IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH: MUMBAI

BEFORE SHRI R.S. SYAL, ACCOUTANT MEMBER
AND SHRI VIVEK VARMA, JUDICIAL MEMBER

ITA No. 4394/Mum/2011
(Assessment year: 2007-08)

ADIT(E)-I(2), R. No.504, Piramal Chambers, 5th Floor, Parel, Mumbai -400 012	**Vs**	Tata Institute of Social Science, Sion-Trombay Road, Deonar, Mumbai -400 088 PAN:**AAATT 4224 B**
Appellant		**Respondent**
Appellant by	:	Shri Jayakumar
Respondent by	:	S/Shri S.N. Inamadar & Anil Sathe

Date of hearing : 30.08.2012
Date of Pronouncement : 26.09.2012

O R D E R

PER VIVEK VARMA, JM:

The appeal filed by the department pertains to assessment year 2007-08. The appeal has been filed against the order of CIT (A)-1, Mumbai dated 04.01.2011.

2. The solitary issue involved in the appeal filed by the Revenue pertains to the allowance of exemption under section 10(23c)(iiiab) of the Act. The facts as per the orders of the Revenue authorities are that for the assessment year 2007-08 the return of income was filed on 10.01.2008 in Form No. 3A along with computation of income, audited income and expenditure account and balance sheet along with its enclosures disclosing total income as Nil. The regular assessment under section 143(3) for the relevant assessment year was completed on 24.12.2009.

2. During the course of assessment proceedings, the AO raised two issues, on which the assessee filed its reply, submitting,

"......your honour had raised two issues as to whether the institution is 100% educational or not and secondly whether the institution is substantially financed by Government.

In regard to both these issues we have already submitted detailed note on various activities like Extra Mural Studies, Child Guidance Clinic etc. The institution has been set up specifically fro the purposes of imparting education in respect of social science, and therefore with a view to give better understanding of the curses taught in the institution, these activities are conducted by the institution. Thus you will appreciate that all such activities which are conducted as filed work programs for students are definitely integral to the education activity. The activities are clearly for the furtherance of education only and should be treated as such. An identical view is expressed by Delhi High Court in the case of Jaypee Institute of Information Technology Society vs. D.G. of Income (Exemption) (185 Taxman 110). We therefore have to state that the issue of whether the institution is 100% educational or not is very clear.

As regards the issue of whether the institution is substantially financed by the Government we have to state as follows:

Your honour will note that the words used in section 10(23C)(iiiab) are "wholly or substantially financed by the Government. In regard to interpreting this provision we wish to point out that the words used are "wholly or substantially". The adjunct or indicates that the word substantial is used in the alternative. The word substantially must be interpreted in the manner that it is used in commercial parlance.For e.g. the matter is said to be of substantial importance when it is on considerable importance. Something which has substance is same thing which has merit. The word substantial has not been defined in the context of this section. However, it has been used to define substantial interest where the percentage is low as 20%. In our opinion the work substantial should be interpreted to be that amount without which the institution would have found it difficult to survive. Thus it could be 50% or thereabout. In conjunction with the word substantial the Act uses the word financed by. Whether an institution is financed by the Government or not has to be seen in a holistic basis and not only yearly basis. Viewed in that light the assessee is clearly an institution which is wholly or substantially financed by the Government. The various propositions raised by us we rely on the following judicial pronouncements :

DD of Income Tax (Exmp) vs IIM, reported in 112TTJ 560 (B'lore)
ITO vs Deeshiya Vidya Shala Samiti, reported in 12 SOT 617 (B'lore)
Santosh Hazari vs Purushottam Tiwari 251 ITR 84 (SC)

4. The assessee further submitted:

"10(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."

There are two types of universities/educational institutions, to which the benefit of exemption is available u/s 10(23). First one is under section 10(23C)(iiiab), second one is under section 10(23C)(iiiad) while third one is u/s 10(23C)(vi). In all the aforesaid cases, the requirement that the university or other educational institution should solely exist solely for educational purposes and not for purposes of profit, is common. However, section 10(23C)(iiiad) does not require any audit to be carried out for the reason that these are bodies whose gross annual receipts do not exceed a specified amount. It is not the

> *legislative policy to subject small educational bodies have aggregate annual receipts below the specified limit, to audit either by the Government or by the accountants as defined u/s 288 of the Income-tax Act.*

5. The AO, implyingly held, that the benefits of exemption shall not be available to the assessee as per the following computation

> *"Applying the above definition, in the case of the assessee,*
>
> *"Total Government Grant" during the year = Rs. 12,79,13,233/-*
>
> *'Total Expenditure' during the year = Rs. 22,49,72,584/-*
>
> *75% of the total expenditure of the institution = Rs. 16,87,29,438/-*
>
> *Therefore going by the above definition (supra) the assessee education institution is not "wholly or substantially" financed by the Government for the purpose of section 10(23C)(iiiab) of the Income Tax Act, 1961 as the Government grant of Rs. 12,79,13,233/- is less than 75% of the total expenditure i.e. Rs. 16,87,29,438/- of the assessee institution and therefore the benefits of exemption under section 10(23C)(iiiab) is denied to the assessee."*

6. The AO, therefore, denied the claim of Exemption u/s 10(23C)(iiiab), as claimed by the assessee.

7. The assessee approached the CIT(A), and reiterated its submissions made before the AO, wherein the AO had denied the exemption as claimed. The CIT(A), on considering the submissions made, agreed with the observation of the AO, that *"wholly and substantially financed by the Government"*, has not been defined in the Act. The CIT(A) also considered the view taken by the assessee that, "word substantially financed by Government" should mean and include any body or institution being financed by the Government to the extent of *50% or more* i.e. to include any body or institution which is in receipt of grants to the extent of 50% or more as compared to its expenditure/total income, for carrying out its educational activities.

8. The CIT(A) observed that "*I am fortified in my view by two decision of the Hon'ble Karnataka High Court. The first is the decision in National Education Society (ITA No.808 of 2009) where the Karnataka High court was pleased to hold as under:*

> ***Para 4*** *The word "substantial" has not been defined under the Income Tax 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 has beneficial interest of more than 10% of the total capital subscribed by all the partners of the firm has been held to be having substantial interest.*
> ***Para 5*** *– In the case of assessee itself when the grant was more **than 50%**, 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 what context **we have to find out whether the grant of 36.42% of total receipts constitutes substantial by the Government.***
> ***Para 6*** *– Viewed from that angle, after excluding fees received from the students, when we look at the amount received by way of donation from others, when compared to the amount granted by the Government, the grant of 36.42% of the total revenue do constitute substantial financial aid from the Government and thus the institution assessee is entitled to the benefit of the aforesaid provision.*
> *It is pertinent to note that the said appeal is in which the above observation had been made was dismissed by the Karnataka High Court at the stage of admission itself i.e. the High court did not find any substantial question of law in the matter. This decision was followed by the Karnataka High court **in CIT vs. Indian Institute of Management (ITA no.529 of 2008) reported in 196 Taxman 276.***

9. The CIT (A), therefore, held:

> *"As regards the term "substantial" I am in agreement with the contentions of the appellant. In the Light of foregoing discussion and respectfully following the decisions of the Karnataka High Court to which a reference has been made in the foregoing paragraphs, I uphold the contentions of appellant and hold that the appellate institution in the present case can be regarded as substantially financed, within the scope of section 10(23C)(iiib) and hence exemption shall be allowed."*

10. The CIT(A), therefore, reversed the findings of the AO and allowed the claim, as made by the assessee, u/s 10(23C)(iiiab).

11. Against these observations, the Revenue is in appeal before the ITAT.

12. Before us, the learned D.R. appearing for the Revenue mainly reiterated the contents of the assessment order and pleaded that the AO was correct in denying the exemption under section 10(23c)(iiiab).

13. The learned A.R., on the other hand, reiterated the submissions made before both the Revenue authorities and submitted that the view taken by the CIT(A) was correct.

14. We have heard the arguments and perused the orders of both the Revenue authorities. The issue before us is whether the exemption under section 10(23c)(iiiab) would be available to the assessee. Section 10(23c)(iiiab) reads as under:

> *"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".*

15. From the fact emerging from the assessment order is that the assessee being a Registered Society, is devoting its objects towards social services and Research Institution. In the year under consideration assessee received Government grant to the tune of Rs. 12,79,13,233/- and it incurred expenses to the tune of Rs. 22,49,72,584/-. According to the AO since the grant received from the Government was leas than 75%, which, according to the AO should be Rs. 16,87,29,438/-, would not come within the parameters of "substantially financed by the Government", hence, the exemption would not be available to the assessee.

16. In the assessment order, the AO has taken refuge of section 14(1) of the Comptroller and Auditor General's (Duties, Powers and conditions of Service) Act, 1971, which defines the expression "substantially financed" and which would mean, *"grant or loan is not less than 75% of the total expenditure".* For importing the legislative meaning from another legislation, it becomes imperative that not only the meaning of the entire section is read and understood as a whole, but due cognisance be given to the meaning. The AO, through referred to section 14(1) only, but when we read the entire section, alongwith sub sections (2) & (3), what we gather from reading of the entire section, is that sub-section (3) allows the audit for a further period of two years, meaning thereby, that in case the *assessee or any person*, who had availed government grant and is required to have its accounts audited by CAG in the first year and in subsequent year or years the financial

assistance falls below the stipulated 75%, CAG will still continue to conduct the audit. If the strict interpretation of the AO's order is to be considered, then the moment financial assistance from the Government goes below 75%, the Society *or any person*, is out of the parameters of CAG.

17. According to us, this could never have been the intention of the CAG. We cannot subscribe to the observation of the AO, when he defines the expression, *"substantially financed by the Government" to mean nearer to 100% or by relying on Explanation to section 14(1) to be not less than 75%.*

18. Looking from another angle, that too, strictly following the provisions of the Act, that to claim exemption under section 10(23C)(iiiab), as per clause (vi) of section 10(23C), an approval has to be sought from the prescribed authority (i.e. CCIT or DGIT). If at all the claim of the assessee was questionable, even minutely, the approval would never be given. On the other hand, AO's implied argument that all educational institutions and universities covered under section 10(23c)(iiiab) are required to have their accounts audited from CAG, cannot be accepted, because, had there been any intention of the Government to cover all institutions, seeking exemptions under section 10(23c)(iiiab) and other corresponding sections, would, automatically get covered by CAG rules, and in that circumstance, application of clause (vi) would be at *otiose.*

19. In that sense, we cannot accept the reasoning given by the AO to import the provisions of section 14 of Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971. We, therefore, hold that the AO erred in importing the section of another legislature, that too partly, to negate the exemption under section 10(23C)(iiiab).

20. Coming back to the expression, *"substantially financed by the Government"* and what exactly it should mean, so far as, Income Tax Act is concerned. The CIT(A) in the impugned order has referred to the case of Hon'ble Karnataka High Court in National Education Society, ITA No. 808 of 2009, wherein the Hon'ble High Court held:

> ***Para 4*** *The word "substantial" has not been defined under the Income Tax 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 has beneficial interest of more than 10% of the total capital subscribed by all the partners of the firm has been held to be having substantial interest.*
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> ***Para 5*** *– In the case of assessee itself when the grant was more* ***than 50%****, 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 what context* ***we have to find out whether the grant of 36.42% of total receipts constitutes substantial by the Government.***
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> ***Para 6*** *– Viewed from that angle, after excluding fees received from the students, when we look at the amount received by way of donation from others, when compared to the amount granted by the Government, the grant of 36.42% of the total revenue do constitute substantial financial aid from the Government and thus the institution assessee is entitled to the benefit of the aforesaid provision.*
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> *It is pertinent to note that the said appeal is in which the above observation had been made was dismissed by the Karnataka High Court at the stage of admission itself i.e. the High court did not find any substantial question of law in the matter. This decision was followed by the Karnataka High court* ***in CIT vs. Indian Institute of Management (ITA no. 529 of 2008) reported in 196 Taxman 276.***

21. We find that in the case of National Education Society, the Court accepted *36.42%* to the substantial finance which entitles the assessee to the benefit of the provisions of section 10(23C)(iiiab). Even in the case of IIM the grant equal to 36.42% was held to be substantial finance by the Government.

22. In the instant case, the grant available was 56.86%, much higher than the grants accepted to be substantial by the Hon'ble Karnataka High Court.

23. With these observations and respectfully following the decisions of the Hon'ble Karnataka High Court, we do not intend to disturb the findings of the CIT(A), which we sustain and as a consequence thereof, reject the appeal of the Revenue.

24. It is strange and interesting to point out that this is a classic case, where the assessee has made inputs towards finances, from its own source and saved tax payers money, but, the AO, in such a case has objection, i.e. why the assessee did not use the tax payers money.

25. The appeal filed by the Revenue is thus dismissed. Held accordingly.

Order pronounced in the open court on this day of 26th September, 2012

Sd/-	**Sd/-**
(**R.S. SYAL**)	(**VIVEK VARMA**)
ACCOUTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Date: 26th September, 2012

Copy to:-

1) The Appellant.
2) The Respondent.
3) The CIT (A)-1, Mumbai.
4) The DIT (Exemption)/ CIT__Concerned, Mumbai,
5) The D.R. "E" Bench, Mumbai.
6) Copy to Guard File.

By Order

/ / True Copy / /

Asstt. Registrar
I.T.A.T., Mumbai

*PS