

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA ‘e-COURT’, KOLKATA
[Hybrid Court Hearing]**

Before

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

**ITA No.: 563/PAT/2024
Assessment Year: 2018-19**

Sarvodaya Samaj Kalyan Sansthan	Vs.	CPC, Bangaluru
(Appellant)		(Respondent)
PAN: AAEAS1257L		

Appearances:

Assessee represented by : N o n e

Department represented by : Shri Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 13-October-2025

Date of pronouncing the order : 26-November-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 25.06.2024.

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

“1. For that the order passed by learned Commission of Income-tax (Appeals) confirming the order passed by CPC, Bengaluru is bad in law as well as on facts.

2. For that the Ld. CIT (Appeals) has further grossly erred in confirming the finding of learned A.O. of treating the appellant trust as AOP for charging tax at maximum marginal rate.



3. For that treating the status of appellant AOP is not at all called for because appellant is registered in Society Registration Act and engaged in imparting education to the boys of weaker section and thus the inference is based on whim and arbitrariness and he department has absolutely failed to justify the action of treating AOP to levy tax at maximum marginal rate.

4. For that the authorities below did not appreciate that the Institution is not a taxable unit because the only purpose of the Institution is imparting ITA Nos. 555 to 558/Asr/2011 Sher-e- Kashmir College of Educational v. ITO education and its income is totally exempt from Income-Tax and as such there was no justification in assessing the income

5. For that the orders of the Assessing Officer as well as of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi, are both against the facts of the case & untenable in law.

6. For that the learned CIT erred in appreciating the fact that appellant trust is registered under society registration act and is an institution solely existing for purpose of educational purpose

7. For that the Ld. CIT (Appeals) did not appreciate that the Assessing Officer was not justified in not allowing the claim of exemption u/s 10(23C)(iiiad) of the Income-Tax Act, 1961.

8. For that the Ld. CIT(Appeals) did not appreciate that the only object of the Institution is imparting of education and as such the income of the Society/Institution is exempt from Income-Tax and was not subject to Income-Tax. As such exemption under section 10(23c)(iiiad) of the Act, should have been allowed and there was no justification in assessing the income at Rs. 2,42,499/-.

9. For that learned CIT absolutely failed the appreciate the mandate of Circular of CBDT No. 320[F.No.131(31)/81- TP(Pt.)] dated 11- 01-1982, which in very categorical terms stipulates that tax at the Maximum Marginal rate u/s. 143(1) is not chargeable in the case of a Society or a Trust. Society or a Trust is chargeable under the rate chargeable to individual assessee.

10. For that no show cause notice was called from the appellant before changing the status as AOP from trust, which means that the status was changed behind the back of appellant, as result of which the appellant deprived of his right of opportunity of being heard.

11. For that the order of proceedings u/s.143 (1) and the Order u/s. 154 by the Income Tax officer (exemption) is incorrect and is against the provisions of Income Tax Act.



12. For that Without prejudice to the above, the Commissioner of Income Tax (Appeals), without appreciating the fact that the appellant trust is accredited educational institution of government and gross receipt is below threshold limit of Rs1,00,00,000/- prescribed by section 10(23C)(iiia), is not at all justified in granting the alternate claim of exemption under section 10(23C)(iiia) of income tax act.

13. For that learned CIT failed to appreciate the fact that the appellant's claim, admittedly made per section 154, and not per the return of income, could be admitted in section 154 proceedings. It is the correct legal position that is relevant, and not the view that the parties may take of their rights in the matter (CIT v. C. Parakh & Co. (India) Ltd. [1956] 29 ITR 661 (SC); Parekh Bros. v. CIT [1984] 150 ITR 105 (Ker)). Also see: Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC). Proceedings under the Act, it may be clarified, are not in the nature of a lis (Gadgil (S.S.) v. Lal & Co. [1964] 53 ITR 321 (SC)).

14. For that the appellant is an accredited institution supported by Government, alternate claim for exemption u/s. 10(23C)(iiia), the same may be appreciated, is not a new claim, but incidental to its activity of running an educational institution, and on which basis it had been claiming exemption in the past. It is true that equitable considerations are out of place in interpreting tax laws. However, as explained in R. 10 | Page The Nehru Memorial Education Society v. ITO B. Jodha Mal Kuthiala vs. CIT [1971] 82 ITR 570 (SC), those laws, like all other laws, are to be interpreted reasonably and in consonance with justice. As it famously remarked in CIT vs. J. H. Gotla [1985] 156 ITR 323 (SC), that though equity and taxation are often strangers, attempts should be made that these do not remain always so, and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.

15. For that the appellant trust has been deprived of genuine alternate claim u/s 10(23C)(iiia) which were made subjecting itself u/s 154 of the act. The premise of the Board Instructions as well as the decisions by the higher courts in this regard is that the assessee should get a fair deal. It is, further, irrelevant for the purpose of rectification whether the genesis or the cause of the mistake (in the order/intimation sought to be rectified) is at the end of the Revenue or the assessee, with, as afore- noted, both making the same mistake in the instant case. True, exemption provisions are to be strictly construed.

16. Any other ground of appeal that may be urged at the time of hearing of the appeal.”

3. None appeared on behalf of the assessee at the time of hearing. Therefore, we have decided to dispose of the appeal after hearing the Id.



Departmental Representative and perusing the material available on record.

4. Brief facts of the case are that the assessee is an educational Trust and had filed its return of income in Form ITR-7 for the Assessment Year 2018-19 on 30.10.2018 declaring total income at Rs. 2,42,499/-, which was the surplus as per the Income and Expenditure account for the year. The return of income was taken up for processing and an intimation under section 143(1) of the Act was issued on 17.03.2020; wherein the total income was determined at Rs. 2,42,499/-, *i.e.* as per the return of income. However, in computing the tax payable, the tax has been charged on the total income at Maximum Marginal Rate (MMR), instead of the normal applicable slab rates; and thus, aggregate tax liability (*inclusive of interest and fees*) has been determined at Rs. 1,00,137/-. The assessee preferred rectification petitions on various dates against the said intimation order. The last of such petitions was rejected by the Ld. AO, vide rectification order under 154 dated 28.12.2020, without assigning any reason, it is stated.

5. Being aggrieved against the said rectification order, the assessee filed an appeal before the Ld. CIT(A), who was of the view that the appellant is not entitled to claim exemption under section 11, not being registered under section 12AA of the Act. The appellant Trust is regularly being assessed to tax in the status of AOP. Therefore, the action of AO in charging tax at Maximum Marginal Rates on total income of the AOP is in accordance with the statutory provisions, hence charging of tax at MMR was sustained.

6. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.



7. We have heard the Ld. DR. Before us, the assessee had also filed a paper book containing the written submission. It is stated that the appellant-assessee being an Institution solely existing for educational purpose within the meaning of section 10(23C)(iiiad) of the Income Tax Act and is registered under the Societies Act, 1960. The assessee is running an ITI College in the remotest area of Jamui District of Bihar and imparting education to poor students. The primary objective of the assessee-Society is not profit-motive, rather the objective of the assessee-Society is to serve the Society by way of charity as defined in section 2(15) of the Act. The assessee-Society exists solely for charitable purpose within the meaning of section 2(15) of the Income Tax Act. The aggregate annual receipts from fee of students were Rs.18,18,863/- and after expending Rs.15,76,363/- on maintenance and salary of staff, there was a surplus of Rs.2,42,499/-, which was treated as income, even though the assessee is exempt from income tax under section 10(23C)(iiiad). The assessee claimed exemption as the gross receipts were below the annual gross receipts specified as per the provision of section 10(23C)(iiiad). The assessee has relied upon the decision of the ITAT, Chennai Bench in ITA No. 159/Mds./2013 for the Assessment year 2009-10 in the case of M/s. Ganapathy Educational Trust and also other decisions in support of the claim that the exemption claimed was allowable.

8. The ld. D.R. submitted that the ld. CIT(Appeals) has discussed the matter and the assessee does not qualify for exemption as it was not registered under section 12A of the Act. However, the fact of the case is that since the assessee is claiming exemption under section 10(23C)(iiiad), which requires the institution existing solely for the purpose of education, and it has not been established in the course of



processing the return under section 143(1)(a) as to for what purpose, the assessee was existing; therefore, it is held that the provisions of section 10(23C)(iiiad) is applicable to the assessee as the gross receipts were less than Rs.1 crore. Since the assessee qualifies for the exemption claimed, the appeal of the assessee is allowed and the ld. Assessing Officer is directed to grant the required exemption under section 10(23C)(iiiad) of the Act as per law as the assessee exists for education purpose, the gross receipts were within the limits specified u/s 10(23C)(iiiad) of the Act.

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

Order pronounced in the open Court on 26th November, 2025.

Sd/-

Sd/-

[Sonjoy Sarma]
Judicial Member

[Rakesh Mishra]
Accountant Member

Dated: 26.11.2025



Copy of the order forwarded to:

1. **Sarvodaya Samaj Kalyan Sansthan, Kalyanpur Jamui, Bihar, Pin Code No. 811307**
2. **CPC, Bangaluru, Centralized Processing Centre, Bangaluru-560500, Karnataka**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata

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