is the total receipts and from what source. In that context, we have to find out whether the grant of 36.42 per cent of total receipts constitutes substantial finance by the Government.”

5. Applying the aforesaid law, in the instant case, the total income of the assessee from all sources is Rs.20.61 lakhs. Out of which, a sum of Rs.7.80 lakhs which represents only 37.85 per cent of the total income is financed by the Central Government, the other source of income being tuition fee, donations, etc. In that context, it is clear that this amount of Rs.7,80,000/- given as grant by the Central

Government to this assessee constitutes substantial finance by the Government. Accordingly, as rightly held by the authorities below the assessee qualifies for exemption under the aforesaid provision.”

11. In the present case, there has been financing by the Government when examined on individual institution basis to be ranging from 41% to 82% whereas when the percentage is taken for the society as a whole then it comes to 44.52% and 45.15% for the two years. The Tribunal after appreciation of evidence held that the Government was substantially financing and interested in the management of the respondent-assessee and, therefore, were eligible for exemption under Section 10(23C)(iiiab) of the Act. The relevant findings of the Tribunal are as under:-

“9. In the above decision, the Hon'ble Court has considered 34.33% as substantial aid for the purpose of eligibility under the above said sections. In the present case, the percentage of grant if considered individually for each institution come out within the range of 41% to 82% as noted in the order of Ld. CIT (A) on pages 5 & 6. If the percentage is considered for the society as a whole even then the percentage comes out at 44.52% and 45.15% in the two years. Therefore, from both angles, the percentage of grants in aid with respect to total receipts are more than 34.33% considered by the Hon'ble Karnataka High Court to be substantial. Therefore, following the above judgment with respect to definition of

substantial interest, we hold that the assessee/
institutions were substantially financed/aided by the
Government and hence are eligible for exemption u/s
10(23C)(iiiab).”

12. In view of the above, the Tribunal was right in holding that
the aid given by the Government to the assessee constitutes substantial
finance by the Government which had entitled the assessee to claim
exemption under Section 10(23C)(iiiab) of the Act.

13. No infirmity or perversity could be pointed out by the learned
counsel for the revenue in the findings recorded by the Tribunal. The
substantial questions of law as claimed by the revenue are answered
accordingly and consequently, finding no merit in the appeals, the same
are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 17, 2015
gbs

(RAMENDRA JAIN)
JUDGE