

# **Overview on Taxability of Educational Institutions**

**Presented by :  
CA Sanjay K. Agarwal**

# **Exemption U/s 10(23C)**

Relevant clauses are as under :

(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.

(iiiad) Any University or other educational institution existing solely for education purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed. (Amount prescribed is Rs. 1 Crore)

***contd.....***

- (vi) Any University or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in (iiiab) or sub clause (iiiad) and which may be approved by the **prescribed authority**.

*Note: Prescribed authority is Chief Commissioner or Director General*

Only authority empowered to grant approval can do so-Power cannot be delegated-*Maharashtra Academy of Engineering and Educational Research v. Director General of Income-tax (Investigation)[2009] 319 ITR 399(Bom.)*

## Case law

- Orissa Trust of Technical Education v. CCIT [2009] 178 TAXMAN 363 (ORISSA)

Whether prescribed authority for necessary approval relating to period from 1-4-1999 to 3-4-2001 was CBDT and it was only thereafter that such power of approval came to be vested in Chief Commissioner and, therefore, Chief Commissioner could not deal with application for approval relating to period 1999-2001 - Held, yes - Whether nature of approval contemplated under section 10(23C)(vi) requires approval from prescribed authority for each year; a common order passed on applications for several years would be without jurisdiction - Held, yes

# *Background*

- Earlier (Prior to Finance Act, 2001)
  - a. organisation registered u/s 10(23C) were not subjected to conditions as specified u/s 11,12,12A and 13.
  - b. The organisation registered u/s 10(23C) were not required to file Income tax return or, further the clause of spending at least 75% was also not applicable
- Finance Act 2001 imposed the condition of spending at least 75 % of income, where Finance Act 2002 has further increased the quantum of spending of income to be at least 85%.
- The Finance Act 2002 has further inserted S. 139(4C) thereby requiring such institution to file their returns as per the provisions of S. 139(1).

# Guidelines for approval of Universities, Educational Institutions

- Under Rule 2CA any University or other Educational Institution whose aggregate annual receipt exceeds Rs.1 Crore refer to in sub-clause (vi) of section 10(23C) is required to file an application for approval in Form No. 56D to the Chief Commissioner or Director General of Income Tax. [First proviso to section 10(23C)].
- Before approving any University or other Educational Institution, Chief Commissioner or Director General of Income Tax may call for such documents (including audited annual accounts) or information, as the case may be as it thinks necessary in order to satisfy itself about the genuineness of the activities and the prescribed Authority may also make such enquires as it deems necessary in this behalf. [Second proviso to section 10(23C)].

## **Guidelines for approval of Universities, Educational Institutions**

- Delay in presenting application for approval to avail exemption u/s 10(23C)(vi) cannot be condoned as there is no provision for condonation of delay in the Act.

*Roland Educational and Charitable trust v. CCIT & (2009) 221 CTR (Ori)88*

Distinguished from

*Padmashree Krutarth Acharya Institute of Engineering and Technology v. Chief CIT [2009] 309 ITR 13 (Orissa)* Wherein it was held, that the Commissioner was to decide the application for condonation of delay on the merits.

# Analysis of Section 10(23C) in relation to Educational Institutions

Any University or Educational Institution as prescribed under section 10(23C)(vi), shall [Third Proviso to section 10(23C)]

- a) apply its income or accumulate wholly and exclusively for the objects for which it is established and in case more than 15% of income is accumulated after 1.4.2002, the period of accumulation of the amount exceeding 15% of its Income, in no case shall exceed 5 years.

**Note:** Chief Commissioner rightly refused exemption where the assessee trust failed to apply 85% of income . Dr. Maharaj Krishana Kapur Educational Charitable Trust and Management Society v. Union Of India [2009] 180 TAXMAN 420 (PUNJ. & HAR.) AND Commissioner of Income-tax v. Sir M. Visveswaraya Educational Trust [2009] 319 ITR 0425 (Kar.)



## ***contd....***

- b) Shall not invest or deposit its funds other than-
  - (i) Any assets where such assets form part of the corpus as on 1<sup>st</sup> June, 1973.
  - (ia) Any asset, being equity shares of public company where such assets form part of the corpus as on 1<sup>st</sup> June, 1998.
  - (ii) Any assets being debentures issued by, or on behalf of any company or corporation acquired before 1<sup>st</sup> March, 1983.
  - (iii) Any accretion to the shares forming part of the corpus mentioned in sub-clause (i) and sub-clause (ia), by way of bonus shares allotted to any university or other educational institution.
  - (iv) Voluntary contribution received and maintained in the form of Jewellery, Furniture or any article as the Board may by notification in the official gazette specify  
***for any period during the previous year otherwise then in any one or more of the firms or modes specified u/s 11(5).***

## **Analysis of Section 10(23C) in relation to Educational Institutions**

- If the Educational Institution as specified u/s 10(23C)(vi) carries on any business then exemption shall be available in respect of business income only if the business is incidental to the attainment of its objectives and separate books of accounts are maintained by it in respect of such business . [Seventh Proviso to section 10(23C)].
- An order granting registration or refusing registration should be passed within 12 months from the end of the month in which the application is received by prescribed authority. [Ninth Proviso to section 10(23C) w.e.f. 13/07/2006].

## ***Analysis of Section 10(23C) in relation to Educational Institutions***

- If the income of Educational Institution referred u/s 10(23C)(vi) exceeds maximum amount which is not chargeable to tax in any previous year then it shall get its accounts audited in respect of that year and furnish the audit report *in form 10BB*, along with the return of income. [Tenth Proviso to section 10(23C)].
- Where Educational Institution referred u/s 10(23C)(vi) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered u/s 12AA or to any institution registered u/s 10(23C)(iv), (v), (vi), (via) shall not be treated as application of income. [12<sup>th</sup> Proviso to section 10(23C)].

# Analysis of Section 10(23C) in relation to Educational Institutions

- Any Educational Institution referred u/s 10(23C)(vi), (via) did not applied 85% of its income as per clause (a) of third proviso to section u/s 10(23C) or does not invest as per clause (b) to third proviso to section 10(23C) or the activities of such Educational Institution are not found genuine or are not being carried out in accordance with all or any of the conditions subject to which it was notified and approved then the Govt. or Prescribed Authority may at any time after giving reasonable opportunity of being heard may rescind the notification or withdraw the approval. [Thirteenth Proviso to section 10(23C)].

# Gems of judiciary

- National Horticulture Board v. CCIT [2009] 176 TAXMAN 167 (PUNJ. & HAR.)

Petitioner-board was set up by Government of India as an autonomous society under Societies Registration Act, 1860, to promote integrated development in Horticulture - Petitioner further submitted that it was exempt under section 10(23C)(iv) in years from 1987-88 to 2007-08 and was also registered as a trust under section 12A - However, after amendment of section 10(23)(iv) on 30-3-2007, authority to grant exemption was vested in Chief Commissioner instead of Central Government and petitioner made an application to said authority.

Chief Commissioner dismissed application on ground that audit reports in Form No. 10BB were not filed with returns and same were filed later, but were not dated as required under 10th proviso to said provision. Whether provision having been substantially complied with, audit report should have been taken into account even if, strictly speaking, it was not filed with return and not in Form No. 10BB but in Form No. 10B as stated in impugned order .Held, yes.

## *Gems of judiciary*

[2010] 188 TAXMAN 402 (PUNJ. & HAR.) Pinegrove International Charitable Trust vs union of India:

To decide entitlement of an institution for exemption under section 10(23C)(vi), **test of predominant object of its activity** has to be applied by posing question whether it exists solely for education and not to earn profit and merely because profits have resulted from activity of imparting education would not result in change of character of an institution that it exists solely for educational purpose .

*Contd....*

***contd....***

- And that capital expenditure incurred wholly and exclusively for objects of education is entitled to exemption and would not constitute part of total income
- Whether educational institutions, which are registered as societies, would continue to retain their character as such and would be eligible to apply for exemption under section 10(23C)(vi) - Held, yes

# Gems of judiciary

## [2009] 185 TAXMAN 255 (DELHI) Digember Jain Society for Child Welfare v. DGIT (Exemption)

Assessee-society was established in year 1969 and was duly registered under Societies Registration Act, 1860 - Since its inception, assessee was imparting education to public at large by running schools in various cities - For relevant assessment years, assessee-society filed application seeking continuation of exemption of its income under section 10(23C)(vi) - Director General of Income-tax (Exemptions) refused to grant exemption mainly on ground that assessee-society was having multiple objects, of which education was one of them; it would mean that assessee could pursue even non-educational objects in coming years, if it deemed fit - It was seen from record that assessee-society had mainly been formed with objective of carrying out educational activity and there was no profit motive

**Contd....**



**contd....**

- It was also noted that respondent had denied exemption to assessee-society merely on suspicion that it might deviate from its objective of education in future – Held that in aforesaid circumstances, assessee could be given benefit of exemption under section 10(23C)(vi) subject to an affidavit of undertaking given by assessee-society that it would not breach any of conditions or stipulations imposed by respondent in terms of third proviso to section 10(23C)(vi) and further, that surplus funds would be utilized only for educational purposes and would not be diverted to other non-educational objectives.

# Gems of judiciary

- Jaypee Institute of Information Technology Society vs. DGIT(E) [2009] 185 TAXMAN 110 (DELHI):

Whether if a university, imparting formal education by a systematic instruction, introduces courses with objective of 'greater interface with society through extra mural extension and field action related programmes', these are not objectives independent of education but are an aid to education - Held, yes

*contd....*

- Assessee was a registered society and was imparting formal education by running an institute of information technology - On its application, UGC conferred status of deemed university upon assessee-institute subject to condition that institute would revise/amend its Memorandum of Association [MOA]/Rules as per UGC model/guidelines - Assessee, therefore, revised/amended its MOA as per UGC guidelines by including objective of undertaking extra mural status, extension programmes and field outreach activities to contribute to development of society - Notwithstanding that, prescribed authority rejected assessee's application for grant of exemption under section 10(23C)(vi) for reason that assessee-institute did not exist solely for educational purposes, as purpose/objective of greater interface with society through extra mural extension and field action related programmes was also stipulated in MOA and same, according to revenue, did not relate to formal education – *Held that on facts, assessee-institute fulfilled all requirement of section 10(23C)(vi) and was, thus, entitled to grant of registration and, consequently, exemption under aforesaid provision.*

# *Gems of judiciary*

- ICAI Accounting Research Foundation v. DGIT (Exemptions) [2009] 183 TAXMAN 462 (DELHI)

Assessee-foundation was set up by Institute of Chartered Accountants of India (ICAI) with main objective to make it an academy for imparting, spreading and promoting knowledge, learning, education and understanding in various fields related to profession of accountancy - It was a deemed company under section 25 of Companies Act, 1956 and was having status of an academy - Assessee filed application for claiming exemption under section 10(23C)(iv) taking plea that it was covered by expression 'charitable purposes' as defined in section 2(15)

*contd....*

- Held that merely on undertaking research projects at instance of Government/local bodies and taking remuneration for such projects, essential character of assessee-foundation could not be said to have been converted into one which carried on commerce or business or activity or rendering any service in relation to trade, commerce or business. **Therefore, assessee was to be granted exemption under section 10(23C)(iv).**

## **Gems – Judgment in Against**

In CIT vs. M/s Queens Educational Society ITA No. 103 of 2007 [2009] 177 Taxmann 326 (Uttarakhand) [In SLP (c) No. 3042 of 2008 ,leave granted and hearing expedited by the Hon'ble Supreme Court of India], it has been held that the investment in the fixed assets like furniture and buildings are the properties of the society and may be connected with the imparting of education but the same has been constructed and purchased out of income from imparting the education with a view to expand the institution and to earn more income, therefore the order of ITAT granting exemption u/s 10(23C)(iiiad) was set aside, following the decision of Apex Court in the case of Aditanars Educational Institution v. Addl CIT as reported in [1997] 224 ITR 310 & High Court in [1992] 3 SCC 890 Municipal Corporation of Delhi v. Children Book Trust [1992] 3 SCC 390

# **Distinction No. 1**

**Distinction of Judgments Followed with due respect to Uttrakhand High Court.**

## *Distinction of Judgment followed*

That the first judgment followed in the case as pronounced by Hon'ble Supreme Court of India in the case of *Aditanars Educational Institution v. Addl CIT* as reported in [1997] 224 ITR 310 is infact a favorable Judgment as the same has been wrongly interpreted and not used in its harmony since it provides that *“After meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes since the object is not one to make profit.*” The decisive or acid test is whether on an overall view of the matter, the object is to make profit.



## Contd....

In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity.” further the pronouncement speaks of Institutions that are not running its own educational institution but establishing, running, managing or assisting colleges or schools or other educational institutions solely for educational purposes and in that regard raising or collecting funds, donations, gifts, etc. are also falls under the preview of “ Other Educational Institutions” as referred u/s 10(22). Therefore the facts of the pronouncement so referred are distinctive with that of Queens Educational Society since there is a question about availability of exemption u/s 10(23C)(iiiad), where there was no dispute about its being educational institution.

## Contd....

Further the second para of Aditnara Educational Trust as observed in Queens Merry i.e. “if one looks at the objects clause, there are other noble and pious objects but assessee society has nothing to achieve the other objects except perusing the main objects of providing education and earning profit. Further with profit earned the society has strengthened or enhanced its capacity to earn more rather than to undertake any other activities to fulfill other noble objects for the cause of poor and needy people or Advancement of religious purpose” is not found in the report as referred in ITR, based on which the decision has been taken that the educational Institution was enhancing its capacity to earn more.

## ***Distinction of Judgment followed***

That the second judgment followed in the case of assessee as pronounced by Hon'ble Supreme Court of India in the case of MCD vs. Children Book Trust etc. does not relate to assessee in any way since there in the definition of Charitable Purpose as per section 115(4) of the Delhi Municipal Corporation Act, 1957 is discussed where as in the instant case definition of charitable purpose as defined u/s 2(15) read with S. 10(23C)(iiiad) should had been analyzed, since the Act itself spells the definition of charitable purpose it would be improper to move beyond the Act, reliance in this regard could be place on Hon'ble Karnataka High Court in the case of Commissioner of Gift-tax v. Bhoomiamma (K.) [1986] 158 ITR 0615, where in it has been held that " A statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded 'according to the intent of them that made it'.

## Contd.....

If the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. further Hon'ble Gujarat High Court in the case of *Bardolia Textile Mills v. Income-tax Officer* [1985] 151 ITR 0389 where in it has been held that The provisions of a taxing statute have to be read and understood according to the language of the statute and if the plain language compels the court to adopt an approach different from that dictated by any rule of logic the court may have to adopt it. Normally, unless it is shown that the context calls for a different meaning to be given to the term used in the same section, one would be justified in assuming that the term has been used so as to have the same meaning.

# Distinction - 2

Judicial pronouncement available u/s  
10(22) are not taken care of ?

## S. 10(22) vis a vis 10(23C)(iiiad) & 10(23C)(vi)

### S. 10(22)

Any income of a university or other educational institution, existing solely for educational purposes and not for purpose of profit.

### S. 10(23C)(iiiad) provides as under :

Any University or other educational institution existing solely for education purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed. (Amount prescribed is Rs. 1 Crore)

### S. 10(23C)(vi) provides as under :

Any University or other educational institution existing solely for education purposes and not for purposes of profit, other than those mentioned in (iiiab) or sub clause (iiiad) and which may be approved by the prescribed authority. (prescribed authority is Chief Commissioner or Director General)

S.N o	Particulars	10(22)	10(23C)(iiiad)	10(23C)(vi)
1.	Profit Motive	NO	NO	NO
2.	Purpose Education	Yes	Yes	Yes
3.	Omission/ Introduction	Omitted vide Finance No. 2 Act 1998 w.e.f. 01/04/1999	inserted vide Finance No. 2 Act 1998 w.e.f. 01/04/1999	inserted vide Finance No. 2 Act 1998 w.e.f. 01/04/1999
4.	Limiting Factor	N.A.	Annual Receipt up to Rs. 1 Crore.	Not falling in S. 10(23C)(iiiad), prior approval required

From the above mentioned table it could be noticed that S. 10(22) has been omitted to split it in to two classes of educational institutions one is whose Annual receipt is less than one crore and other is whose annual receipt is more than one crore and approved by prescribed authority. Therefore the intent of the law while introducing S. 10(23C)(iiiad) and S. 10(23C)(vi) is same as behind S. 10(22), therefore all the judgment passed u/s 10(22) shall be applicable to S. 10(23C) subject to similar facts.

# Gems of judiciary

One or two factors in any year could not determine if the Institution exists for educational purpose or have profit motive.

The condition precedent for claiming the exemption under s. 10(22) of the I.T. Act, 1961, is that the university or educational institution must exist solely for educational purposes and not for purposes of profit. If this condition is fulfilled then the fact that the recipient or owner of the income is a person other than the educational institution or university would not affect the position. The expression "existing" in s. 10(22) must not be judged with reference to the facts of the relevant year only. Though the facts of the relevant year would be very material whether an institution exists or is existing solely for any particular purpose or not cannot be judged only by the facts of one year. All the factors will have to be taken into consideration, namely, the clause or the power enabling the institution to function, its activities in general, etc. Neither the fortuitous factor of having a large surplus in any particular year nor the solitary fact of diverting some of the income to objects charitable but not educational would be decisive of the matter.

Case law : Birla Vidhya Vihar Trust v. Commissioner of Income-tax [1982] 136 ITR 0445 [Cal.]



# Gems of judiciary

## Conditions precedent to the availability of exemption to educational institution.

Under the provisions of section 10(22) of the Income-tax Act, 1961, the conditions precedent to the availability of exemption to an educational institution can be stated thus: (a) the educational institution must actually exist for the application of the said section and the mere taking of steps would not be sufficient to attract the exemption; (b) the educational institution need not be affiliated to any university or Board, in fact a society need not itself be imparting education and it is enough if it runs some schools or colleges; (c) the educational institution must exist solely for educational purposes and not for purposes of profit but merely because there is a surplus of receipts over expenditure, it cannot be said that the educational institution exists for profit;

**Contd....**

(d) an entity may have income from different sources but if a particular income is from an educational institution which exists solely for educational purposes and not for purposes of profit, then that income would be entitled to exemption and further the income should be directly relatable to the educational activity. When the section says that the institution should not exist for purposes of profit, it does not mean that in the framing of objectives of the institution the item of surplus of receipts over expenses should be completely absent.

Case Law : Educational Institute of American Hotel and Motel Association v. Commissioner of Income-tax [1996]  
219 ITR 0183 [Authority for Advance Ruling]

# *Gems of judiciary*

## *Director of Income-tax (Exemption) v. Moti Bagh Mutual Aid Education[2008] 298 ITR 0190 [Delhi High Court]*

The assessee had been running a school since 1960. The assessee was granted exemption under section 10(22) of the Income-tax Act, 1961, on the ground that it was a society existing solely for educational purposes and not for any profit motive. Even for the years subsequent to the assessment year 1996-97 the assessee had been granted exemption under section 10(22). For assessment year 1996-97 it was held that there were discrepancies in the accounts which led the Assessing Officer to the conclusion that it was not existing solely for educational purposes but also for a profit motive. The Hon'ble High Court Held, that details of construction of the school building through P had been filed. Even if there were minor contradictions or deviations in the accounts of the assessee, that by itself did not substantiate the allegation that the assessee did not exist solely for educational purposes or that it existed partly for a profit motive. The fact that the assessee had been granted exemption under section 10(22) of the Act since 1960 and even subsequent to the assessment year in question was a factor that could not be easily overlooked. The assessee was entitled to exemption under section 10(22) for the assessment year 1996-97.

# Gems of judiciary

It is revenue that has to prove that assessee was existing for Profit motive.

For purposes of allowability of exemption under section 10(22) of the Income-tax Act, 1961, the Revenue can evaluate each year to find out whether the institution existed during the relevant year solely for educational purposes or for purposes of profit. But this has to be done by the Revenue. The assessee can only put all material facts, its activities and income from which reasonable inference is to be drawn by the Assessing Officer and case made out against the assessee that it existed for profit. The assessee cannot prove that it does not exist for profit. There were specific objects in the constitution of the assessee-society prohibiting use of the profit for benefit of any individual. It was to be used for the purposes of the school during its existence and even on the dissolution of the institution. Thus, the assessee was an institution existing solely for educational purposes. There was no material on record to show that the society was existing for purposes of profit. Even the Assessing Officer did not challenge the fact that the assessee was existing for educational purposes. The Revenue had to show that exemption was wrongly granted and the assessee in fact was existing for purposes of profit.

Assistant Commissioner of Income-tax v. South Point Montessori School [2007] 294 ITR (A.T.) 0149 [Income-tax Appellate Tribunal--Gauhati]

## *Gems of judiciary*

Until revenue is not able to point any distinctive features in year under consideration, assessee is entitled to exemption u/s 10(22).

Case law : *Director of Income Tax vs. Tagore Education Society. [2002] 124 Taxman 22 (Delhi.)*

## *Gems of judiciary*

Is educational Institution deriving income from any other source barred relief u/s 10(22) of the Act ?

If the institution exist solely for the purpose of education and it derives income from any other source and if that income is used only for the purpose of education, then, it will come u/s 10(22) of the Income Tax Act.

Case Law : Brahmin educational Society v. ACIT (1997) 227 ITR 317 (Ker.)

# Gems of judiciary

CIT vs. Pulikkal Medical Foundation (P) .Ltd. (1994) 210 ITR 299 (Ker.) where in it is held that For the purpose of examining the claim under section 10(22), first objects of the academy and its activities should be scrutinized, primary and incidental . . . It will be, therefore, obvious that the income of the assessee is exempt under section 10(22) if the assessee is an educational institution or an establishment which primarily engages itself in educational activities. The institution, however, may incidentally take other activities for the benefit of the students or in furtherance of their education. It may invest its funds in any manner, but the income generated there from must be utilised exclusively for educational activities. If these requirements are complied with, the assessee's income shall be exempt under section 10(22) of the Act.

All cumulative factors will have to be taken into consideration, namely, the clause or the power enabling the institution to function, its activities in general, etc. Neither the fortuitous factor of having large surplus in any particular year, nor the solitary fact of diverting some income of the source concerned to objects charitable but not educational by itself would be decisive of the matter and in that context the facts relevant to the relevant year would be very material though not conclusive."

# Gems of judiciary

Powers given under Instrument establishing Institution to trustees should also be taken care of while determining if the same is established for profit motive.

The objects of the assessee-trust made it clear that the trust was established to undertake, to run and improve schools and to upgrade schools belonging to the Board. The trustees had been given power to construct buildings and to lease out the properties. Though the powers given to the trustees were in the objects clause, a reading of the objects clause showed that they were mere powers conferred on the trustees and they could not be regarded as objects of the trust. A distinction should be made between the corpus, objects and powers of the trustees. When the distinction between the objects and powers was kept in mind.

Case law : Commissioner of Income-tax v. Kshatriya Girls Schools Managing Board [2000] 245 ITR 0170 [Madras High Court]



## **Distinction No.3**

**Application of Section 11 to 13 –  
Alternatively plea should be taken.**

## S. 10(23C) vis a vis 11 to 13.

- Section 13 would have no application for Institutions Registered u/s 10(23C).

Case Law : Commissioner of Income-tax Vs. Lagan Kala Upvan [2003] 259 ITR 0489 (Del).

- The Distinction as between corpus and other funds, registration u/s 12A is inapplicable for sections 10(23C) institution.

# Legal Compliances

Basis of differences	Section 10(23C)	Section 12 AA	Section 80G
<b>When is Application required to be made?</b>	Required to be made by educational institutions where: Gross annual receipt exceeds Rs. 1 crore; or Is not substantially financed by the Government.	Required to be made by all NGOs in order to claim exemption u/s 11	Required to be made by all NGOs which wishes to take the benefit under this section
<b>Form for the above Application</b>	Form 56 D	Form 10 A	Form 10 G
<b>Rules applicable</b>	2CA	17A	11AA
<b>Time limit for filing of application</b>	Before the end of the previous year	Before the end of the previous year	NA.
<b>Time limit for approval</b>	Within 12 months from the end of the month in which application is received	Within 6 months from date of application	Within 6 months from date of application
<b>Time period for exemption</b>	Lifetime	Lifetime	Lifetime <b><i>Time limit of Upto 5 Years is omitted by Finance (No.) 2 Act,2009</i></b>
<b>Withdrawal of approval</b>	By CCIT	By CIT	By CIT/CCIT

# Legal Compliances

Basis of differences	Section 10(23C)	Section 12	Section 80G
<b>Exemption w.e.f.</b>	The year in which it is granted and thereafter	The year in which it is granted and thereafter	
<b>Appeal on rejection</b>	Not provided. However writ can be filed in the High Court	Lies to Appellate Tribunal	Lies to Appellate Tribunal
<b>Form of Audit Report</b>	Form 10BB (Rule 16CC)	Form 10B (Rule 17B)	
<b>Form of Application for accumulation</b>	Not prescribed	Form 10	
<b>Last date of filing of form for accumulation</b>	Before the due date of filing of return u/s 139	Before the due date of filing of return u/s 139	
<b>Power to condone belated application</b>	No	No	
<b>Form for filing of return</b>	ITR 7	ITR 7	

**Note:** In case of Private Trusts the Return has to be filed in ITR 5

# *Gems of judiciary*

## *In the case of CIT v. Saraswath Poor Students Fund (1984) 150 ITR 142 (Karn.)*

the High Court held that :

- a) The exemption u/s 10(22) is in respect of the whole of the income of an assessee.
- b) The exemption u/s 10(22) is not restricted to such income applied or accumulated for charitable or religious purpose as provided u/s 11.
- c) The scope of section 10(22) is very much wider than that of section 11.

## Contd...

CBDT in Instruction No. 1112 dated, October 29, 1977 had clearly stated that a trust, which runs an educational institution is itself eligible for exemption u/s 10(22) and the question of exemption u/s 11 would need consideration only if it does not fall u/s 10(22), however where the surplus of educational institution at the end of the year is diverted for the personal use of the proprietor thereof, or if the surplus can be used for non educational purposes, it cannot be said that the institution is existing solely for educational purpose and such institution will not be liable for exemption u/s 10(22). But in such cases, the applicability of section 11 can be examined, and if the conditions laid down therein are satisfied, the income will be exempt u/s 11.

# **Gems of Judiciary**

**Institution availing exemption u/s 10(23C)(vi) can validly apply for registration u/s 12A to avail exemption u/s 11 & 12.**

Income derived by a trust running an educational institution or by an educational institution per se is deemed to be the income derived by such trust or institution from property held under trust and will be exempt from income subject to the exceptions provided in sec.13(3) of the Act - Merely because Sec.10 (23C) provides for exemption of the income of an educational institution, it does not follow that such institution cannot avail exemption u/s 11/12 subject to conditions being fulfilled – Appeal of the Department dismissed by the Tribunal by following the Supreme Court's decision in CIT Vs Bar Council of Maharashtra (130 ITR 28)

**Case Law : Asstt. Director Of Income-tax (Exemptions) v. rajasthani Shiksha Samithi, Nizamabad in the ITAT – HYDERABAD, ITA Nos. 80 & 81/Hyd/08**

# Gems of judiciary

**Aryan Educational Society v. Commissioner of Income Tax [2006] 281 ITR (A.T.) 0072 [ITAT-Delhi].**

Money spent on acquisition of assets for educational institutions amounts to application of funds for charitable purpose. A society formed with the dominant objective of imparting education and running schools could not be denied registration u/s 12A of the Income Tax Act 1961 on the ground that some profits had been earned. If the provisions of Ss. 11, 12, and 12A of the Act were complied with by the educational institution, registration could not be denied. Further, the surplus had been used for acquiring computers and for construction of another school building.



**Judicial Pronouncement**  
**on Miscellaneous Issues.**

## Gems of judiciary

- *Whether if the requirements of sec. 10(23C) are not complied with, exemption can be denied u/s 11*

*CIT vs. Mahasabha Gurukul Vidyapeeth  
Haryana[2010] 2 DTLONLINE 283 (Punj. & Har.)*

Held that once all requisite conditions for exemption under section 11 had been met by assessee, an educational society, then there would be no bar for assessee to seek exemption under section 11 even if conditions under section 10(23C)(vi) had not been complied with

# Gems of judiciary

- Assam State Text Book Production and Publication Corporation Ltd. v. Commissioner of Income-tax [2009] 319 ITR 317(SC)

Held, reversing the decision of the Gauhati High Court in CIT v. Assam State Book Production and Publication Corporation Ltd. [2007] 288 ITR 352 , that the assessee was entitled to the exemption under section 10(22). The assessee was a Government company and it was controlled by the State of Assam ; the Central Board of Direct Taxes had granted similar exemption by letter dated August 19, 1975 to the Tamil Nadu Text Books Society which performed activities similar to those of the assessee ; and the Central Government had by letter dated July 9, 1973, stated that all State-controlled Educational Committees/Boards had been constituted to implement the educational policy of the States and consequently they should be treated as educational institutions. [Matter remanded.]

CIT v. Rajasthan State Text Book Board [2000] 244 ITR 667 (Raj) and Secondary Board of Education v. ITO [1972] 86 ITR 408 (Orissa) followed.

# Gems of judiciary

**Where the institution is in process of starting educational activity but not yet commenced any such activity.**

■ **Shavak Shiksha Samiti vs CIT 104 TTJ 127 (ITAT – Delhi)**

The applicant trust was a society registered under the Societies Registration Act 1860 and was in the process of setting up a school on a plot allotted to it. The trust's main object of imparting education came within the purview of charitable purpose and it did not exist for profits, since the surplus, if any, were not to be distributed among its members. Therefore, the trust was entitled to registration under s.12A of the Income Tax Act 1961.

# Gems of judiciary

*Whether exemption can be denied on disallowance of certain expenses*

*ITO v. Virendra Singh Memorial Shiksha Samiti*  
*[2009] 121 TTJ (Luck.) 829/ [2009]18 DTR 502*

Mere disallowance of certain expenses can add to the surplus but cannot become the basis for denying exemption u.s

10(22)/ 10(23C)(iiiad). Further provisions of sec. 10(22) cannot be given restricted meaning and exemption available u.s 10(22) could cover income chargeable u/s 68 also.

Other rulings .[2010]001 ITR(Trib.)0527(ITAT Coch.) DIT (Exemption) v. Raunaq Education Foundation [2004] 294 ITR 76 (Delhi)

# Situation

**A society with a main object of spreading education has opened 3 schools, where in the turnover from the schools individually do not exceed Rs. 1 crore, however on aggregate basis it exceeds Rs. 1 crore. – Application of S. 10(23C)(iiiad) or S. 10(23C)(vi) ?**

The limit of one crore shall be considered with regard to any university or other educational institution. In the instant case education society is itself an educational institution. The Supreme Court in the case of Aditanar Educational Institution v. Addl. CIT (1997) 224 ITR 310(SC), observed that it will be rather unreal and hyper technical to hold that the assessee-society is only a financing body and will not come within the scope of “other educational institution”. The object of the assessee-society is to establish, run, manage or assist colleges or schools or other educational institutions solely for educational purposes and in that regard to raise or collect funds, donations, gifts, etc. Colleges and schools are the media through which the assessee imparts educational and effectuates its objects. In substance and reality, the sole purpose for which the assessee has come into existence is to impart education at the levels of colleges and schools and so, such an educational society should be regarded as an “educational institution”. Thus, in this case availability of exemption as per section 10(23C) (iiiad) shall be examined in relation to Education Society and not in respect of every school managed by the society.

## Contd....

Further, the language used in clause (iiiad) of section 10(23C) provides that the aggregate annual receipt of such other educational institution should not exceed Rs.1 crore. Therefore, the department can legitimately tag the turnover of all the school run by such Education Society. The Education Society which is not eligible for exemption under section 10(23C)(iiiad), can still avail of exemption under section 10(23C)(vi), subject to approval by the DGIT on fulfillment of certain conditions. If the conditions under section 10(23C) (vi) are also not fulfilled, then the society can avail of exemption under section 11 of the Income Tax Act and for the purpose of availing of such exemption, the society must apply for registration under section 12A. Thus, it is advisable that the society should apply for registration under section 12A at earliest.

# Gems of judiciary

Will educational Institution charging fees for education loose exemption ?

Hon'ble Supreme Court in the case of P.C. Raja Ratnam Institution V. Municipal Corporation of Delhi (1990) 181 ITR 354 (SC) has held that mere imparting of Education is enough to claim exemption,

That the test of charitable purpose is satisfied by the proof of any of the three conditions, namely, relief of the poor, education or medical relief. The fact that some fee was charged from the students was not decisive inasmuch as the proviso to section 115(4)(a) of the Delhi Municipal Corporation Act, 1957, indicated that the expenditure incurred in running the society might be supported either wholly or in part by voluntary contributions. Besides, the Explanation to section 115(4)(a) was, in terms, inclusive and not exhaustive.

**More Case Laws : Shanti Devi Progressive Education Society Vs. Asst. Director of Income-tax (Exemption) [1999] 236 ITR (A.T.) 0040 (ITAT - Del)**



# Gems of judiciary

*Does Educational activity necessarily to be taken place for claiming exemption u/s 10(23C)?*

Section 10(23C) of the Income-tax Act, 1961 – Educational institutions / university – Assessment year 2003-04 – Assessee's claim for exemption under section 10(23C)(iiiad) was rejected by revenue authorities on ground that no educational activity had started in relevant accounting year- On instant appeal, it was seen that during relevant year activities undertaken by assessee were for purpose of setting-up an educational institution – Further , assessee's books of account showed that apart from miscellaneous expenses, processing fees were paid for availing of affiliation for setting –up of an educational institution – Assessee had also paid certain amount for purchase of land for setting-up of an educational institution – Whether on facts, it could be concluded that for year under appeal , assessee-trust was existing solely for educational purposes and not for purposes of profit and, thus, it was entitled to exemption under section 10(23C)(iiiad) – Held, yes

*Case Law : Income-tax Officer, Ward-1, Hisar v. Baba Dhall Educational Society of India [2009] 27 SOT 391 (DELHI - ITAT)*

# Gems of judiciary

## Society running educational institution is also entitled to exemption

Section 10(22) of the Income-tax Act, 1961, exempts income of a "University or other educational institution existing solely for educational purposes" from income-tax. The word "institution" has not been defined in the Act. There is no reason why an educational society cannot be regarded as an educational institution if that educational society is running educational institutions.

[The High Court directed the Income-tax Officer to consider afresh whether the assessee, a society running educational institutions, came within the ambit of section 10(22)]

Case Law : Katra Education Society v. ITO [1978] 111 ITR 0420 [All.] further approved in (1997) 90 Taxman 528 (SC) Aditanar educational Institution vs. Additional CIT

## contd....

- An educational society or trust or other similar body running an educational institution solely for educational purposes and not for the purpose of profit could be regarded as “other educational institution” coming within S. 10(22) of the Act and that it will be rather unreal and hyper technical to hold that the assessee society is only a financing body and will not come within the scope of “other educational institution” as specified u/s 10(22).

*Case law : Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310 (SC).*

- A trust or a society which runs, maintains or assists such institution may well be eligible for exemption, even if it does not own the institution, if its sole object is education.

*Case law : Secondary Board Of education v. ITO (1972) 86 ITR 408 (Ori.), Katra Educational Society v. ITO [1978] 111 ITR 420 (All.), CIT v. Sindhu Vidhya Mandal Trust [1983] 142 ITR 633 (Guj), Director of Income-tax Vs. Sir Shri Ram Education Foundation [2003] 262 ITR 0164, DCIT vs Mahathama Educational Society 2007 15 SOT 44 ITAT - Hyderabad.*

# Gems of judiciary

*Funds Diverted to business organizations where trustees were having substantial interest, since interest @ of 18% was charged, the educational institution shall not be disentitled from exemption u/s 10(23C)*

(i) where none of the objects of the trust showed that profit-making was one of the objects of the trust and Surplus had been generated only incidentally and the same was part of the surplus because of interest received by the trust on diversion of funds. The surplus was being accumulated for the purpose of purchasing more land to start the second unit of the school. Then it could not be said that the trust was existing for the purpose of earning profit. There was no evidence to show that any amount was either spent towards personal benefit of the trustees. There was no denial that funds were lent out to various business organizations in which the trustees or their relatives had substantial interest. But interest had been charged on such advances at eighteen per cent. per annum wherever there was a debit balance in the account and such interest had been charged even up to 1999-2000. Interest had not been charged because later on such advances had been treated as land advances. There is no requirement under section 10(22) that funds should be invested in specified assets as contemplated under section 11(5) or in any other particular manner.

## Contd.....

Therefore, the observation of the Commissioner (Appeals) that interest was never paid and no security was taken had no force. *Circular No. 712 dated July 25, 1995, issued by the Central Board of Direct Taxes makes it clear that there is no mandate in the Act to invest the funds in any particular fashion for the purposes of section 10(22).* Thus, it was proper on the part of the trust to park the surplus funds with the business organizations where the trustees and/or their relatives had a hold because then the trustees could exercise some kind of control on such investments and had the satisfaction that such investments were safe.

*Case Law : A. R. R. Trust vs. Assistant Commissioner of Income-tax (Income-tax Appellate Tribunal--Chennai) [2006] 280 ITR (A.T.) 0152*

# Gems of judiciary

*Application of Income outside India does not disentitle educational institution exemption u/s 10(23C)(vi), however the prescribed authority is always empowered to grant registration subject to certain conditions.*

The expression 'in India' - the third proviso to Section 10(23C)(vi), which refers to monitoring conditions, confines the words application of income to the objects for which the Institution is established. The third proviso does not use the words in India in the matter of application or accumulation of income though in several other sections like Sections 10(20A), 10(22B) and 11(1)(a) etc., Parliament has used the words in India. Therefore, the words in India cannot be read into the third proviso. Further the Prescribed Authority is at liberty to prescribe any condition, including certain percentage of accounting money to be spent in India but cannot reject the application

*Case law :AMERICAN HOTEL LODGING ASSOCIATION EDUCATION INSTITUTE Vs CBDT 2008-TIOL-115-SC-IT*

# *Gems of judiciary*

- Decision further applied in

*Ewing Christian College Society v. Chief  
Commissioner of Income-tax[2009] 318 ITR  
0160(All)*

# Gems of judiciary

- City Montessori School (Reqd.) v. Union of India[2009] 315 ITR 048(All)

Society providing not only traditional education but also preparing students by providing guidelines to get admissions in professional institutions to pursue their higher studies--Society engaged in educational activities falling under "charitable purpose"--Society satisfying all statutory requirements for getting exemption under section 10(23C)(vi)--No material to prove surplus earned by society utilised for personal profit or gain of anyone including founder-manager/director--Chief Commissioner directed to grant approval under section 10(23C)(vi)



# Gems of judiciary

*When the assessee collects money over and above the fees prescribed by the Government, whether it constitutes a charitable institution or not.*

Capitation fee is nothing but a price for selling education. As held by the Apex Court, the concept of 'teaching shop' is contrary to the constitutional scheme and is wholly abhorrent to Indian culture and heritage. Some of the State Legislatures passed legislation prohibiting the collection of capitation fee and also made the same as a punishable offence. Collection of capitation fee is contrary to the Constitutional scheme and prohibited by State enactment. When the assessee used the charitable activity/educational institution as an apparatus for selling the education, the element of charity no longer remains in the activity of the assessee.

*Vodithala Education society v. ADIT (EXEMPTIONS - II), ITAT – HYDERABAD, 2008-TIOL-139-ITAT-HYD*

# Gems of judiciary

## Establishment of educational activities taking place in India is required.

- i. that for the purpose of exemption under section 10(22) of the Income-tax Act, 1961, the University or other educational institution need not exist in India,
- ii. that, however, the university or other educational institution has to engage in educational activity in India not for profit. It is not beyond the bounds of possibility that Parliament should be willing to forgo a very small percentage of its revenue for the purposes of education, even though it might mean the education of people outside India, if that education was being provided by a university or other educational institution whose sole purpose was to provide education and not at all to make a profit.
- iii. Even a university or other educational institution established or incorporated outside India can be eligible for the exemption under section 10(22) provided that it exists solely for educational purposes and not for purposes of profit.

*Contd....*

## Contd....

- iv. Interpretation of a statutory provision granting exemption which does not stand the test of rationality and will lead to absurd results cannot be accepted.
- v. Each one of the exemptions in section 10 is intended to serve a definite public purpose and is meant to achieve a special object.
- vi. The expression "existing solely for educational purposes and not for purposes of profit" qualifies "a university or other educational institution".
- vii. The expression "existing solely for educational purposes and not for purposes of profit" qualifies "a university or other educational institution".
- viii. Giving a purposeful interpretation of section 10(22), it will be reasonable to hold that in order to be eligible to claim exemption there under the assessee has to establish that it is engaged in some educational activity in India and its existence in this country is not for profit only.

*Contd....*

ix.

In a case where a dispute is raised whether the claim for exemption from tax by the assessee is admissible or not, it is necessary for the assessee to establish that it is a part of a university which is engaged solely or at least primarily for educational purposes and not for purposes of profit and the income in respect of which exemption is claimed is part of the income of the university. The label "university press" is not sufficient to establish that the assessee is engaged in any educational activity.

The imparting of education is service to the society. From the language of section 10(22), it does not appear that without any such service in India, the Legislature intended to exempt the total income of the assessee. The requirement of imparting education or some other educational activity in this country can be read into section 10(22). That is the basic assumption of section 10(22). A university established in a foreign country is not excluded from the ambit of section 10(22) in case it is imparting education in India or has some educational activity in India. It is evident that for the purposes of granting exemption under section 10(22) the Legislature assumed the existence of educational activity in India by a university or other educational institution. The basic requirement of the section is the existence of "educational purpose" which, in other words, means the imparting of education which has to be in India. The absence of the words "India" in this provision is inconsequential. It has to be read into section 10(22).

**Case law : Oxford University Press v. Commissioner of Income Tax**  
**[2001] 247 ITR 0658 [Supreme Court of India]**

**THANK YOU!!!**

**CA. Sanjay K. Agarwal**  
**Member Central Council-ICAI**

**email: agarwal.s.ca@gmail.com**

**Mobile No. : 9811080342**