

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL (IT) NO. 400 OF 2016

The Commissioner of Income Tax
(Exemptions), Pune .. Appellant

Versus

Deccan Education Society .. Respondent

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• Mr. Suresh Kumar for the Appellant
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**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : NOVEMBER 26, 2018.

P.C.:

1. This appeal is filed by the Revenue challenging the judgment of the Income Tax Appellate Tribunal, Pune ("**the Tribunal**" for short) dated 13.7.2015. The appeal relates to the Assessment Year 2008-09. The Revenue has presented the following question for our consideration :

- “(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that exemption u/S. 10(23C)(iiiab) is available to the society as a whole, when in fact some of the institutions under the assessee trust are unaided and fall outside the purview of Section 10(23C)(iiiab) of the Act?”

2. The respondent - assessee is a registered Public Charitable Trust. The assessee runs a large number of educational institutions such as primary and higher secondary schools, arts, science, commerce and law colleges, vocational institutions like nursing, physiotherapy, management and nursing colleges. These institutions are situated at various places in the State of Maharashtra. The Trust was established by Lokmanya Tilak and is in existence since more than 125 years. For the said assessment year 2008-09 in the return filed, the assessee claimed exemption under Section 10(23C)(iiiab) of the Income Tax Act, 1961 ("**the Act**" for short). The assessing officer examined the audited accounts of the assessee in detail. In so far as the institutions which were receiving grants from the Government and those which did not receive such grants but whose total receipts were less than Rs. One Crore, the assessing officer did not disturb the assessee's claim of exemption. However, the assessing officer noticed that there were three educational institutions run by the assessee which did not receive grant from the Government and whose total receipts exceeded Rs. One Crore during the relevant

period. He was of the opinion that qua these institutions, the assessee's claim of exemption was not valid. Accordingly, he framed assessment. The CIT (Appeals) rejected the appeal of the assessee upon which the issue was carried in further appeal before the Tribunal. The Tribunal by the impugned judgment, allowed the assessee's appeal. The Tribunal rejected the Revenue's contention that the assessee was not existing solely for educational purpose. The Tribunal was of the opinion that the exemption under Section 10(23C)(iiiab) was in relation to the assessee and was not specific to the institutions individually run by the Trust. The Tribunal referred to and relied upon the Judgment of the Supreme Court in the case of **Aditanar Educational Institution Vs. Additional Commissioner of Income Tax** reported in **[1997] 90 Taxman 528 (SC)**.

3. Learned counsel for the Revenue submitted that the Tribunal committed serious error in allowing the assessee's appeal. He pointed out that there were three educational institutions run by the assessee trust which neither received Government grant and their income would not be exempt

since the total receipts exceeded Rs. One Crore. Qua these institutions, the assessee's claim of exemption was not valid. Learned counsel argued that in the decision in the case of Aditanar Educational Institution (supra), this question did not come up for consideration before the Supreme Court.

4. Having heard the learned counsel for the Revenue and having perused the material on record, in our opinion, the central question is whether the exemption under Section 10(23C)(iiiab) is specific to the assessee trust or whether such exemption can be examined by further bifurcating the position of different institutions which are run by the assessee trust. The Revenue's ground that the assessee trust did not exist solely for the purpose of educational activity, needs to be recorded for rejection. It is by now well settled through various series of judgments of the Supreme Court that an educational institution is not precluded from generating reasonable surplus. Merely because, in the process of running an educational institution, the surplus funds are generated, would not disqualify the institution from being an institution existing solely for the educational

purpose. In fact, this was a view taken by the Supreme Court in the case of Aditanar Educational Institution (supra).

5. Section 10(23C)(iiiab) grants exemption in relation to any income received by any person on behalf of any university or other educational institution existing solely for educational purposes and not for the purpose of profit, and which is wholly or substantially financed by the Government. This provision, thus, exempts the income received by a person on behalf of the institutions specifying the requirements of the said clause. The exemption is not relatable to the individual institution run under the common umbrella of a Trust. Therefore, if the assessee trust satisfies the statutory requirement noted above, the exemption provision would apply, irrespective of the fact that in isolated cases of a few institutions runs by such Trust, the requirement may not be seen to have been fulfilled. From the above, it is very clear that it is the trust or the society that has to apply for registration and claim exemption. Had it been the intention of the legislature to grant exemption only to the institutions individually or independently and not to

the society as a whole, the language would have been different. The society or trust may run more than one institutions. Therefore, the argument of the Revenue that it should be institution specific and not the society as a whole in our opinion is not correct.

6. Thus, we are broadly in agreement with the view expressed by the Tribunal. No question of law arises. The Income Tax Appeal is dismissed.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]