

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

आयकर अपीलीय अधिकरण, न्यायपीठ "A" कोलकाता,

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER****ITA No.362/Kol/2022****Assessment Year: 2018-19**

The University of Burdwan C/o S. N. Ghosh & Associates, Advocates, 2, Garstin Place, 2 nd floor, Suite No.203, Off Hare Street, Kolkata-700001 (PAN: AAALT0725D)	Vs.	Assistant Commissioner of Income Tax (Exemption), Circle-2, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Somnath Ghosh, Advocate

Respondent by : Shri G. H. Sema, CIT, DR

Date of Hearing : 09.11.2022

Date of Pronouncement : 24.11.2022

ORDER**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2021-22/1042334600(1) dated 31.03.2022 passed against the rectification order by the CPC, Bangalore against intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 04.09.2020.

2. At the outset, we note that appeal of assessee is time barred by 22 days. The impugned order of Ld. CIT(A) is dated 31.03.2022 and the

assessee had received the order on the same day itself. The present appeal ought to have been filed by 30.05.2022. It is noted that the period of delay falls during the time of Pandemic of Covid-19 which has been excluded by the Hon'ble Supreme Court in the case of Suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and proceed to adjudicate upon the matter.

3. Grounds raised by the assessee are reproduced as under:

"1. FOR TIIAT the Ld. Commissioner of Income Tax (Appeals)-NFAC failed to appreciate that none of the conditions precedent existed and/or have been complied with and/or fulfilled by the Ld. Assistant Director of Income Tax. Centralized Processing Centre for not accepting the plea of the appellant u/s. 154 of the Income Tax Act. 1961 and the specious order dated 31-03-2022 passed thereunder is therefore ab initio void. ultra vires and null in law.

2. FOR TIIAT on a true and proper interpretation of the scope and ambit of the provisions of s. 154 of the Income Tax Act. 1961, the Ld. Commissioner of Income Tax (Appeals)-NFAC was absolutely in error in upholding the action of the Ld. Assistant Director of Income Tax. Centralized Processing Centre of sustaining the wrong committed by the appellant citing technical considerations in support of such hostile exercise and the purported conclusion reached on that behalf is completely unfounded. unjustified. and untenable in law.

3. FOR TIIAT the specious action of the Ld. Commissioner of Income Tax (Appeals)-NFAC in upholding the action of the Ld. Assistant Director of Income Tax, Centralized Processing Centre without considering the claim u/s. 10(23C)(iiiab) of the Income Tax Act, 1961 and rejecting the claim wrongly made u/s. 10(23C)(vi) of the Act on extraneous parameters not germane to the issue is wholly illegal, illegitimate and infirm in law."

4. Brief facts of the case are that assessee is a University incorporated by the Burdwan University Act, 1981 by the West Bengal Legislative Assembly for imparting education. Return was filed on 22.10.2018 reporting NIL income by claiming exemption u/s. 10(23C)(vi) of the Act against aggregating annual receipt of Rs.113,13,24,059/-. The said claim of exemption was rejected in the processing of the

return by the Centralised Processing Centre (CPC), Bangalore vide intimation passed u/s. 143(1) of the Act dated 20.03.2020. Against the said processing, assessee moved an application of rectification u/s. 154 of the Act on 30.07.2020 by making a correction towards the claim of exemption u/s. 10(23C)(iiiab) of the Act as against eligible claim made u/s. 10(23C)(vi) of the Act. The rectification application was rejected vide order dated 04.09.2020 against which assessee went in appeal before the Ld. CIT(A), NFAC, Delhi who had upheld the rejection of the claim made by the assessee u/s. 10(23C)(iiiab) of the Act vide its rectification application.

5. Before us, Shri Somnath Ghosh, Advocate represented the assessee and Shri G. H. Sema, CIT, DR represented the revenue.

6. Before us, Ld. Counsel submitted that there is no dispute on the fact that assessee had been imparting education without any profit motive and is substantially financed by the Govt. of West Bengal. He further submitted that assessee had always claimed exemption u/s. 10(23C)(iiiab) of the Act on its receipt which has always been allowed. He also referred to the assessment order passed u/s. 143(3) of the Act dated 13.12.2019 for AY 2017-18 wherein assessee had claimed exemption u/s. 10(23C)(iiiab) of the Act which was considered in the said assessment proceedings. He also referred to the assessment order for AY 2016-17 passed u/s. 143(3) of the Act dated 03.12.2018 wherein also assessee's claim of exemption u/s. 10(23C)(vi) of the Act was considered and allowed. Both the orders are placed in paper book at pages 49 and 47 respectively. Ld. Counsel further

referred to the intimation issued u/s. 143(1) of the Act for AY 2019-20 and 2020-21 i.e. the years subsequent to the impugned order under consideration placed at pages 55 and 59 of the paper book to point out that assessee had claimed exemption u/s. 10(23C)(iiiab) of the Act in the return which has been accepted and processed by the department.

6.1. By referring to all these documents, ld. Counsel emphasized on the fact that assessee had always been claiming exemption u/s. 10(23C)(iiiab) of the act. However, in the impugned year under consideration, inadvertently while filing the return, the claim was made u/s. 10(23C)(vi) of the Act. He also submitted that a rectification application was filed to correct the inadvertent mistake by making claim of exemption under the correct section of 10(23C)(iiiab) of the Act which has been unjustifiably rejected. Thus, in view of all the above processing and assessment in the assessee's own case of the preceding as well as subsequent assessment years, Ld. Counsel emphasized that Rule of Consistency ought to be applied and there is no reason to deviate from the view which has already been taken. Since there is no change in the facts and the applicable law, there is no occasion for the ld. AO to take a different view from that adopted in the above referred proceeding.

6.2 Ld. Counsel also submitted that he had evidently demonstrated that the mistake is a mistake apparent from record which is rectifiable u/s. 154 of the Act merely because assessee has claimed exemption under a wrong provision to which it is otherwise entitled to. He submitted that Ld. AO ought to have accepted the apparent mistake by accepting the claim u/s. 10(23C)(iiiab) of the Act. In this respect, he also

referred to the CBDT Circular No. 14 (XL35) of 1955 dated 11.04.1955 and submitted that it is the duty of the officers of the department to assess the tax payer in every reasonable way, particularly in the matter of claiming and securing relief and in this regard the officers should take initiative in guiding a taxpayer where the proceedings before them indicate that some refund or relief is due to him. He also stated that it is mandated that the officers of the department should not take advantage of ignorance of an assessee as to his rights.

6.3. Ld. Counsel placed reliance on the decision of coordinate bench of ITAT, Lucknow in the case of Desh Bharti public School Samiti Vs. DCIT (2022) 139 taxmann.com 231 (Luck) wherein similar issue was dealt in. Head Note of the said decision is reproduced as under:

“Where assessee, a trust, in earlier years had been claiming exemption under section 10(23C) and it got registration under section 12A on 2.9.2014 and it in return filed for assessment year 2014-15 claimed exempt income under section 10(23C) instead of claiming same under section 12A, mistake had occurred as a human error and thus Assessing Officer was to be directed to allow exemption under section 12A.”

7. Per contra, the Ld. CIT, DR placed reliance on the order of the Ld. CIT(A).

8. We have heard the rival submissions, perused the material available on record and gone through the documents placed in the paper book referred by the Ld. Counsel. Admittedly, it is undisputed that assessee had been imparting education and has been claiming exemption u/s. 10(23C)(iiiab) of the Act which has been considered and allowed in the preceding as well as in the subsequent assessment years vis-à-vis the impugned year under

consideration either in the intimation issued u/s. 143(1) of the Act or assessment completed u/s. 143(3) of the Act. Ld. Counsel has evidently demonstrated that it was an inadvertent mistake which occurred at the end of the assessee in the filing of return where the claim of exemption was made u/s. 10(23C)(vi) of the Act instead of section 10(23C)(iiiab) of the Act. It is also noted that upon receiving intimation u/s. 143(1) of the Act wherein the inadvertent claim made u/s. 10(23C)(vi) was disallowed and remedial measure was taken by the assessee by filing an application u/s. 154 for rectifying the mistake by making a claim under the correct section of sec. 10(23C)(iiiab) of the Act. We note that assessee had been consistently claiming exemption u/s. 10(23C)(iiiab) of the Act. Considering thi ITAT Lucknow in the case of Desh Bharti public School Samiti (supra), we note that mistake apparent from record is rectifiable under the provisions of section 154 of the Act which in the present case ought to have been allowed as claimed by the assessee. Accordingly, we set aside the finding of the Ld. CIT(A) and direct the Ld. AO to allow the claim of the assessee by applying the provisions of section 10(23C)(iiiab) of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open Court on 24th November, 2022

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 24th November, 2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi.
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata