

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.825/PUN/2025
Assessment Year : 2022-23

DCIT (Exemption) Circle, Pune	Vs.	Maharashtra State Board of Secondary & Higher Secondary Education Shivaji Nagar, Pune – 411005
		PAN: AAAJM1081B
(Appellant)		(Respondent)

CO No.19/PUN/2025
Assessment Year : 2022-23

Maharashtra State Board of Secondary & Higher Secondary Education Shivaji Nagar, Pune – 411005	Vs.	DCIT (Exemption) Circle, Pune
PAN: AAAJM1081B		
(Cross Objector)		(Respondent)

Assessee by : Shri Piyush Bafna
Department by : Shri Ratnakar Bhimrao Shelake
Date of hearing : 10-09-2025
Date of pronouncement : 24-10-2025

ORDER

PER R.K. PANDA, VP :

This appeal filed by the Revenue is directed against the order dated 31.01.2025 of the Ld. Addl / JCIT(A)-2, Gurugram relating to assessment year 2022-23. The assessee has filed the Cross Objections vide CO No.19/PUN/2025 against the appeal filed by the Revenue. For the sake of convenience, the appeal

filed by the Revenue and the Cross Objections filed by the assessee were heard together and are being disposed off by this common order.

ITA No.825/PUN/2025

2. Facts of the case, in brief, are that the assessee is an artificial juridical person and is an autonomous statutory body established in 1965 by Special Act in Maharashtra State Legislative Assembly under the provisions of the Maharashtra Act No.41 of 1965 i.e. Maharashtra Secondary and Higher Secondary Education Boards Act, 1965. It conducts the higher secondary certificate and secondary school certificate examinations in the entire state of Maharashtra through its nine Divisional Boards located at Pune, Mumbai, Chhatrapati Sambhajnagar, Nashik, Kolhapur, Amravati, Latur, Nagpur and Ratnagiri. It filed its return of income on 23.11.2022 declaring Nil income after claiming exemption u/s 10(46) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). During the year under consideration the total receipts of the assessee were Rs.1,91,86,33,440/- out of which the total application of income towards the objects of the assessee board were Rs.1,85,94,67,002/- and the assessee board has balance amount of Rs.5,91,66,438/- which was claimed as exempt. The assessee has filed audit report in Form No.10B on 31.03.2024 along with copy of audited Income & Expenditure statement for financial year ending as on 31.03.2022. The CPC vide intimation dated 28.07.2023 rejected the claim of deduction u/s 10(46) of the Act.

3. Before the Ld. Addl / JCIT(A) it was argued that it was inadvertently claimed exemption u/s 10(46) whereas the assessee is entitled to claim exemption u/s 10(23C) of the Act. It was submitted that the approval for exemption u/s 10(23C) has been granted by the PCIT for assessment years 2022-23 to 2026-27.

4. Based on the arguments advanced by the assessee the Ld. Addl / JCIT(A) allowed the claim of deduction u/s 10(23C)(iv) of the Act by observing as under:

7.0 Decision:-

7.1 Grounds of appeal:-The core issue in these grounds of appeal are related to the action of the learned Assessing Officer at CPC, Bangaluru, while processing the ITR filed for AY 2022-23 by disallowing of exemption claimed under section 10(46) of the Act. The A.O, CPC has found inconsistency that "in Schedule OS, filed "Income due to disallowance of exemption under clauses of section 10" at SI No. 1(e) is less than of the following: [SI. No. 1(-) SI. No. 2] of Schedule IE1 (-) exemption claimed in Part B2 of Part B T1.

7.2 The appellant has contended in its submission that the appellant is 'State' under Article 12 of the Constitution of India and as per Article 289 of Constitution of India it not liable to tax at all. Further appellant has contended that the objective of the appellant board is to regulate secondary and higher secondary education within the state and he is responsible for administering examinations for both levels of education. Appellant had inadvertently claimed exemption u/s 10(46) of the Act while filing the original ITR on 28.11.2022. However, appellant has duly obtained the prior approval from the Ld. Commissioner of Income Tax vide Form 10AC on 07.10.2023, which was valied from A.Y. 2022-23 to 2026-27. Thus, appellant was duly eligible for the exemption u/s 10(23C)(iv) of the Act.

7.3 The reply and submission provided by the appellant and documents available on record have been duly considered. It is found that appellant had claimed exemption u/s 10(46) while filing the ITR for year under consideration. The appellant Board is Artificial Juridical Person (AJP), established by Maharashtra Legislative Council under the Maharashtra Secondary and Higher Secondary Boards Act, 1965. The main objective of the appellant is to regulate secondary & higher secondary

education within the state.

7.4 During the year under consideration, the appellant board had total receipts of Rs. 1,91,86,33,440/-, out of which total application income towards the objects of the appellant was of Rs. 1,85,94,67,002/-. Thus total accumulation of income of appellant was Rs. 5,91,66,4238/- which was claimed inadvertently as exempt under section 10(46) instead of under section 10(23C)(iv) of the Act. On going through the return of income and documents available on record that appellant had inadvertently claimed in wrong section. Further appellant had duly obtained the prior approval from the Ld. Commissioner of Income Tax vide Form 10AC on 07.10.2023, which is applicable for instant assessment year. Thus, the contention of appellant is prima facie found to be tenable. Consequently, the grounds of appeal are allowed with deletion of addition made by the A.O u/s 143(1) dated 28.07.2023.

8.0 In the result, the appeal of appellant is hereby **allowed**.

5. Aggrieved with such order of the Ld. Addl / JCIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and circumstances of the case, the Ld. Addl/JCIT(A) has erred in allowing claim of exemption by the assessee at the appellate stage despite the fact that the same was not claimed in the original return of income.*
2. *On the facts and circumstances of the case, the Ld. Addl/JCIT(A) has failed to appreciate that the intimation u/s 143(1) was issued correctly based on the information available in the return of income, wherein the assessee had claimed exemption u/s 10(46) of the Act and not u/s 10(23C)(iv) of the Act.*
3. *On the facts and circumstances of the case, the Ld. Addl/JCIT(A) has erred in deciding that the total accumulation of income of the assessee of Rs.5,91,66,438/- was claimed inadvertently as exempt u/s 10(46) instead of u/s 10(23C)(iv) of the Act when it was consciously claimed by the assessee in the return of income.*
4. *On the facts & circumstances of the case, it is prayed to restore the computation u/s 143(1) of the Act dated 28.07.2023 in accordance with law as determined by the CPC.*
5. *The appellant craves leave to add, alter or amend any or all the grounds of appeal.*

6. The assessee has also filed the Cross Objection by raising the following grounds:

1. *On the facts and in the circumstances of the case and in law, the learned Addl. Commissioner of Income Tax (Appeals) erred in not adjudicating the other grounds of appeal raised by the appellant, despite allowing relief on the limited ground that the appellant is eligible for exemption under section 10(23C)(iv) of the Act and therefore, it is submitted that the learned Addl CIT(A) ought to have adjudicated all grounds independently to ensure comprehensive disposal of the appeal in accordance with law.*
2. *On the facts and in the circumstances of the case and in law, the intimation order passed u/s 143(1) of the Act by the Ld CPC Bengaluru for AY 2022-23 is invalid, without jurisdiction and hence, bad in law and therefore, may please be quashed.*
3. *On the facts and in the circumstances of the case, the question of the Appellant's eligibility for exemption under section 10 of the Act involves complex and debatable issues requiring detailed examination of facts, legal interpretation, and verification of records, which cannot be adjudicated through a summary mechanism like section 143(1) and therefore, the adjustment of Rs.5,91,66,438 made by the CPC, Bengaluru in the impugned intimation under section 143(1) is without jurisdiction and liable to be quashed along with the said intimation.*
4. *On the facts and in the circumstances of the case and in law and without prejudice to any other ground, Ld. CPC Bengaluru has erred in denying the exemption u/s 10(23C)(iv) of the Act and thereby further erred in assessing the total income of the Appellant at Rs.5,91,66,438/- as against the returned income of Rs NIL which is factually and legally incorrect and invalid and hence, the said addition of Rs.5,91,66,438/- made to the returned income should be set aside and the demand raised by the CPC may please be deleted.*
5. *On the facts and in the circumstances of the case and in law and without prejudice to other grounds, the Appellant is 'State' within the meaning of Article 12 of the Constitution of India and hence, as per Article 289 of Constitution of India it not liable to tax at all and therefore, the impugned addition of Rs.5,91,66,438/- and consequential demand raised is unconstitutional and thus, illegal, invalid and bad in law and therefore, the addition made as well as demand raised may please be quashed and set aside.*
6. *On the facts and in the circumstances of the case and in law and without prejudice to any other ground and assuming but without admitting appellant was not eligible for exemption u/s 10(23C)(iv), Ld. CPC Bengaluru has erred in denying the exemption under section 10(46) of the Act whereby the entire income earned by the Appellant board was exempt*

and therefore, the impugned addition of Rs.5,91,66,438 made in the intimation order is invalid and bad in law and therefore, the same may please be quashed and set aside.

7. *On the facts and in the circumstances of the case and in law and without prejudice to any other ground, Ld. CPC Bengaluru has erred in levying interest u/s 234A, 234B and 234C and hence, the same may please be deleted.*
8. *On the facts and in the circumstances of the case and in law and without prejudice to any other ground, Ld. CPC Bengaluru has erred in the levying fee u/s 234F and hence, the same may please be deleted.*

7. The Ld. DR submitted that since the assessee has not claimed the deduction u/s 10(23C)(iv) of the Act, therefore, the CPC was justified in rejecting the claim of exemption u/s 10(46) of the Act for which the assessee is not entitled. The assessee has made a wrong claim in the return of income by mentioning wrong figures under wrong clauses, therefore, the CPC was fully justified in rejecting the claim. The Ld. Addl / JCIT(A) without appreciating the facts properly has allowed the claim of deduction u/s 10(23C)(iv) of the Act which is not correct. He accordingly submitted that the order of the Ld. Addl / JCIT(A) be reversed and that of the Assessing Officer / CPC be restored.

8. The Ld. Counsel for the assessee on the other hand while supporting the order of the Ld. Addl / JCIT(A) drew the attention of the Bench to the decision of Hon'ble Bombay High Court in the case of Sanchit Software & Solutions (P.) Ltd. vs. CIT reported in (2012) 349 ITR 404 (Bom). He submitted that the Hon'ble High Court in the said decision has held that where in return of income the assessee had sought to exclude its dividend income and long term capital gains

from sale of shares u/s 10 but by mistake, omitted to exclude them, Commissioner should rectify the return and revision could not be denied.

9. Referring to the decision of the Delhi Bench of the Tribunal in the case of Smt. Ashrafi Devi Shiksha Samiti vs. ITO reported in (2025) 172 taxmann.com 568 (Delhi-Trib.), he submitted that the Tribunal in the said decision has held that where assessee, an educational institution, claimed exemption under section 10(23C)(iiiad) only after it received approval under section 10(23C)(i) read with section 10(23C) (vi) for relevant year, it was entitled for claiming exemption under section 10(23C) even though it was not registered under section 12A.

10. Referring to the decision of the Lucknow Bench of the Tribunal in the case of Desh Bharti Public School Samiti reported in (2022) 195 ITD 600 (Lucknow-Trib.), he submitted that the Tribunal in the said decision has held that where assessee, a trust, in earlier years had been claiming exemption under section 10(23C) and it got registration under section 12A on 2-9-2014 and it in return filed for assessment year 2014-15 claimed exempt income under section 10(23C) instead of claiming same under section 12A, mistake had occurred as a human error and thus Assessing Officer was to be directed to allow exemption under section 12A.

11. Referring to the CBDT Circular No.14(XL-35)/1955 dated 11.04.1955, he submitted that according to the said circular, the tax officers are required to assist

the taxpayers in making legitimate claims for exemption or relief. He submitted that the assessee in the instant case is entitled for claim of deduction u/s 10(23C)(iv) of the Act since the approval u/s 10(23C)(iv) was granted on 07.10.2023 for assessment years 2022-23 to 2026-27. Further, the exemption u/s 10(23C) was fully granted by the CPC for subsequent assessment years 2023-24 and 2024-25, copies of which are placed at pages 235 to 255 of the paper book.

12. Referring to the decision of Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers & Shareholders reported in 349 ITR 336 (Bom) and the decision of the Hon'ble Karnataka High Court in the case of PCIT vs. Karnataka State Co-op. Federation Ltd. reported in 128 taxmann.com 1, he submitted that a new claim / exemption can be raised at appellate stage. He submitted that mere claim under incorrect section will not disentitle exemption and the wrong information in the ITR can be rectified. He accordingly submitted that the claim of exemption u/s 10(23C)(iv) of the Act could not even be denied merely because there was wrong information in the ITR.

13. We have heard the rival arguments made by both the sides, perused the orders of the CPC / Assessing Officer and the Ld. Addl / JCIT(A) and the paper book filed by both the sides. We have also considered the various decisions cited before us. We find the assessee in the instant case instead of claiming the deduction u/s 10(23C)(iv) made wrong claim u/s 10(46) of the Act which was denied by the CPC in the intimation u/s 143(1) of the Act. We find in appeal the

Ld. Addl / JCIT(A) after appreciating the facts properly allowed the claim of deduction u/s 10(23C)(iv) of the Act. We do not find any infirmity in the order of the Ld. Addl / JCIT(A) on this issue. Admittedly the assessee vide order dated 07.10.2023 has been granted the approval u/s 10(23C)(iv) of the Act for assessment years 2022-23 to 2026-27 which is as under:

FORM NO. 10AC

(See rule 17A/11AA/2C)
Order for approval

1	PAN	AAAJM1081B
2	Name	MAHARASHTRA STATE BOARD OF SECONDARY & HIGHER SECONDARY EDUCATION
2a	Nature of Activities	Charitable
2b	Address	
	Flat/Door/Building	SHIVAJI NAGAR
	Name of premises/Building/Village	SHIVAJI NAGAR
	Road/Street/Post Office	Shivajinagar S.O (Pune)
	Area/Locality	Pune City
	Town/City/District	PUNE
	State	Maharashtra
	Country	INDIA
	Pin Code/Zip Code	411005
3	Document Identification Number	AAAJM1081BA2021101
4	Application Number	364192380300923
5	Unique Registration Number	AAAJM1081BA20211
6	Section/sub-section/clause/sub-clause/proviso in which approval is being granted	03-Clause (i), of first proviso to clause (23C) of section 10 (for applicants covered under sub-clause (iv) of clause (23C) of section 10)
7	Date of approval	07-10-2023
8	Assessment year or years for which the trust or institution is approved	From AY 2022-23 to AY 2026-2027
9	Order for approval:	
	a. After considering the application of the applicant and the material available on record, the applicant is hereby granted approval with effect from the assessment year mentioned at serial no 8 above subject to the conditions mentioned in row number 10	
	b. The taxability, or otherwise, of the income of the applicant would be separately considered as per the provisions of the Income Tax Act, 1961.	
	c. This order is liable to be withdrawn by the prescribed authority if it is subsequently found that the activities of the applicant are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it is granted, if it is found that the applicant has obtained the approval by fraud or misrepresentation of facts or it is found that the assessee has violated any condition prescribed in the Income Tax Act, 1961.	

10	The approval is granted subject to the following conditions:-	
	a. Any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution, shall not be applied, other than for the objects for which it is established.	
	b. The fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall not have income from profits and gains of business which is not incidental to the attainment of its objectives.	
	c. Separate books of account shall be maintained by such fund or institution or trust or any university or other educational institution or any hospital or other medical institution in respect of the business which is incidental to the attainment of its objectives.	
	d. No non-genuine activity shall be carried out by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution.	
	e. No such activity shall be carried on by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is not in accordance with all or any of the conditions subject to which it was notified or approved.	
	f. The fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall comply with the requirement of any other law for the time being in force.	
	g. The form for approval in Form No 10A has been duly filled in by providing all the required information or documents and no false or incorrect information or documents have been provided.	
	h. Where the fund or institution or trust or any university or other educational institution or any hospital or other medical institution is required to furnish application for approval under clause (ii) of first proviso to clause (23C) of section 10, the said fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall furnish such application within the time allowed under that clause.	
	Name and Designation of the Approving Authority	Principal Commissioner of Income Tax/ Commissioner of Income Tax (Digitally signed)

14. We find Hon'ble Bombay High Court in the case of Sanchit Software & Solutions (P.) Ltd. vs. CIT (supra) has held that where the assessee sought to exclude its dividend income and long term capital gains from sale of shares u/s 10 but by mistake, omitted to exclude them, revision could not be denied. The Hon'ble High Court while deciding the issue has observed as under:

5. In any civilized system, the assessee is bound to pay the tax which he liable under the law to the Government. The Government on the other hand is obliged to collect only that amount of tax which is legally payable by an assessee. The entire object of administration of tax is to secure the revenue for the development of the Country and not to charge assessee more tax than that which is due and payable by the assessee. It is in aforesaid circumstances that as far back as in 11/04/1955 the Central Board of Direct Tax had issued a circular directing Assessing Officer not to take advantage of assessee's ignorance and/or mistake. The relevant portion of the above Circular is as under:

"3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should:-

- (a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;
- (b) freely advise them when approached by them so to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."

Therefore the above Circular should always be borne in mind by the officers of the respondent-revenue while administering the said Act.

6. There is a fundamental error in the impugned order dated 7.04.2011, as it proceeds on the erroneous basis that the petitioner had admittedly not claimed the benefit of Sections 10(34) and 10(38) of the Act in respect of it's dividend income and long term capital gains on sale of shares respectively in its return of income. In fact, in the return of income, the petitioner had admittedly sought to exclude it's dividend income and long term capital gains from sale of shares under section 10 of the Act as is evident from page 24 of the return of income. However, at page 11 of the return of income as filed originally on 25.10.2005, the petitioner, by mistake, omitted to exclude the dividend income and income from long

term capital gains from the total income being declared by it. We reproduce herein below, the relevant extracts:

Extract at Page 11 of the Return of Income

(1)	Income from house property (4c of Scheduled-HP) (enter nil if loss)					NIL	
(2)	Profits and gains from business or profession						
	(i)	Profit and gains from business other than speculative business (A37 of Schedule-BP) (enter nil if loss)		(2i)	NIL		
	(ii)	Profit and gains from speculative (B41 of Schedule-BP) (enter nil if loss)		(2ii)	NIL		
	(iii)	Total (2i + 2ii)			(2iii)	NIL	
(3)	Capital Gains						
	(a)	Short term					
		(i)	Short-term (under section 11A (A7 of Schedule CG)	(3ai)	NIL		
		(ii)	Short-term (others) (A8 of Schedule-CG)	(3aii)	NIL		
		(iii)	Total short-term(3ai + 3aii) (enter nil if loss)	(3aiii)	NIL		
	(b)	Long-term (B6 of Schedule-CG) (enter nil if loss)			(3b)	680914	
	(c)	Total expenses gains (3aiii + 3b)				(3c)	680914
(4)	Income from other sources						
	(a)	From sources other than from owning race horses (3 of Schedule OS) (enter nil if loss)		(4a)	110651		
	(b)	From owning race horses (4c of Schedule OS) (enter nil if loss)		(4b)	NIL		
	(c)	Total (a + b)				(4c)	110651
(5)	Total (1 + 2iii + 3xc + 4c)					(5)	791565
(6)	Losses of current year to be set off against 5 (total of 2vi,3vi and 4vi of Schedule CYLA)					(6)	NIL
(7)	Balance after set off current year losses (5 - 6)					(7)	791565
(8)	Brought forward losses to be set off against 7 (total of 2vi, 3vi and 4vi of Schedule BFLA)					(8)	NIL
(9)	Gross total income (7 - 8) (also 5vii of Schedule BFLA)					(9)	791565
10	Deductions under Chapter VI-A (I of Schedule VI-A)					(10)	NIL
11	Total income (9 - 10)					(11)	791565
12	Net agricultural income/any other income for rate purpose (4 of Schedule EI)					(12)	NIL
13	'Aggregate income' (11 + 120)					(13)	791565

14	Losses of current year to be carried forward (total of xi of Schedule CFL)	(14)	89633
15	Deemed total income under section 115JB (6 of Schedule MAT)	(15)	584041

Extract at Page 24 of the Return of Income

Schedule EI - Details of Exempt Income (Income not to be included in Total income)			
(1)	Interest income	(1)	NIL
(2)	Dividend income	(2)	110651
(3)	Long-term capital gains on which Securities Transaction Tax is paid	(3)	680914
(4)	Net Agriculture income(other than income to be excluded under rule 7, 7A, 7B or 8)	(4)	NIL
(5)	Share in the profit of firm/AOP etc.	(5)	NIL
(6)	Others	(6)	NIL
(7)	Total (1+2+3+4+5+6)	(7)	791565

7. Therefore, in view of the above it is clear that the Commissioner of Income-tax in the order dated 7.04.2011 committed a fundamental error in proceeding on the basis that no deduction on account of dividend income and income from capital gains under Section 10 of the Act was claimed. Therefore there is an error on the face of the order dated 7.04.2011 and the same is not sustainable.

8. In view of the above, we are not considering the other submissions made and authorities cited by Mr. Shah with regard to the scope of revisional jurisdiction and the objection of the respondent with regard to the maintainability of a revisional application before the Commissioner of Income-tax. At this stage, we deem it appropriate to set aside the order dated 7.04. 2011 of the Commissioner of Income-tax and remand the matter to her for fresh consideration keeping all the contentions open on both sides, including the maintainability of a revision application.

9. At the same time, it must be pointed out that the petitioner's application for rectification filed on 8.02.2010, has not yet been disposed of. The apprehension of the petitioner that the Assessing Officer would consider himself bound by the findings in the order dated 7.04.2011, of the Commissioner of Income-tax, is not well founded. The impugned order was not based on the merits of the matter and has no relevance to the application under section 154. In any event, now that the order dated 7.04.2011, of the Commissioner of Income-tax under section 264 of the Act has been set aside for fresh consideration, the Assessing Officer would be bound to and is directed to consider the rectification application filed by the petitioner on its own merits, without being influenced by the impugned order or awaiting the result of the revisional proceedings before the Commissioner of Income-tax on remand.

10. We are conscious of the fact that in terms of sub-section (8) of Section 154 of the Act, a Rectification application has to be disposed of within six months from the date of the application for rectification. Therefore we direct the Assessing Officer to treat the application dated 8.02.2010 as a fresh application received on the date a copy of his order is served upon his office. We would appreciate if the Assessing Officer disposes of the rectification application dated 8.02.2010, filed under section 154 of the said Act at the earliest, preferably within six weeks from the receipt of this order.

11. The Writ Petition is allowed in the above terms. There shall, however, be no order as to costs.

15. We find the Delhi Bench of the Tribunal in the case of Smt. Ashrafi Devi Shiksha Samiti vs. ITO (supra) has held that where assessee, an educational institution, claimed exemption under section 10(23C)(iiiad) only after it received approval under section 10(23C)(i) read with section 10(23C) (vi) for relevant year,

it was entitled for claiming exemption under section 10(23C) even it was not registered under section 12A. We find the Tribunal at para 6 has observed as under:

“6. We have heard both parties at length and have perused the material available on the record. The issue before us is only that whether the adjustment of Rs.77,43,697/-, in absence of approval under section 12A and 10(23C)(i) rws 10(23C)(vi) of the Act can be done in the processing of ITR under section 143(1) of the Act. In principle, we are in agreement of the finding of the Ld. Addl/JCIT(A)-9, Mumbai as the impugned order is well reasoned. But the anomaly has arisen after the approval vide order dated 08.07.2024 under section 10(23C)(i) rws 10(23C)(vi) of the Act for the relevant year as the assessee's entire income having derived from the educational institution is fully exempted even after the said adjustment of Rs.77,43,697/- as the tax cannot be levied on the exempted income. In such facts and circumstances, we have no option except to restore the matter back to the AO to give effect to the order passed under section 10(23C)(i) rws 10(23C)(vi) of the Act for relevant year as the assessee is entitled for claiming exemption under section 10(23C) of the Act. We, therefore, direct the AO to allow the benefit of section 10(23C) of the Act and allow consequential relief to the assessee.”

16. We find the Lucknow Bench of the Tribunal in the case of Desh Bharti Public School Samiti (supra) while holding that the assessee due to mistake claimed exemption u/s 10(23C) of the Act instead of claiming the same u/s 12A, is entitled for exemption u/s 12A. The relevant observations from para 4 onwards read as under:

“4. We have heard the rival parties and have gone through the material placed on record. We find that it is undisputed fact that assessee got registration u/s.12A of the Act w.e.f. 1.4.2013 vide order dated 2.9.2014, a copy of such registration certificate is placed in P.B. pg.24. It is also an undisputed fact that assessee in the earlier years has been claiming exemption u/s.10(23C) of the Act and which was being allowed by the department also as the receipt of the assessee in the earlier years were less than Rs.1.00 crore. During the year under consideration, the assessee got the registration u/s.12A of the Act on 2.9.2014 and filed the income tax return on 20.9.2014. Along with filing of return of income, the assessee also uploaded Form-10B which is audit report u/s. 12A(b) of the Act. However, in the return of income, the assessee claimed exempt income u/s.10(23C) instead of claiming the same u/s.12A of the Act. The CPC rejected the claim of the assessee

u/s.10(23C) by holding that the assessee had not obtained necessary approval from the prescribed authority and the receipts of the assessee exceeded Rs.1.00 crore. The application for rectification u/s.154 was also rejected and on appeal before Id. CIT(A), the Id. CIT(A) also dismissed the appeal of the assessee by first holding that there was no mistake apparent from record and further held that there is lot of difference between the claim of exemption u/s.10(23C) and Section 11 of the Act. However, nowhere in the appellate order the Id. CIT(A) disputed the fact that assessee was not registered u/s.12A of the Act. The registration certificate granted by the department on 2.9.2014 is on record. Further the uploading of Form-10B which is a audit report u/s.12A(b) of the Act, proves that the mistake committed by assessee in claiming exemption u/s.10(23C) is inadvertent mistake as by committing such a mistake the assessee is not going to gain anything. Fact of the matter is that assessee is registered u/s.12A of the Act and is eligible for exemption u/s.11 of the Act. Therefore for inadvertent mistake the assessee cannot be penalized. Since the assessee has been claiming exemption u/s.10(23C) in the earlier years therefore during the year under consideration there is high probability that assessee again claimed exemption u/s.10(23C) by overlooking the fact that it had already got registration u/s.12A of the Act which in any case was available with the assessee before the filing of return of income. The mistake has occurred as a human error and should have been judicially considered. The CBDT vide Circular No.14 (XL35) dated 11.4.1955 in Para 3 has held as under:

“Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assesseees on whom it is imposed by law, officers should:—

(a) Draw their attention to any refunds or reliefs to which they appear to be dearly entitled but which they have omitted to claim for some reason or other;

(b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.”

5. In view of above facts and circumstances, we direct the Assessing Officer to allow the exemption to the assessee u/s.12A of the Act in accordance with law.

6. In the result, the appeal of the assessee is allowed.”

17. In view of the above discussion and considering the fact that the assessee has already been granted approval u/s 10(23C)(iv) of the Act for assessment years 2022-23 to 2026-27, therefore, merely because there was an inadvertent error on the part of the assessee by claiming exemption u/s 10(46) instead of u/s 10(23C)(iv), the assessee could not be deprived of the legitimate claim. We, therefore, we do not find any infirmity in the order of the Ld. Addl / JCIT(A) in granting exemption u/s 10(23C)(iv) of the Act. We, therefore, uphold the same and the grounds raised by the Revenue are dismissed.

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18. Since the appeal filed by the Revenue is dismissed, the CO filed by the assessee becomes infructuous. Accordingly the same is dismissed.

19. In the result, the appeal filed by the Revenue and the Cross Objection filed by the assessee are dismissed.

Order pronounced in the open Court on 24th October, 2025.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 24th October, 2025
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

- 1. अपीलार्थी / The Appellant;
- 2. प्रत्यर्थी / The Respondent
- 3. The concerned Pr.CIT, Pune
- 4. DR, ITAT, ‘A’ Bench, Pune
- 5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	21.10.2025		Sr. PS/PS
2	Draft placed before author	23.10.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			