

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 344/PAT/2018
Assessment Year: 2012-13**

Bihar State Educational Infrastructure Development Corp. Ltd.	Vs.	ACIT, Exemptions, Circle-1, Patna.
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: AAECB1859M		

Appearances:

Assessee represented by : D.V. Pathy, Sr. Adv.

Department represented by : Rinku Singh, CIT DR.

Date of concluding the hearing : February 3rd, 2025

Date of pronouncing the order : February 12th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-I, Patna [hereinafter referred to as *Ld. 'CIT(A)'*] passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2012-13 dated 09.07.2018,

which has been passed against the assessment order u/s 143(3) of the Act, dated 31.03.2015.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation of time by 89 days. An application seeking condonation of delay has been filed by the assessee for condoning the delay stating as follows:

“1. That this is an application for condonation of delay in filing of the instant Appeal.

2. That the Appellant states that the order of Assessment was passed on dated 27.07.2018. The Appellant states that the said order was received on 08.08.2018.

3. That the Appellant was under an obligation in law to file an Appeal within a period of 60 days from the date of receipt of the order. The Appellant submits that in the present case he was obliged to file an Appeal by 07.10.2018.

4. That the Appellant states that after receipt of the copy of the order of Appeal to its counsel, Shri Amar Nath Singh, for filing Appeal. The said counsel on account of his ill health could not pursue to file Appeal within 60 days.

5. That the Appellant submits that delay in the filing of the Appeal has occurred primarily due to ill health of the counsel. The Medical documents of treatment of the Council are enclosed for your kind perusal and consideration.

6. That the Appellant submits that in view of the facts stated in the preceding paragraphs the delay in filing of the Appeal be condoned and the Appeal be admitted.

It is, therefore, prayed that your honour may graciously be pleased to consider the submissions as made in the foregoing paragraphs and further be pleased to condone the delay in the filing of the instant Appeal be admitted and Appeal be fixed for hearing.”

1.2. Considering the condonation application and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within



the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. For that the grounds of appeal hereto are without prejudice to each other.

2. For that the order of the ld. Assessing Officer as well as the ld. Commissioner of Income Tax (Appeal) is bad both in law and on facts.

3. For that the order of the ld. Assessing Officer as well as the ld. Commissioner of Income Tax (Appeal) is based on presumption, surmises and conjectures.

4. For that the order of the ld. Assessing Officer as well as the ld. Commissioner of Income Tax (Appeal) is further violative of the settled principles of natural justice in as much as no opportunity much less adequate opportunity was ever afforded to the appellant to furnish its defence in course of assessment proceedings.

5. For that the order of the ld. Assessing Officer as well as the ld. Commissioner of Income Tax (Appeal) is wholly perverse in as much as the same are contrary to and at variance with the materials available on record.

6. For that the learned Commissioner of Income Tax (Appeals) has erred in holding that the surplus of the funds are liable to tax notwithstanding the fact that the appellant is constituted solely for the purposes of construction of building and provision of infrastructure of educational institutions run by the State Government of Bihar; it works only on the funds granted by the State Government for the purpose; the unutilized portion of the grant cannot be any income liable to tax under the provisions of the Act and that even otherwise the activity being akin and incidental to education can well be said to be an educational institution within the meaning of section 10 (23c) (iiiab) of the Act.

7. For that in any view of the matter the order of the ld. assessing officer as well as the Id. Commissioner of Income Tax (Appeal) to the extent as aforesaid is bad and is therefore, fit to be set aside.

8. For that other various grounds which may be urged at the time of hearing.”

3. Brief facts of the case as submitted in the statement of facts before the Ld. CIT(A) are as under:

"1. The Assessee, is a Bihar Government undertaking having Registered Office at Patna

2. The Company is registered with Main Object of Building Educational Infrastructure

3. The Amount Received by Corporation is for Development / Construction of Government School Building, Primary, Secondary & Higher Secondary Level. The affairs of the assessee are controlled by the State Government. In view of its policy decision, the State Government extends funds to the assessee directly or indirectly for educational institution controlled by Government, for construction & repair of school premises and incidental to educational infrastructure for the benefit of the children of the deprived sections of the society in an effort to fulfil the constitutional mandate for spread of education

4. Chapter III of Income Tax Act, 1961 contains certain provisions under which certain incomes which do not form part of total income and are exempted from tax. The purpose behind granting these exemptions under chapter III of the Act is to motivate activities on which the exemptions have been given. Amongst the above there is an important exemption which is granted to educational institutions under section 10(23C) in order to encourage the social purpose of the educational activity.

5. The section 10(23C)(iiiab) described with:

"any income received by any person on behalf of:

Clause (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"

6. The Bihar State Educational Infrastructure Development Corporation Limited (BSEIDCL) is the assessee and a public sector undertaking of the Government of Bihar, and is a Government Company, within the meaning of section 617 of the Companies Act, 1956, the entire shares of the company are held by the Governor of Bihar or his official nominees. The BSEIDCL is engaged in the business of building educational infrastructure and job works relating to same, etc. It had submitted its returns for the period in question claiming exemption from taxation, with following connotations:

i. Income received by BSEIDCL from constructing & developing educational infrastructure.

ii. Corporation is developing educational infrastructure of Government owned school, college & universities which are fully financed by Government. In either case same fund is given directly to schools, colleges or universities same is fully exempted from tax. The purpose is to mobilize the end fund with dedicated team hired by corporation for strengthening in better-ways. Government has set up the corporation for building educational infrastructure of school & college & set up the team of employees having requisite professional exposure of building educational infrastructure for each and every schools, colleges of state. The schools & colleges shall individually find it difficult to make the same in the absence of requisite trained professionals.

iii. Since the fund is used solely for educational purposes the institutional activities of the same should be termed as "educational activities".

iv. State Government Corporation which has wholly owned equity shares belong to Governor of Bihar & constituents thereof with act of constitutional need. Same may be termed as Charitable Purpose and same should also be claimed to be an educational institution for charitable purpose within the meaning of section 2(15).

7. Since the corporation is wholly owned Bihar State Government concern. It has to be read with Part IV of the Constitution which enshrines the Directive Principles of State Policy. Article 38 is headed (State to secure a social order for the promotion of welfare of the people). Article 39 is to the effect that the State shall, in particular, direct its policy towards securing for the citizens, men and women equally, to secure the right to an adequate means of livelihood. Article 41 is headed | Right to work, to education and to public assistance in certain cases |. It is to the effect that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to education. Article 45 provides that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. Article 46 provides to the effect that the State shall promote with special care the educational interest of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes. It may be parenthetically added that in furtherance of these provisions of the Constitution, the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009. It is evident on a perusal of the relevant provision of section 10(23C), that the spirit of exemption from taxability of the income of the university or other educational institution without profit motive runs through the newly inserted provision with details added therein. Section 10(23C)(iiiab) appears to be of paramount importance in the present case. There is no denying the position that the assessee is an instrumentality of the State Government, and a

Government company within the meaning of section 617 of the Companies Act, which carries out the mandate of the State Government, enshrined in Chapter-IV of the Constitution and summarized hereinabove. It strives to carry out the directive principles of Chapter-IV of the Constitution and as per the direction of the State Government to build & construct educational infrastructure for the students. In such a situation, its charitable nature and character is in no doubt, and is dependent on the State finance.

8. "Section 2(15) of Income tax act defines "Charitable Purpose" includes relief of the poor, education.... Advancement of other general public utility."

9. Resultant Profit what corporation derived is purely incidental to attainment of main object. The fact that, in pursuit of its charitable purpose, it registers some income in its balance-sheet will not per se make it to be a profit-making organization. An organization of this size has to maintain its infrastructure and the staff which needs money. This kind of seemingly apparent income is really not per se indicative of profit-making. The activities of the assessee are covered by section 10(23C)(iiiab). The motive, the aims and objective the purpose and the nature of its activities have to be adjudged, and are the relevant basic indicia.

10. There are certain corporation within this state or outside State has exempted from paying Income Tax under the section with same motive, so denial of exemption is not justified.

11. During the Financial Year or from the Income out of which we are claiming exemptions are derived from Construction/ Repair of Government School Premises which provides education to Children. The Section Permits exemptions to any type of assessee which have Object to do so. The denial of Exemptions to view the Other Object Clause is incorrect."

4. Rival contentions heard and the submissions made have been examined. It was submitted during the course of the appeal before the Tribunal that the return showing total income of Rs. 'NIL' was filed and the case was selected for scrutiny and notices were issued. The assessee claimed exemption u/s 10(23C)(iiiab) of the Act and the Assessing Officer (hereinafter referred to as ld. 'AO') after examining the Memorandum and Articles of the Association and the objects of the assessee held that the exemption u/s 10(23C)(iiiab) of the Act was not available and as the Trust is not existing solely for educational purposes

as it has other objects as well mentioned in the Memorandum of Association and also existed for the purposes of profit which are clear from its Memorandum of Association as has been discussed in the assessment order. Accordingly, the total income was assessed at Rs. 24,14,61,530/-. Aggrieved with the assessment order the assessee filed an appeal before the Ld. CIT(A) who has gone through the facts of the case and denied the exemption claimed u/s 10(23C)(iiiab) of the Act, after examining the decision in **CIT vs. Surat Art Silk Cloth Mfrs. Assn. [1978] 121 ITR 1/[1979] 2 Taxman 501 (SC)** and culled out in **American Hotel & Lodging Association Educational Institute vs. CBDT [2008] 301 ITR 86/170 Taxman 306 (SC)** which was reiterated in paragraph 19 of the decision in **Queen's Educational Society vs. CIT 231 Taxman 286 (SC)** and which proposition has been applied in the case of **M/s. Visvesvaraya Technological University vs. ACIT 384 ITR 37**. The relevant extract from the order of the Ld. CIT(A) is as under;

"23. The University of this Category does not mean or making profit. The University may have surplus of income over the expenditure. The hon'ble Apex Court in the case of 'Aditanar Educational Institution V. Additional Commissioner of Income Tax' - 1997 (2) TMI 3 had held that one should bear in mind the distinction between the corpus, the objects and the powers of the concerned authority. In short, merely because 'certain surplus' arises from its operations, it cannot be said that the institution is being run for the purpose of profit so long as no person or the individual is entitled to any profit of the said profit and the said profit is used to meet the object of the Institution.

24. In the aforesaid case, it has been elaborately discussed about the surplus raised by the University and its claim for exemption under Section 10(23C)(iiiab) of the Act. It has been held that an exemption under Section 10(23C)(iiiab) cannot be either claimed or granted unless all the ingredients as reflected therein are satisfied. The expression 'not for the purpose of profit' will have to be read in the light of the word 'existing' used in sub-clause (iiiab). The University was set up and is existing for the educational purpose which is not itself sufficient. The necessary requirement is that it

should not exist for profit. There could be surplus every year but the word 'surplus' will have to be read and understood in proper perspective. The surplus, the High Court held, cannot be more than 10%-15% so as to meet contingencies or unforeseen expenditure.

25. It was also held that the surplus raised by the University should be reasonable. If the surplus exceeds the reasonable limit then it would amount to 'existing for profit'. About the 'reasonable surplus', observation of the hon'ble court was that the constant increase in surplus every year after year by way of collection of fees under various heads, more than what is required, would not amount to 'reasonable surplus'. It would indicate that the University is systematically making profit. Collecting more money, under different heads more than what they require to spend for the purpose for which they collect it, is not justified. It further indicated that the surplus funds could be collected, or these could be incidental surplus, to meet contingencies or for spending during the consequent year for specific purpose for which it was collected and not for investing the same in fixed deposits for earning of income by way of interest, but of course, not to be spent on requirement of Corporate Social Responsibility.

26. The activities of the Appellant-corporation has to be judged on the anvil of the aforesaid principles and it is found out that whether the appellant corporation is wholly or substantially financed by the Government which is an additional requirement for claiming benefit under Section 10(23C) (iiiab) of the Act and also whether the appellant Corporation is not existing for the purposes of profit?. It is not in dispute that grants/direct financing by the Government during the previous year relevant to the assessment year under appeal is on record. But, from the income and expenditure account on record, it is seen that the appellant corporation had generated huge surplus apparently on account of Grant/advance/Finance received from the State Government. In view of the CSR Policy of the appellant corporation and in view of the generation of substantial surplus on record, it cannot be said that the appellant corporation is not existing for the purposes of profit and is existing solely for educational purposes, to be considered charitable activities in terms of Memorandum of Association for its incorporation by the State Government.

27. In the present situation and on facts, leads to the irresistible conclusion that the appellant-corporation does not satisfy the first requirement spelt out by Section 10 (23C) (iiiab) of the Act. Since, the twin condition of corporation existing solely for education and without any profit as well as wholly or substantially financed by the Government as held by the Hon'ble Supreme Court in the case of M/s Visvesvaraya Technological University (supra), are commutatively not satisfied. Therefore, respectfully following the

judgements of the hon'ble Courts supra, it is held that the appellant University is, though directly and even substantially financed by the Government so as to be entitled to exemption from payment of tax under the Act but is not the educational institution or the university existing solely for the purpose of education and without any profit motive, hence it cannot be said to be an university or institution in the terms of Section 10(23C) (iiiab) of the Act.

28. In the result, the appeal is dismissed.”

5. Aggrieved with the order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.

6. Rival contentions were heard and the record and the submissions made have been examined. We have also gone through the paper book filed. It was submitted that the assessee was formed by the State Government for construction of schools etc. and the funds are provided by the State Government and only administrative expenses are incurred. The Ld. CIT(A) relied upon the orders of the Hon'ble High Courts and the Hon'ble Supreme Court which are rendered on different facts and in which no funding of Government was made so as to make them eligible u/s 10(23C)(iiiab) of the Act. It was submitted that as per Annexure-4 of the paper book, which is a copy of the order of the Ld. CIT (Exemption), Patna vide DIN: ITBA/REV/F/REV7/2020-21/1031778876(1) for AY 2016-17 from pages 46 to 68, passed u/s 264 of the Act, the assessment order was set aside and the application of the assessee was allowed. In all the three years for which orders u/s 264 of the Act were passed i.e. AY 2016-17, AY 2018-19 and AY 2020-21 in which orders u/s 264 of the Act have been passed the claim of exemption u/s 10(23C)(iiiab) of the Act has been allowed and consequential assessment orders were passed by the Ld. AO and the submission of the assessee has been considered. A request was made



that for the impugned assessment year as well, the assessment order may be set aside to be done de novo as per the facts in the aforesaid 3 years. Ld. DR did not have any serious objection to this proposition.

7. We have considered the matter. The assessee is developing infrastructure for education institution and orders u/s 264 of the Act have been passed for AY 2016-17, AY 2018-19 and AY 2020-21 on the basis of which consequential orders have been passed by the Ld. AO. Hence, since the facts are similar in AY 2012-13 as submitted, we deem it appropriate to set aside the orders of the Ld. CIT(A) as well as the Ld. AO and remit the matter to the Ld. AO for framing the assessment order de novo after considering the orders u/s 264 of the Act passed by the Ld. CIT (Exemption) in the aforesaid three assessment years. Since res judicata is not applicable to the income tax proceedings, however the rule of consistency has to be applied and the facts being similar, a contrary view to that adopted in the subsequent assessment years would not be justified in the present case. Hence, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12th February, 2025.

Sd/-

[Sonjoy Sarma]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 12.02.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Bihar State Educational Infrastructure Development Corp. Ltd.,
Shiksha Bhawan, Bihar Rashtrabhasa Parisad Campus,
Acharya Shiv Pujan Sahay Path, Saidpur, Patna, Bihar,
800004.**
2. **ACIT, Exemptions, Circle-1, Patna.**
3. CIT(A)-I, Patna.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata