# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH AT NAGPUR

## INCOME TAX APPEAL NO.20 OF 2016

[The Commissioner of Income Tax (Exemptions), Pune .vs. Shri Shivaji Education Society, Shivaji Nagar, Amravati]

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders |
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Shri Anand Parchure, counsel a/w Shri Bhushan Mohta, counsel for the appellant,
Shri K.P. Dewani, counsel for the respondent.

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**CORAM : SMT. VASANTI A. NAIK AND MRS. SWAPNA JOSHI, JJ.**

**DATED : JUNE 07, 2016.**

By this Income Tax Appeal, the department-revenue challenges the order of the Income Tax Appellate Tribunal, Nagpur, dated 24.9.2015 holding that the receipts were utilised by the respondent-assessee for educational purposes and not for the purpose of profit and hence the said income would be exempted under Section 10(23C)(iiiab) of the Income Tax Act.

On hearing the learned counsel for the parties and on a perusal of the order of the Assessing Officer and the Income Tax Appellate Tribunal, it appears that the Tribunal has recorded a clear finding of fact that the respondent-assessee runs educational institutions solely for education purposes and not for the purpose of profit and 74.61% of the total receipts are received from the State Government. On the basis of the aforesaid finding of fact, the Tribunal has held that since the total receipts are utilised for the object of the society which runs the educational institutions, the receipts are exempted under Section 10(23C)(iiiab) of the Income Tax Act. While holding so, the Tribunal has held that the assessee-society is running 269 schools and colleges and is imparting education to a large number of students, the strength of the students being approximately 1,09,600/-. The Tribunal recorded a clear finding of fact that the assessee-society was substantially financed by the Government. It appears that though the Assessing Officer had held that 95% of the total receipts flow from the government, the appellate authority held that 74.61% of the receipts came from the Government. The Tribunal relied on the judgment in the case of **Aditanar Educational Institution, reported in 224 ITR 310 (SC)** and held that the respondent-Education Institution had come into existence for imparting education at the levels of schools and colleges and hence the same should be regarded as an Educational Institution within the ambit of provisions of Section (23C)(iiiab) of the Act. We find that in a case where the educational institution received government grant which constituted about 75% of the total receipts, this court has held that the said percentage would constitute a substantial part of the total receipts and it could be said that the institution is substantially financed by the Government. While holding so, in the unreported judgment dated 7.9.2015 in Income Tax Appeal No.107/2013, this court has referred to a judgment rendered by the Karnataka High Court where the government finance to the extent of 36.42% was held to be substantial. The judgment of the Karnataka High Court has been upheld by the Hon'ble Supreme Court. We find that the appeal filed by the department-revenue against the order of the Karnataka High Court has been dismissed by the Hon'ble Supreme Court and the said decision appears to have been upheld.

In the instant case, since it is not disputed that the main object of the society is to run educational institutions solely for educational purposes and since 74.61% of the total receipts flow from the State Government, there is no reason to interfere with the finding of the Tribunal that the respondent-assessee was entitled to the benefit of the provisions of Section 10(23C)(iiiab) of the Income Tax Act. The Tribunal was also justified in holding that as the amount of Rs.47,25,000/- was received by the respondent-assessee through donations and as the provisions of Section 10(23C) of the Income Tax Act refer to “any income” received by any person on behalf of an educational institution, that is wholly or substantially financed by the Government, the said amount also could not have been subjected to tax. On a reading of the provisions of Section 10(23C)(iiiab) of the Income Tax Act, the findings of the Tribunal need no interference.

Since no substantial question of law arises for determination in this appeal, the appeal is dismissed with no order as to costs.

**JUDGE** **JUDGE**

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