

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI SANJAY ARORA, AM

ITA No.6762/Mum/2011
(A Y: 2008-09)

The Income Tax Officer (E), Ward 1 (1), Room No.505, Piramal Chambers, 5 th Floor, Parel, Mumbai 400 012	Vs.	Chetna, Survey No.341 Government Colony, Bandra (E), Mumbai 400 052
PAN:AAATC 3012A		
Appellant	..	Respondent

C. O. No.180/Mum/2015
(In ITA No.6762/Mum/2011- A Y: 2008-09)
&
ITA No.2451/Mum/2013
(A.Y. 2009-2010)

Chetna, Survey No.341 Government Colony, Bandra (E), Mumbai 400 052	Vs.	The Income Tax Officer (E), Ward 1 (1), Room No.505, Piramal Chambers, 5 th Floor, Parel, Mumbai 400 012
PAN:AAATC 3012A		
Cross Objector/Appellant	..	Respondent
Revenue by		Shri Premand J, DR
Assessee by		Shri V. V. Mehandule Shri S. S. Phadker, ARs
Date of hearing		18-07-2016
Date of pronouncement		29-07-2016

ORDER

PER BENCH:

The appeal by the Revenue and the Cross Objection by the assessee are arising out of the order of the CIT (A)-I, Mumbai passed in appeal No.CIT (A)-I/IT/E-I(196)/10-11 dated 26-07-2011. Assessment was framed by the Additional DIT (E), Range-I, Mumbai for the assessment year 2008-09 vide his order dated 29-12-2010 u/s 143(3) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. The only issue in this appeal of the Revenue is as regards to the order of the CIT (A) in allowing exemption u/s 11 and u/s 10(23C) (vi) of the Act, the assessee being an Educational Institute. The assessee has contested confirmation of disallowance of exemption in respect of payment of penalty by the assessee to AICTE, New Delhi

amounting to Rs. 63 lacs and disallowance of exemption in respect of rental income in its Cross Objection.

3. Briefly stated facts are that the assessee is a Public Charitable Trust engaged in educational activities. The assessee is running the following Institutes:-

S. No.	Name of Institutions	Courses
1	Chetana's H. S. College of Commerce & Economics & Smt. Kusumatai Chaudhari College of Arts.	
2	Chetana College of Management Studies (B.M.S.)	
3	Chetana's Junior college of Commerce & Arts	
4	Chetana Junior College of Commerce – Vocational Course	
5	Chetana's R. K. Institute of Management & Research	MMS
6	Chetana's Institute of Management & Research	PGDBM, PGDCM, PGDBA, PGPRM
7	Chetana Society	

The assessee is granted registration u/s 10(23C) (vi) of the Act by the Chief Commissioner of Income Tax, Mumbai vide Order bearing No.10(23C) (vi)/239/2008-09 dated 08-05-2008 with retrospective effect for and from the assessment year 2008-09 until withdrawn. The assessee is also registered as a Trust u/s 12A of the Act. The learned Counsel for the assessee made a statement at the Bar that neither registration granted u/s 10(23C) (vi) by the CCIT has been withdrawn till date nor the registration granted u/s 12A and 80G of the Act are withdrawn. The AO during the course of assessment proceedings noted that the assessee is doing the following activities:-

- Chetana Unique Academy
- Giving Hall on rent for functions like marriages etc.
- Coaching classes for students.

Accordingly, the AO relying on the decision of the Hon'ble Patna High Court in the case of Bihar Institute of Mining & Mine Surveying Vs CIT (1994) 208 ITR 608 (Pat.) and the decision of the Hon'ble Supreme Court in Sole Trustee, Lok Shikshana Trust Vs. CIT 101 ITR 234 held that the activities of the assessee are not charitable activities for the reason that the assessee is not existing solely purpose of education because it is running unapproved courses of Chetana's Institute of Management & Research for the courses of PGDBM, PGDCM, PGDBA and PGPRM. According to the AO, the assessee

has also violated the terms of land allotted by the Government and for this penalty was levied by AICTE on the institution amounting to Rs.63 lacs. According to the AO, profiteering is the main motive of the assessee as it has earned a fee of Rs.1.75 crores for the above mentioned courses, which are unrecognized. He also noted that the assessee's expenditure on Amrut Mahotsav on the 75th Birth Day of the Founder Trustee Mr. Madukarrao Chaudhary and publishing of souvenir like biography does not fall under the category of education. The AO also noted that violation of the provisions of Section 13 of the Act for the rent charged from Mrs. Snehaja Rupwate, as against market rate of Rs.24,000/-, was at Rs.3,000/-. Accordingly, the AO after disallowing various items assessed the income of the assessee as under:-

	Gross income as per statement of income		17,89,89,989/-
Less:	1) Administrative expenses	2,75,16,247/-	
	2) Depreciation(as claimed)	<u>11,75,831/-</u>	<u>2,86,92,078/-</u>
			<u>15,02,97,911/-</u>
Less:	1) Expenditure on education	10,13,20,546/-	
	2) Capital disallowed (as discussed)	-----	<u>10,13,20,546/-</u>
			4,89,77,365/-
Add:	1) Penalty levied by the AICTE for conducting unapproved courses	63,00,000/-	
	2) Amrut Mahotsav expenditure not for the purpose of activity	<u>2,06,048/-</u>	<u>65,06,048/-</u>
	Total Income		5,54,83,413/-

4. Aggrieved, the assessee preferred before the CIT (A), who allowed the benefit of exemption u/s 11 and 10(23C) (vi) of the Act in respect of educational fee received by the assessee for conducting various courses, allowed exemption of hall of the Trust given on rent from which rental income was earned and deleted the disallowance of capital expenditure and also depreciation but confirmed the disallowance of exemption in respect to expenses incurred on account of Amrut Mahotsav and addition made on account of penalty levied by AICTE, New Delhi amounting to Rs.63,00,000/-.

5. Aggrieved by the order of the CIT (A), the Revenue challenged the allowance of exemption u/s 11 and Section 10(23C) (vi) of the Act on deficit arising out of the expenditure out of the income of which exemption has already been claimed and allowed set off of deficit of earlier years against the income of the current year. The assessee has challenged the order of the CIT (A) on the issue of confirmation of addition by disallowing exemption of rental income and addition of penalty levied by ACITE, New Delhi amounting to Rs.63,00,000/-.

6. We have heard the rival contentions and have also gone through the facts and circumstances of the case. The fact of the case that the assessee is a Public Charitable Trust engaged in educational activities. For the relevant assessment year 2008-09, a return claiming exemption of the income along with Form 10B, income & expenditure account and balance sheet was filed on 17-12-2008. Admittedly, the assessee is a registered Trust u/s 12A and also u/s 80G of the Act. The assessee is also granted exemption u/s 10 (23C) (vi) of the Act by the CCIT, Mumbai vide Order dated 08-05-2009 for and from the assessment year 2008-09. The AO recorded these facts in the assessment order at page which read as under:-

“2. The assessee trust is registered with the Charity Commissioner and also u/s. 12/A of the I. T. Act. Certificate u/s 80G of the I.T. Act has also been granted to the Trust by the D. I. T.(E), Mumbai. Chetana is a Society and is registered under Society’s Registration Act. Assessee has received an approval u/s. 10(23C) from Chief Commissioner of Income-tax, Mumbai vide order No. CCIT/MUM/10(23C)(vi)/239/2008-09 dated 8th May,2008”.

The learned Counsel for the assessee made a Statement at the Bar that neither exemption certificate granted u/s 10 (23C) (vi) nor registration granted u/s12A or exemption certificate granted u/s 80G of the Act are withdrawn till date. The learned Counsel also stated that there is no charge that the assessee has not made investment as per the provisions of Section10 (23C) (vii) of the Act. In respect of the disallowance of Rs.2,06,048/- the learned Counsel for the assessee stated that the assessee celebrated Amrut Mahotshav on account of completion of 75 years of age of its Founder, Shri Madhukar Rao Choudhary, in the assessment year 2003-04 and the expenditure incurred was debited in the account of Chetana Institute of Management (Computer Division). The balance of Rs.3,00,000/- out of the advance given to the said Institute remained outstanding in the books of Chetana Computer Division which was carried forward till assessment year 2007-08. An amount of Rs.93,952/- incurred by the assessee itself on this account which was to be reimbursed by the Chetana Institute of Management remained as credit balanced in the assessee’s books and thus, the net balance amount of Rs.2,06,048/- was written off in the books of accounts of the assessee. He further stated that the said amount was not incurred during the year under consideration. In respect of the observation of the AO that payment of Rs.63,00,000/- to the AICTE was in violation of AICTE Rules and the courses were also not approved by the AICTE, the learned Counsel for the assessee submitted that the PGDBM, PGDCM, PGDBA and PGPRM courses were approved by the ACITE and that this amount was to

be paid by the assessee to AICTE on account of enrollment of students beyond the strength of students approved by the AICTE and hence, the same cannot be treated as penalty for violation.

7. With regard to disallowance of capital expenditure amounting to Rs.3,53,28,989/-, the learned Counsel for the assessee, in this respect submitted that since the assessee has already been granted exemption u/s 12A of the Act the AO was not justified in disallowing the same on the plea that the assessee has not been granted exemption u/s 11 of the Act. With regard to disallowance of Rs.1,22,25,962/- on account of disallowance of depreciation, the learned Counsel for the assessee submitted that the AO was not justified in disallowing the same relying on the decision of the Hon'ble Supreme Court in the case of J. K. Synthetics Ltd. Vs Union of India [192] 65 Taxman 420 (SC), since this decision of the Hon'ble Supreme Court is in respect of computation of income under the head business and, therefore, the same is not applicable to the facts of the assessee's case.

8. We find from the facts of the case that the assessee is already registered as a Trust u/s 12A and also u/s 80G of the Act. The assessee is also granted exemption u/s 10 (23C) (vi) of the Act by the CCIT, Mumbai vide Order dated 08-05-2008 for and from the assessment year 2008-09. We find that the objects of the assessee Trust were to promote, support, establish and conduct college or colleges, schools and institutions for advancement of education and other assistance to students. The assessee stands allowed approval u/s. 10(23C)(vi) of the Act by the CCIT w.e.f A.Y. 2008-09, i.e., the current year, and which obtains. There is no material on record, nay, not even a charge in its respect, i.e., of the withdrawal of the said approval by the competent authority, even as the same was confirmed before us by the Id. Counsel by making a statement at bar to that effect. That being the case, in our view, notwithstanding the breach/es, if any, by the assessee, as alleged by the Revenue, its' entire income would continue to be exempt u/s.10(23C)(vi) of the Act for the current year. The Id. DR, on being queried thus in the matter during the hearing by the Bench, could not furnish any satisfactory answer. There is, thus, in our view, no merit in bringing the income of the assessee partially to tax by denying/disallowing exemption u/s. 10(23C)(vi) *qua* specific expenses, viz. penalty, etc. as done by the Revenue.

Coming to the Revenue's appeal, there can equally be no question of 'allowance' of capital expenditure in determining the assessee's income under the Act by considering it as 'applied' for charitable purposes to that extent. This is as the assessee's entire income, being exempt u/s. 10(23C)(vi) (save to the extent of Rs. 4,83,910/- derived as rental income by letting out of hall for marriage purposes), does not fall to form part of the total income as defined u/s. 2(45) of the Act. There is accordingly no question of considering its' application towards charitable purposes and allowing deduction in its respect on that basis. To this extent we are in agreement with the Revenue's plea, which is against the allowance of both, the capital expenditure, as well as the depreciation thereon, in computing the assessee's income under the Act. The assessee's 'income' would thus stand to be arrived at on the basis of principles of commercial accountancy (as is the case for a charitable institution registered u/s. 12A). The issue, we may though clarify, becomes academic in view of the assessee's entire income (other than the rental income supra) being exempt u/s. 10(23C)(vi). There is under the circumstances no scope for application of the decision in *CIT vs. Institute of Ranking Personnel Selection* [2003] 264 ITR 110 (Bom). The non-exempt income would stand to be brought to tax. We decide accordingly.

9. In the result, the assessee's appeal and cross-objection are allowed, and the Revenue appeal is partly allowed as indicated above.

Order pronounced in the open court on 29/07/2016.

Sd/-

(SANJAY ARORA)
ACCOUNTANT MEMBER

Mumbai, Dated 29/07/2016

Lakshmikanta Deka/Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

BY ORDER,

Assistant Registrar
ITAT, MUMBAI