AFR

Court No. - 3

Case :- INCOME TAX APPEAL No. - 52 of 2013

Appellant :- Manas Sewa Samiti
Respondent :- Addl. Commissioner Of Income Tax
Counsel for Appellant :- Rahul Agarwal, Vishwjit
Counsel for Respondent :- C.S.C. I.T.,Gaurav Mahajan

Hon'ble Naheed Ara Moonis,J.
Hon'ble Saumitra Dayal Singh,J.

1. Heard Sri Rahul Agarwal, learned counsel for the appellant/assessee and Sri Gaurav Mahajan, learned counsel for the revenue.

2. Present appeal has been filed under Section 260-A of the Income Tax Act, 1961 (hereinafter referred as the Act) against the order of the Income Tax Appellate Tribunal, Agra Bench, dated 23.10.2012 passed in ITA No.29/Agra/2011 for the A.Y. 2007-08. By that order the Tribunal has dismissed the appeal filed by the assessee and upheld the assessment of the appellant's income at Rs.86,34,460/-, after denying the benefit claimed by the assessee under Section 10(23C)(iiiad) of the Act.

3. Upon earlier hearing, the question of law, on which the present appeal arises, was framed as below:

> *"Whether, in view of the law laid down in CIT Vs. Children's Education Society [2013] 358 ITR 373 (Kant.) and the order passed by this Hon'ble*

Court in CIT (Exemption) v. Chironji Lal Virendra Pal Saraswati Shiksha Parishad [2016] 380 ITR 265 (All), the order of the Tribunal denying the exemption under Section 10 (23C) (iiiad) and clubbing the voluntary contributions received by the appellant Society with the receipts of the educational institution is justified in law?"

4. Having heard the learned counsel for the parties, it transpires that the appellant/assessee Manas Sewa Samiti is a Society (hereinafter referred to as "Society"). It is registered under the Societies Registration Act, 1860. Under its registered objects, it established an educational institution in the name, Institute of Information Management and Technology at Aligarh (hereinafter referred to as "Institution"). For the previous year relevant to A.Y. 2007-08, undisputedly the said Institution received fees Rs. 85,95,790/- and interest on FDR Rs. 86,121/-. Thus the total receipts of the Institution were Rs.86,81,911/-. After deducting expenditure of the Institution, the excess of Income over Expenditure, Rs.38,54,310/- was carried to the Income and Expenditure Account of the Society. Also, undisputedly the Society received donations or subscription amount Rs.47,62,000/- and interest on FDR Rs.18,155/-.

5. With respect to the receipts arising from the Institution, the assessee claimed benefit of Section 10(23C)(iiiad) of the Act. Relevant to our discussion, that provision of law is quoted below:

"Section 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:-*

S. 10 (23C) *any income received by any person on behalf of*

(i) ……..

(ii) ……..

(iii) ……..

(iiia).....

(iiiaa).....

(iiiaaa).....

(iiiaaaa).....

(iiiab).....

(iiiac).....

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed."

6. It is also undisputed that in the relevant Assessment Year, the upper limit prescribed for such receipts was Rs.1 Crore, under Rule 2(BC) of the Income Tax Rules, 1962.

7. The assessing authority accepted the fact that the Society was running the Institution. He also accepted the fact that the total receipts of the Institution were below the prescribed limit of Rs.1 Crore. However, he proceeded to deprive the assessee of the benefit of Section 10(23C)(iiiad) of the Act since the aggregate of the fee receipts of the Institution and the receipts of the Society breached the prescribed upper limit of Rs.1 Crore. That

reasoning came to be approved and affirmed by Commissioner of Income Tax vide his order dated 15.3.2011, in Appeal No.59 of 2009. He rejected the claim made by the assessee on the further reasoning since the Institute was the only activity carried out by the Society, all donations received by the Society were attributable to that activity alone and therefore to the Institution. He further relied on the fact that the surplus of income over expenditure of the Institute was carried to the accounts of the Society.

8. The Tribunal has also affirmed that order on the further reasoning that there was no evidence that the donations had been received by the Society with any specific direction that they will form part of the corpus of the Institution. Reliance has also been placed on the fact that there exists no registration under Section 12AA of the Act. Hence the assessee was not entitled to the benefit and it did not exit solely for education purpose of imparting education.

9. In support of his submission, learned counsel for the assessee has relied on the decisions in the case of **CIT vs M/S Childrens Education Society** reported in ***(2013) 358 ITR 373 (Kar);*** **M/S Vivekanand Society of Education and Research vs. CIT another,** dated 29.12.2017 in ITA No.23/2014 and **a** division bench of this Court in *ITA No.258 of 2013* **(The CIT Alld. Vs. Wachaspati Madhupati Prani Sewa Sansthan)** decided on 30.10.2017.

10. On the other hand, Sri Gaurav Mahajan, learned counsel for the revenue has relied on a decision of the Supreme Court in **Visvesvaraya Technological University Vs. Assistant Commissioner of Income-tax** reported in ***(2016)384 ITR 37(SC)***.

11. Having considered the submissions advanced by the learned counsel for the parties and having perused the record, the benefit granted under Section 10(23C)(iiiad) is only with reference to an activity of running a University or other educational institution, existing solely for educational purposes. By virtue of Section 10(23C)(iiiad) such receipts are excluded from the income received by the "person", who may have run such University or other educational institution.

12. Thus, the benefit has been granted with respect to receipts arising from a specified activity. The benefit is not conditioned or restricted to the person who may have established or may have run such activity or who may have been in receipt of such receipts.

13. Though, obviously, the issue whether that benefit is available or not would arise only in the course of assessment proceedings of a person/assessee , who may have engaged in such activity, at the same time, it is not the intent of the Act to look at the aggregate income or receipt of such person for the purpose of granting the benefit under section 10(23C)(iiiad) of

the Act.

14. In fact, as lucidly explained in the decision of the Karnataka High Court, it is the receipt of each individual University or other educational institution that would be looked at to determine whether the receipt would qualify for the benefit conferred under Section 10(23C)(iiiad), read with Rule 2 BC of the Income Tax Rules, 1962.

15. In paragraphs 20, 21, 23 and 24 of the report in **CIT Vs. M/S Childrens Education Society (Supra)** decision, it was held as under:-

> *20. Now, we are concerned with the meaning to be attached to the word "aggregate annual receipt". The argument is, other educational institution referred to in the said sub-clause refers to all educational institutions run by the assessee and aggregate annual receipts of such other educational institutions means the aggregate of annual receipts of all such educational institutions put together. Otherwise, the use of the word "aggregate" loses its meaning. We find it difficult to accept the said argument.*
>
> *21. Firstly, if the word "aggregate annual receipts" of other educational institution is to be understood as clubbing of annual receipts of all educational institutions run by an assessee society, then it will also include the annual receipts of an educational institution which is wholly or substantially financed by the Government. If that was intention of the Legislature, they would not have introduced separate sub- clauses as (iii)(ab) and (iii)(ad). If such interpretation is placed, sub-clause (iii)(ab) becomes otiose. Therefore, it is not possible to*

place such an interpretation. If an assessee society is running several educational institutions, if some of them are wholly or substantially financed by the Government in terms of sub-clause (iii)(ab), the income on behalf of such educational institution received by the assessee is exempted from being computed the total income of the assessee. If the assessee is running other educational institutions which are not wholly or substantially financed by the Government, then the benefit of that exemption is also extended to the income derived from such educational institutions and received by the assessee under sub-clause (iii)(ad) reading with sub-clause (iii)(ad) along with Rule2BC. It was contended, the Legislature used the word "aggregate annual receipt" and "amount of annual receipts" and therefore, the provisions are not one and the same. The word "aggregate" has been defined in Chambers 21st Century Dictionary as under:

> *"aggregate - noun = a collection of separate units brought together, a total taken altogether, bring together."*
>
> *In Wharton's Law Lexicon, it is defined as thus:*
>
> *"a collocation of individuals, units or things in order to form a whole"*

23. No doubt, education has become a business, a very profitable business also. But it requires huge investment. It is the duty of the Government to provide education to all its citizens, as the Government is not able to shoulder the responsibility completely. Therefore, the field of education is now thrown open to private organizations. But for throwing open the field to the private operators, probably, the country would not have achieved in the field of education what it has achieved. Therefore, lot of funds are invested in running these educational institutions, either by creating

a Society or a Trust. In course of time, they have expanded their activity providing course in various subjects at various levels and for that purpose they have established more than one educational institution. Each educational institution is a separate entity controlled under various statutes for various purposes. May be the Management of these educational institutions would be in the hands of the Societies or the Trust, but for all other purposes they are different, independent entities. That is the reason why Section 10 (23)(c) is worded as under:

> *"Any income received by any person on behalf of..."*

24. Here "any person" refers to the assessee and "on behalf of" refers to such institutions. It may be an University, it may be an educational institution, it may be a hospital or other institutions of similar nature. As all such institutions are independent entity and they generate income and when that income is received by the assessee, it becomes the income in the hand of the assessee and it is such income which is sought to be excluded while computing the total income of the assessee under Section 10. The test prescribed under the aforesaid provision is not the income of the educational education. It is the aggregate annual receipts of such educational institution that is prescribed at Rs.1 crore. Therefore, irrespective of the expenditure incurred by those institutions, the exemption is based on the total receipts. Even if the word "aggregate" has to be understood as suggested by the Revenue as the annual receipts of such educational institutions put together, probably, the said provision regarding exemption would be of no use at all. Especially, if the society is running a medial college or any engineering college or other professional courses, then the annual receipt of each institution would run to

few crores and therefore, the very object of granting exemption to such genuine institution would be lost. Therefore, the word "aggregate annual receipt" has to be understood with the context in which it is used and the purpose for which the said provision was inserted, keeping in mind, the Scheme of the Act. Therefore, if an assessee is running several educational institutions, if any of them is wholly or substantially financed by the Government, then the income from such educational institution received by the assessee is not included while computing his total income. Similarly, income from each educational institution if they are not receiving any aid from the Government wholly or substantially in respect of which the aggregate annual receipt do not exceed Rs.1 crore received by the assessee, is also not included while computing annual total income of the assessee."

16. Similar view was taken by the Jammu and Kashmir High Court in ***M/s Vivekanand Society of Education and Research vs. CIT and another (Supra).*** It was held as under:-

13. On a plain reading of the above provisions, it is evident 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, if the aggregate annual receipts of such University or educational institution do not exceed the amount of aggregate receipts, as may be prescribed (which is Rs. 1 crore as per Rule 2BC of the said Rules), would not be included in the total income of that person.

14. It is not in issue that „the person" in the facts of the present case has reference to the assessee society. It is also not in issue that the

expression „educational institution" has reference to the two institutions of the assessee society. It is also not disputed that these two institutions exist solely for educational purposes and not for purposes of profit. It is, therefore, clear that there is a distinction between the expression „any person" and „educational institution", and that the two are not the same. Had it been the intention of the legislature to have limited the scope of the provision to the interpretation which has been given by the Tribunal, it could easily have said that, if the aggregate annual receipts of any person from all institution(s) do not exceed Rs. 1.00 crore then the income derived there from would not be included in the total income of that person. But, this is not the case here. The reference here is pointedly to the „aggregate annual receipts" of the educational institution. The expression, „educational institution" and „any person" do not refer to the same entity and are distinct and different insofar as Section 10 (23C) (iiiad) of the said Act is concerned.

15. In our view, therefore, where there are more than one such institutions, which are under a particular society or trust, such as the assessee society in the present case, the aggregate annual receipts of each of the educational institutions would have to be considered separately and not together. Thus, if there are two institutions A and B and if the aggregate annual receipts of the Institution A is less than Rs. 1.00 crore, then the income received by a person (such as the assessee society) on behalf of the Institution A, would not be included in the total income of that person (such as the assessee society). At the same time, if the aggregate annual receipts of Institution B exceeds Rs. 1.00 www.taxguru.inITA No. 23/2014 Page 6 of 8 crore, then any income received by any person on behalf of Institution B would be included in the total income of that person. Similarly, by

> *taking this logic further, if neither Institution A nor Institution B has aggregate annual receipts of Rs. 1.00 crore or more, any income received by any person on behalf of these institutions, would not form part of the total income for the purposes of income tax."*

17. Thereafter, the Jammu and Kashmir High Court concurred with the opinion of the Karnataka High Court in ***CIT Vs. Children's Education Society [2013] 358 ITR 373***.

18. A coordinate bench of this Court also appears to have offered a similar reasoning in ***ITA No.258 of 2013*** **(The Commissioner of Income Tax Alld. Vs. Wachaspati Madhupati Prani Sewa Sansthan)** wherein, it was observed as under:-

> "*We are in full agreement with the finding of the ITAT as we find that the assessee society is running a school and has admittedly received the tuition fee being the annual receipts below the prescribed limit of Rs.1 crore and according to us the exemption limit clearly provides the cut of figure of Rs.1 crore being the annual receipt of the educational Institution or the University, as the case may be, and not that of the total income of the society running the educational Institution or University. In the present case, the income of Rs.6,67,000/- towards the buildings/capital assets and Rs.4,01,900/- received towards donation cannot be part of the annual receipts of the University/ College/School. Therefore, in our considered opinion the assessee is entitled for exemption under Section 10(23C)(iiiad) as annual income of the assessee society did not exceed Rs.1 crore."*

19. Insofar as the decision of the Supreme Court relied upon by the learned counsel for the Revenue is concerned, it was a case pertaining to provision of Section 10(23C)(iiiab). The question that arose before the Supreme Court was whether the University receiving finance by the Government below one percent of its total receipts could be considered to be a University substantially financed by the Government. Those facts of law are not involved in the present case. Therefore, the said decision is found to be wholly distinguishable and hence inapplicable.

20. In the first place, for reasons given above, we find ourselves in complete agreement with the reasoning of the Karnataka High Court in ***CIT vs. Children's Education Society (Supra)*** as also the decision of the Jammu & Kashmir High Court in ***M/s Vivekanand Society of Education and Research vs. CIT and another (Supra).***

21. Next, we find, the reasoning adopted by the assessing authority as affirmed by the appellate authority and the Tribunal, wholly erroneous in law. As noted above, the benefit of Section 10(23C)(iiiad) being activity centric, the limit of Rs. 1 crore prescribed thereunder had to be seen only with reference to the fee and other receipts of theeligible activity/Institution. Admittedly, those were below Rs. 1 Crore. In the facts of the present case, the eligibility condition prescribed by law was wholly met by the assessee.

22**.** The further reasoning offered by the assessing authority to disallow that benefit, on account of excess of income over expenditure of the Institution having been carried to the Society, is extraneous to the issue involved in the present case.

23. The fact that the Institution did not exist on its own and was run by the Society could never be a valid consideration to disallow that benefit. It is clearly not contemplated under the Act. Here, we may further note, according to the assessing authority itself, there were two accounts maintained. One for the Institution and the other of the Society. After the Income and Expenditure account of the Institution had been made, its excess of Income over Expenditure were carried to the account of Society for taxation and other purposes. That did not and it could not lead to the inference that the receipts of the Society were also the receipts of the Institution. That reasoning is based on no material or evidence on record.

24. Legally, it is only a figment of imagination. Even in the computation of the income, the assessing authority has recognized the difference between the two receipts being "Surplus as per Income/ Expenditure A/c of college". It was taken at Rs. 38,54,310 and, "Surplus as per Income/Expenditure A/c of Society" of the of society which was taken at Rs. 47,62,000/-.

25. Once that difference of the receipts was

acknowledged by the assessing authority, there was absolutely no other material existing to treat the donations received by the Society to be receipts of the Institution.

26. Similarly, the further reasoning offered by the appellate authority to affirm the order of the assessing authority is wholly erroneous and contrary to law. Merely because the assessee Society was the person running the Institution, it did not cause any legal effect of depriving the benefit of Section 10(23C)(iiiad) which was activity specific and had nothing to do with the other income of the same assessee.

27. To complete the discussion, the Tribunal has also erred in looking at provisions Section 12 AA of the Act and the fact that the donations received by the Society may not have been received with any specific instructions. It is not relevant in the facts of the present case. It is so because here the assessee had only claimed the benefit of Section 10(23C)(iiiad) with respect to the receipts of the Institution, Information Management and Technology and it had not claimed any benefit with respect to the donations received by the Society.

28. In view of the above, the question of law is answered in the negative i.e. in favour of the assessee and against the Revenue. There would be no clubbing of the receipts of the Institution with the other income of the Society, for the purpose of

considering the benefit of Section 10(23C)(iiiad).

29. Appeal ***Allowed***. No order as to costs.

Order Date :- 5.10.2021
M. Tariq