आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA.No.477/Ahd/2015
निर्धारण वर्ष/ Asstt. Year: 2010-2011

M/s.S.M. Badat Education & Welfare Trust, Valia Road, AT & Post : Kondh Taluka – Ankleshwar Bharuch 393 001. PAN : AAATS 8449 K	Vs	ITO, Ward-2 Bharuch.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Deepak Shah, AR
Revenue by :	Shri Dinesh Singh, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 22/06/2016**
घोषणा की तारीख /**Date of Pronouncement: 15/07/2016**

आदेश/O R D E R

The assessee is in appeal before the Tribunal against the order of the ld.CIT(A)-III, Baroda dated 14.11.2014 passed for the Asstt.Year 2010-11.

2. The assessee has taken following grounds of appeal:

"*1. That the ld.CIT(A) erred in confirming the order of the AO in denying exemption under section 10(23C)(iiiad) of the Act.*

2. That the ld.CIT(A) erred in confirming the order of ht AO in making an addition of Rs.9,00,684/-

3. That the ld.CIT(A) erred in confirming the order of the AO in making an addition of Rs.14,58,500/-.

3. Brief facts of the case that the assessee is a public charitable trust and registered with Charity Commissioner, Bharuch since 1977. It is holding registration no.B-839. The assessee has been getting its accounts audited

under the Bombay Public Trust Act, 1950. It has also been registered under section 12A and 12AA of the Income Tax Act vide letter no./Baroda/CIT-III/Tak/12(K)/110 (76-S)/2012-13 dated 28.6.2013. During the accounting year for the Asstt.Year 2010-11, the assessee was not enjoying registration under section 12A of the Income Tax Act. It has filed its return of income on 9.12.2010 declaring total income at NIL. In the computation of income, the assessee has filed return, as if it was enjoying registration under section 12A of the Income Tax Act, but later on it has changed its computation and contended that since it is a charitable trust solely existing for the purpose of education, it is entitled to exemption under section 10(23C)(iiiad) of the Income Tax Act. The claim of the assessee was rejected by the AO on the ground that section 10(23C)(iiiad) of the Act contemplates that the assessee should solely be existing for educational purpose. A perusal of the trust-deed, would indicate that apart from education, the assessee could undertake work of social welfare of Sunni Muslim Vohra Community. In other words, the stand of the AO was that apart from education, the assessee has other objects also, therefore, it is not entitled for exemption under section 10(23C)(iiiad) of the Act. The ld.AO further observed that assessee had total receipt of Rs.52,45,736/-. It has claimed deduction of Rs.31,650/- as establishment expenses, Rs.42,56,507/- as school fees and Rs.56,895/- as trust expenses. The AO has treated the assessee as an Association of Persons. He debited a sum of Rs.43,45,052/- from the gross receipt of Rs.52,45,736/- and worked out a sum of Rs.9,00,684/-. He made an addition of this amount. Similarly, he observed that the assessee has made addition of Rs.14,58,500/- in reserve fund viz. Unity School Building Fund. Since the assessee was not registered under section 12A, thus, according to the AO, the assessee cannot claim this amount. He accordingly made addition of Rs.14,58,500/-. The AO has determined total taxable income of the assessee at Rs.23,59,184/- as against

NIL income disclosed by the assessee. Appeal to the ld.CIT(A) did not bring any relief to the assessee.

4. Before me, the ld.counsel for the assessee has contended that in various authoritative judgments at the end of the Hon'ble High Courts, it has been held that a trust or society might have various objects in their memorandum of association, but in if any particular year they are existing solely for the purpose of education, then, exemption under section 10(23C) should not be denied to such societies. In order to buttress his contentions, he relied upon following decisions:

i) C.P. Vidya Niketan Inter College Shikshabn Society, 359 ITR 322 (All)
ii) Hardayal Charitable & Education Trust, 355 ITR 0534 (All)
iii) Vanita Vishram Trust, 327 ITR 121 (Bom)
iv) Geetanjali Education Society, 339 ITR 333 (Kar)

He placed on record copies of these judgments. For substantiating his claim that the assessee trust was solely existing for the purpose of education, he took me through page no.23 of the paper book wherein the statement of income returned has been placed on record. He pointed out that the assessee has not carried out any other activities during the year. He also took me through page no.26 of the paper book, where details of various expenditure have been placed on record. These details are contained in Schedule-A, B, C and D forming part of audited accounts. He also pointed out that subsequently a registration under section 12A has been granted to the assessee, meaning thereby, objects of the trust has not even been doubted by the department.

5. On the other hand, the ld.DR relied upon the orders of the Revenue authorities. He contended that the CIT(A) has considered all these aspects in

detail and highlighted as to how the assessee has been carrying out activities other than education. He particularly took me through para 4.3.2 of the CIT(A)'s order.

6. I have duly considered rival contentions and gone through the record. I have perused computation of income available at page no.23 of the paper book. This computation along with revised computation for the purpose of section 10(23C)(iiiad) has been reproduced by the authorized representatives of the assessee in his submissions filed to the AO. It is pertinent to take note of this computation. It reads as under:

"*Income from other sources:*

Rent	*Rs.12,305*		
Bank Interest	*Rs.519,568*		
Fees from Schools	*Rs.4,479,685/-*		
Interest from school	*Rs.118,178/-*		*Rs.5,245,736*
Less:	*Establishment Expenses*		*Rs.31,650/-*
			5,214,087
Less:	*Expenditure on the objects of the trust*		
	School Expenses	*Rs.4,256,507/-*	
	Trist Expenses	*Rs.56,895/-*	*Rs.4,313,402/-*
			Rs.900,685/-
Less:	*Statutory accumulation @ 15% permitted u/s.11(2) on Rs.52,45,736/-*		*Rs.786,860*
			Rs.113,824
	TAXABLE INCOME		*Rs.NIL*
	TAX PAYABLE		*Rs.NIL*

3. However, the assessee has not claimed following expenses to the extent of Rs.2,79,332/-. They are -

1)	*Depreciation*	*Rs.2,74,132/-*
2)	*Audit Fees*	*Rs.4,500/-*
3)	*Legal Fees*	*Rs.700/-*
		Rs.2,79,332/-

Moreover, the trust would like to claim deduction u/s.10(23C)(iiiad) as under. Its computation is as under:

	Net Surplus as per profit & Loss A/c.	*Rs.2,79,996/-*
Add:	*School fees of unit English Medium School, Ankleshwar*	*Rs.44,79,685/-*

Less:	*Expenditure on object of the Trust School Expenses*	*Rs.(-)42,51,507/-*
	Net Surplus	*Rs.6,26,352/-*
Less:	*Deduction u/s. 10(23)(iiiad)*	*Rs.6,26,352/-*
	Taxable Income	*Rs.NIL*

7. Before embarking upon an inquiry on the above facts, I deem it appropriate to take note of the proposition of law canvassed by the ld.counsel for the assessee on the strength of various authoritative pronouncements. The Hon'ble Allahabad High Court has considered this issue in the case of C.P. Vidya Niketan Inter College Shikshan Society (supra). The Hon'ble High Court was of the opinion that claim of the assessee under section 10(23C)(vi) cannot be denied merely on the ground that in the object clause the assessee has other objects also than the education. The Hon'ble High Court has also eliminated the apprehension of the Revenue that in future the assessee shall pursue such non-educational objects. According to the Hon'ble High Court there are various safeguards to deal with that situation. The discussion made by the Hon'ble High Court in para-23 of the judgment is worth to note. It reads as under:

> *"23. In the present case the petitioner society is registered charitable society with the Registrar of Societies and is also registered under Section 12A with its objects of establishing, running and maintaining educational institutions. It has a school by the name of C.P. Vidya Niketan Inter College. At present the society does not have any activity other than running and maintaining educational institutions. The other objects and purposes in the 'Smriti Patra' may, if such objects are undertaken, may constitute such purpose, to be other than educational purpose, but at present it cannot be said nor there is any allegation or material either brought before the Chief Commissioner of Income Tax, Ghaziabad or referred to in the counter affidavit, which may be other than education. There are adequate safeguards, that if the activities other than educational activities are undertaken, the exemption may be withdrawn, but in the absence of any such allegation it cannot be said merely on the enumeration of the activities, which are all primarily connected with education and charity that the society does not exist*

> *solely for the purpose of imparting education. The case in hand is quite similar to that of Vanita Vishram Trust v. Chief Commissioner of Income Tax & Anr. (Supra), and satisfies the tests laid down in American Hotel and Lodging Association Educational Institute (Supra) as well as the view taken by this Court in Ewing Christian College Society (Supra) in which it was held that where it is not disputed that the society runs an educational institution, and is not for the purposes of making profit, merely because the object of the society is also to serve the church and the nation would not mean that the educational institution not existing solely for educational purpose."*

8. Similarly, the Karnataka High Court has considered an identical issue in the case of Geetanjali Education Society (surpa). According to the Hon'ble High Court, if it is established that the assessee has not carried out any other activities except education, then, the benefit of section 10(23C) cannot be denied. The discussion made by the Hon'ble Karnataka High Court para 11 and 13 is worth to note. They read as under:

> "*11. From bare perusal of the observations made by the Supreme Court in American Hotel's case, what appears to us, is that the Assessing Officer while considering the case, such as one in hand, has to closely analyse activities of the Institute, objects of the Institute, its sources of income and utilization. In that case, the Supreme Court considered its activities as reflected in the paragraph quoted above and therefore, while remanding the matter, made it clear that the appellant had fulfilled the threshold pre-condition of actual existence of the educational institution under Section 10(23C)(vi) with further direction to the Central Board of Direct Taxes not to reject the approval application on that ground. Two of the objects in that case as reflected in the judgment were also to offer the National Council the lowest possible prices for the products and services sold to or utilized by the schools under the umbrella of the Government of India and so also to utilize Indian Authors whenever possible in the development of customized programmes. The Supreme Court, despite these objects/activities, held that the institution in American Hotel was involved only in educational activities, perhaps on the ground that it was not carrying on those activities.*
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> .....

> *13. In the present case, it is not in dispute that the society has been conducting the primary and secondary school in the State of Karnataka since 2002. Nor is there any dispute before us that save and except for conducting school, the society has carried on any other activities since then. Without expressing any opinion whether the object, as reflected in Clauses 3(b) and 3(h) of the Memorandum of Association, are related to education, it is clear that save and except educational activity the assessee did not/do not carry on any other activity is the fact, which is not in dispute. In other words, though the activities as reflected in Clauses 3(b) and 3(h), may constitute the purpose, other than the educational purpose, but, during the relevant assessment year, it is not the case of the revenue nor is there any material to show, that the society was ginning any activities other than the educational activity. In this view of the matter, we are of the considered opinion that the view taken by the Tribunal is not correct and deserves to be set aside. There are adequate safeguards that if the activities other than educational activities are undertaken by the society, exemption granted can be withdrawn. Merely, because there exists object, which is not related to educational activities, in our opinion, is not sufficient to deny the exemption/benefit of Section 10(23C)(iiiad) of the Act. In short, in the absence of any allegation or material against the society showing that they are involved in any other activities than the educational activities, in our opinion, it cannot be denied exemption under Section 10(23C)(iiiad). In the circumstances, we answer both the substantial questions of law in favour of the assessee and against the revenue."*

9. From perusal of the above authoritative pronouncements, it is clear that even if an assessee having other objects in its memorandum of association, but in a particular year, it has acted exclusively for the purpose of education, then, exemption under section 10(23C) cannot be denied to an assessee. In the light of the above proposition, let us examine the facts of the present case. A perusal of the details of expenditure would indicate that major amount incurred by the assessee was towards school expenses. It is a sum of Rs.42,56,507/-. The other expenditure is of only Rs.56,895/-. Similarly, major source of income to the assessee is fees from school amounting to Rs.44,79,685/-. The alleged bank interest according to the assessee was out

of the deposits from collection of fees etc. Thus, the details of expenditure would indicate that the assessee has not incurred any expenditure except small amount on any other activities than the education. The ld.CIT(A) has highlighted *masjid* expenses of Rs.21,900/- which is a very meager amount, which is not a deciding factor for the activities of the assessee. All these facts are to be seen in the light of subsequent years where registration under section 12A has been granted to the assessee. Taking into consideration all these facts and circumstances, I allow the claim of the assessee and direct the AO to grant exemption under section 10(23C)(iiiad) of the Income Tax Act.

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

Order pronounced in the Court on 15th July, 2016 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 15/07/2016