

**Knowledge / Education Boom in India and Incentives for Educational Institutions**  
**under the Income-Tax Act, 1961**

[Including Foreign Educational Institutions]  
200 CTR (Art.) 62 (Part-1)

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Presently, India is witnessing a knowledge and information technology boom. New BPO (Business Process Outsourcing) units and Call-Centres are being opened every day throughout the length and breadth of the country. In addition, KPO (Knowledge Process Outsourcing) units are also being established in view of tremendous demand for the same. Similarly, there is also a boom in biotechnology research and application. Besides, a number of multinational companies are making India as their research and development (R&D) hub in various fields like automobiles, pharmaceuticals and FMCG (Fast Moving Consumer Goods) etc. Accordingly, demand for trained personnel in the aforesaid fields and educational facilities for the same has been increasing. As a result new educational institutions are being opened and the existing educational institutions are expanding in order to provide various training facilities. The aforesaid scenario has become quite attractive for the foreign universities and other educational institutions also and therefore, a number of such universities / educational institutions are showing keen interest in establishing their branches in India.

In this context, a question may arise as to the income-tax implications in respect of the educational faculties being established by the various Indian as well as foreign educational institutions. It is heartening to note that Income-Tax Act, 1961, provides adequate incentives for the spread of such educational facilities by the Indian as well as foreign universities and other educational institutions. Earlier, any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit was exempt under the erstwhile Section 10(22) of the Income-Tax Act, 1961(the Act). The erstwhile Section 10(22) was omitted by Finance (No.2) Act, 1998, with effect from 1.4.1999, by shifting the provision to Section 10(23C), though in a diluted form. It was perhaps done for the reason that in the absence of any monitoring mechanism for checking the genuineness of the activities of such universities and other educational institutions, these provisions were being misused.

This exemption could, however, continue in respect of any university or other educational institution which is wholly or substantially financed by the Government, under new sub-clause (iiiab), inserted in Section 10(23C) of the Act by the Finance (No.2) Act, 1998. Further, under sub-clause (iiid) in

Section 10(23C), the income of other educational institutions would also be exempt, if their annual receipts are below the prescribed limit viz. Rs.1 crore (Rule 2BC).

The income of the remaining educational institutions would be exempt, under sub-clause (vi) of Section 10(23C), if they are approved by the prescribed authority on application made by them.

Under the erstwhile Section 10(22), blanket exemption was available to educational institutions, wherein it was provided that the income of a university or other educational institution was not includible while computing the total income. Such institutions are now required to maintain a discipline similar to trusts under Section 11. For this purpose a number of conditions as provided under various *provisos* to Section 10(23C), are required to be fulfilled. In this context, there are a number of other issues which are relevant and for this purpose various judicial precedents will also have to be referred to. All these aspects are discussed as follows-

## **I. The various provisos to Section 10(23C) of the Act**

There are in all eleven *provisos* to Section 10(23C) of the Act. There are a number of conditions laid down under these provisos which are required to be fulfilled in order to be eligible for the exemption from the income-tax, under Section 10(23C) of the Act. The same are discussed as follows.

### **1. First proviso – Application to be made in prescribed form**

For the sake of ready reference, the first proviso to Section 10(23C), is reproduced as follows-

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**Provided** that the fund or trust or institution or any University or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via):

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From the aforesaid provisions of the first proviso, it may be seen that for the purpose of grant of exemption or continuance thereof, all the educational institutions covered under sub-clause (vi) of Section 10(23C), are required to make an application in the prescribed form and manner to the prescribed authority.

As per Rule 2CA(1) of the Income-Tax Rules, 1962, the prescribed authority under sub-clause (vi) of clause (23C) of Section 10, will be the Chief Commissioner or Director General to whom the application shall be made in Form No.56D.

The approval of the prescribed authority shall, at any one time, have effect for a period not exceeding three assessment years.

## 2. Second proviso – Submission of audited annual accounts

For the sake of ready reference, the second proviso to Section 10(23C) is reproduced as follows-

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**Provided further** *that the Central Government, before notifying the fund or trust or institution, or the prescribed authority, before approving any University or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any University or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of the fund or trust or institution or any University or other educational institution or any hospital or other medical institution, as the case may be, and the Central Government or the prescribed authority, as the case may be, may also make such inquiries as it deems necessary in this behalf:*

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From the aforesaid provisions of the second proviso, it may be seen that the prescribed authority before approval of any university or educational institution under sub-clause (vi), may call for such documents including audited annual accounts or information, as it thinks necessary in order to satisfy itself about the genuineness of the activities of the aforesaid university or institution. Further, the prescribed authority may also make such enquiries, as it deems necessary for the aforesaid purpose.

## 3. Third proviso – Application of income and investment of funds

For the sake of ready reference, the third proviso to Section 10(23C) is reproduced as follows-

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**Provided also** *that the fund or trust or institution or any University or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via)—*

*(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and]*

*(b) does not invest or deposit its funds, other than—*

- (i) *any assets held by the fund, trust or institution or any University or other educational institution or any hospital or other medical institution] where such assets form part of the corpus of the fund, trust or institution or any University or other educational institution or any hospital or other medical institution as on the 1st day of June, 1973;*
- (ia) *any asset, being equity shares of a public company, held by any University or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any University or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;]*
- (ii) *any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any University or other educational institution or any hospital or other medical institution] before the 1st day of 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 the fund, trust or institution or any University or other educational institution or any hospital or other medical institution ;*
- (iv) *voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,*  
*for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:*

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From the aforesaid provisions of the third proviso, it may be seen that the exemption will be available if-

- (i) the institution applies its income or accumulates it for application, wholly and exclusively for the objects for which it is established, and
- (ii) the income so accumulated is invested in securities as specified under Section 11(5) of the Act.

As per clause (a) of third proviso, a university or institution has to apply its income or accumulate it for application wholly and exclusively towards the objects for which it is established and in a case where more than 15 per cent of its income is accumulated on or after 1.4.2002, the period of accumulation of the amount exceeding 15 per cent of its income, shall not exceed five years.

Clause (b) of third proviso, deals with the investment of the funds of the university or educational institution. All the investments have to be made in any one or more of the forms or modes specified in Section 11(5) of the Act. In this regard, certain exceptions have been provided, viz.

- (i) Any asset where it forms part of the corpus, as on 1.6.1973.
- (ii) Any asset being equity shares of a public company where such shares form part of the corpus as on 1.6.1998
- (iii) Any asset being debentures acquired before 1.3.1983
- (iv) Any accretion to the aforesaid shares by way of bonus shares, and
- (v) Voluntary contributions received and maintained in the form of jewellery, furniture or any other articles, as the Board may, by notification in the official Gazette, specify.

According to Circular No.772, dated 23.12.1998, issued by the Central Board of Direct Taxes (CBDT), the educational institutions are given time upto 30.3.2001, to transfer their investments to specified securities.

#### **Donations in kind**

At times contributions in the shape of books, furniture or equipments, etc. may be received by the educational institutions. Such donations in kind could be treated as income within the meaning of Section 2(24) of the Act. In this context, vide Circular No.580, dated 14.9.1990, the CBDT has clarified that use of such items towards the objects of the educational institutions, could be regarded as application of income within the meaning of clause (a) of the third proviso to Section 10(23C).

#### **4. Fourth proviso – Exemption not to be denied in certain circumstances**

For the sake of ready reference, the fourth proviso to Section 10(23C) is reproduced as follows-

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**Provided also** that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993 :

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This proviso is not applicable to any University or other educational institution covered under sub-clause (vi) of clause (23C) of Section 10 of the Act.

## 5. Fifth proviso – Investment of funds

For the sake of ready reference, the fifth proviso to Section 10(23C) is reproduced as follows-

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**Provided also** that the exemption under sub-clause (vi) or sub-clause (via) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001 :

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 From the aforesaid provisions of the fifth proviso, it may be seen that the exemption under sub-clause (vi) shall not be denied in relation to any funds invested or deposited before 1.6.1999, otherwise than as provided under Section 11(5), if such funds do not continue to remain so invested or deposited after 30.3.2001.

## 6. Sixth proviso – Contributions in kind

For the sake of ready reference, the sixth proviso to Section 10(23C) is reproduced as follows-

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**Provided also** that the exemption under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution or any University or other educational institution or any hospital or other medical institution, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:

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 From the aforesaid provisions of the sixth proviso, it may be seen that where any asset is received in kind, the university or educational institution will not lose the benefit of exemption, provided it disposes of the asset within one year from the end of the previous year in which it was acquired or 31.3.1992, whichever is later.

## 7. Seventh proviso – Income, being profits and gains of business, not exempt

For the sake of ready reference, the seventh proviso to Section 10(23C) is reproduced as follows-

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**Provided also** that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any

*University or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:*

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From the aforesaid provisions of the seventh proviso, it may be seen that nothing contained in sub-clause (vi) shall apply in relation to any income of any university or educational institution, being profits and gains of business, unless the business is incidental to the attainment of its objects and separate books of accounts are maintained by it in respect of such business.

In other words, seventh proviso states that business income of any university or educational institution shall be chargeable to tax, unless the business is incidental to the attainment of its objects and separate books of accounts are maintained by it in respect of such business.

The meaning of the expression '*Incidental to the attainment of its objects*' has been discussed later on, in this Article.

**8. Eighth proviso– Notification issued by the Central Government to have effect for maximum three assessment years only**

For the sake of ready reference, the eighth proviso to Section 10(23C) is reproduced as follows-

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**Provided also** *that any notification issued by the Central Government under sub-clause (iv) or sub-clause (v) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:*

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From the aforesaid provisions of the eighth proviso, it may be seen that eighth proviso does not apply to any university or other educational institution covered under Section 10(23C)(vi) of the Act.

**9. Ninth proviso– Taxability of donations received for but not applied, to earthquake relief in Gujarat**

For the sake of ready reference, the ninth proviso to Section 10(23C) is reproduced as follows-

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**Provided also** *that any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure*

*have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax:*

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From the aforesaid provisions of the ninth proviso, it may be seen that the ninth proviso also does not apply to any university or other educational institution covered under Section 10(23C)(vi) of the Act.

#### **10. Tenth proviso– Restriction on application of accumulated income**

For the sake of ready reference, the tenth proviso to Section 10(23C) is reproduced as follows-

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**Provided also** that where the fund or trust or institution or any University or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) 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 under section 12AA or to any fund or trust or institution or any University or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be treated as application of income to the objects for which such fund or trust or institution or University or educational institution or hospital or other medical institution, as the case may be, is established :

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From the aforesaid provisions of the tenth proviso, it may be seen that where any university or other educational institution does not apply its income during the year of receipt and accumulates it, any credit or payment out of such accumulation to any registered trust or university / educational institution etc., either during the period of accumulation or thereafter, will not be treated as application of income towards the objects of such university or educational institution.

#### **11. Eleventh proviso – Non-fulfilment of the conditions laid down under Section 10 (23C) and withdrawal of approval**

For the sake of ready reference, the eleventh proviso to Section 10(23C) is reproduced as follows-

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**Provided also** that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer;

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 From the aforesaid provisions of the eleventh proviso to Section 10(23C), it may be seen that if the Government or the prescribed authority is satisfied that-

(i) such fund / trust / educational institution etc., has not-

(A) applied its income in accordance with the provisions contained in clause (a) of third proviso, or

(B) invested or deposited its funds as per clause (b) of third proviso, or

(ii) the activities of such fund / trust etc.-

(A) are not genuine, or

(B) are not being carried out in accordance with all or any of the conditions of approval

-then it may at any time after giving a reasonable opportunity of showing cause, rescind the notification or withdraw the approval and forward copy of the same to the Assessing Officer (A.O.) and also the trust / fund / educational institution etc.

## **II. Relevant judicial precedents relating to an educational institution under Section 10(23C)(vi) of the Act**

In order to understand the scope of exemption to the income of an university or other educational institution under Section 10(23C)(vi) of the Act. There are a number of relevant issues which have been judicially interpreted. The same are discussed as follows-

### **1. Meaning of the term ‘Other educational institution’**

An educational society or a trust or other similar body running an educational institution solely for educational purposes and not for purposes of profit, can be regarded as ‘*Other educational institution*’. In India, there are numerous trusts and societies, etc. which are established solely for running / managing schools and colleges. Such a society or trust is itself treated as an educational institution. This view is supported by the judgement of the Apex Court in the case of *Aditanar Educational Institution Vs. Addl. CIT [1997] 224 ITR 310 (S.C.)*.

It was held in this case that an educational society or a trust or other similar body running an educational institution solely for educational purposes and not for the purposes of profit could be regarded as ‘*Other educational institution*’ coming within Section 10(22) of the Act.

### **2. Meaning of the expression ‘Incidental to the attainment of its objects’**

As already pointed out, as per seventh proviso to Section 10(23C), if the income of an educational institution includes income from profits and gains of business, then such business must be incidental to the attainment of its objects. There is a similar provision in Section 11(4A), which provides that exemption will not be available to any income of a charitable or religious trust / institution from profits and gains of business, unless the business is incidental to the attainment of the main objects of such trust or institution. In order to clarify the aforesaid concept the following decisions of the Apex Court are quite relevant.

- (i) *CIT Vs. AP State Road Transport Corpn. [1986] 159 ITR 1 (S.C.)*

The relevant part of the Report on page 10 is, as follows:

*“If the predominant object is to carry out a charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity”.*

- (ii) *Aditanar Educational Institution Vs. Addl. CIT [1997] 224 ITR 310 (S.C.)*

It was held by the Apex Court in this case that if after meeting the expenditure 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. It was further held that the decisive or acid test is whether, on an overall view of the matter the object is to make profit and 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. (p.318)

- (iii) *Thiagarajar Charities Vs. Addl. CIT [1997] 225 ITR 1010 (S.C.)*

The relevant part of the Report on p.1025 is, as follows-

*“It is clear that the business of purchasing and selling cotton, cotton yarn, cloth and other fibres, etc., was held under trust; the said business was started in exercise of the powers vested in the trustees under clause 7(e) read with clause 32 of the resolution dated 6.6.1992, and in view of clause 3 of the deed it is the “corpus” of the trust in reality. It is not an object of the trust. So, it cannot be said that the trust is carrying on (business) – an activity for profit. The business-corporus-property held under trust – produces or results in income, like any other property. That is all. The business is only a “means” of achieving the “object” of the trust; it is a medium through which the “objects” are accomplished.*

*In this view, the entire approach made by the Appellate Tribunal as also by the High Court fails to give due effect to the trust deed as a whole and is palpably erroneous and the resultant conclusion is vitiated, in denying the exemption to the appellant-trust. We hold accordingly”.*

- (iv) *Addl. CIT Vs. Surat Art Silk Cloth Manufacturer’s Association [1980] 121ITR 1 (S.C.)*

The relevant parts of the Report on pp.25 and 26 are as follows-

*“But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of charitable purpose merely because*

*some profit arises from the activity. The exclusionary clause does not required that the activity must be carried on in such a manner that it does not result in any profit”.*

*“If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity”.*

(v) *Sole Trustee, Lok Shikshana Trust Vs. CIT [1975] 101 ITR 234 (S.C.)*

*“If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on “charity”. If that obligation is there, the income becomes entitled to exemption. That, in our Opinion, is the most reliable test.”*

As a summation, it can be safely stated that, institutions with philanthropic purposes having an incidental or ancillary business activity that creates profits necessary for achieving the main objects of the institutions, will be entitled to exemption from income-tax in respect of profits and gains derived from such business activity. In other words an educational institution will not lose its exemption under Section 10(23C), if incidentally it makes some profit in carrying on its main object of promoting education and such profits are applied for such educational objects. Thus, if the surplus resulting from an activity while pursuing the object of promotion of education, is utilized on the aforesaid objects, the institution would be entitled to exemption from income-tax under Section 10(23C) of the Act.

### **3. The institution need not exist in India, but some educational activity must be carried on in India**

The basic requirement of Section 10(23C)(vi) or erstwhile Section 10(22) is the existence of ‘*Educational purpose*’, which in other words, means the imparting of education, which has to be in India.

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. This was laid

down by the Apex Court in the case of *Oxford University Press Vs. CIT [2001] 247 ITR 658 (S.C.)*.

In this case, however, the issue was decided against the assessee as the assessee though part of a foreign university, was merely running a printing press in India for the printing of educational books and their sale and there was no finding that the assessee was imparting any education or had any educational activity in India. It was, *inter-alia*, held that the assessee was not entitled to claim exemption under Section 10(22) of the Act.

**4. Even a University established in a foreign country is not excluded from the ambit of Section 10(22) / Section 10 (23C)(vi) of the Act**

As already explained in earlier para (3), even a university established in a foreign country is entitled to exemption under Section 10(23C)(vi), if it is imparting education in India or has some educational activity in India.

**5. Eligibility for exemption must be evaluated every year**

Availability of exemption under Section 10(23C)(vi) should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit. This was held in the case of *Aditanar Educational Institution Vs. Addl. CIT [1997] 224 ITR 310 (S.C.)*

In this context, the judgement of Bombay High Court in the case of *CIT Vs. Vidya Vikas Vihar [2004] 265 ITR 489 (Bom.)* is also very relevant. In this case a co-operative society was engaged in imparting technical education to students. The dominant object of the Society was to open and run college of polytechnic to impart technical education. One of the objects shown in the constitution of the society was to construct houses for weaker sections of the society, if anything surplus remained after incurring expenses on the activities of imparting education. The incidental object of constructing houses for weaker sections was never implemented or acted upon by the assessee society in the relevant assessment year. Hence the assessee society was entitled to exemption under Section 10(22) of the Act.

**6. The institutions must be accountable to some authority and must have control over the taught**

In this context, the judgement of Gujarat High Court in the case of *Saurashtra Education Foundation Vs. CIT [2005] 273 ITR 139*, is quite relevant.

In this case, the Foundation conducted English improvement classes for standards X, XI and XII and also conducted guidance classes for C.A. entrance examination. It also held refresher courses for English language teachers and guidance course of banking service recruitment, etc. But the Foundation was not conducting any courses in formal education. It was not affiliated to or registered by any authority. Further, it had no control over the recipients of the training. It was held that the Foundation was not an educational institution established for educational purposes as contemplated under Section 10(22) / 10(23C)(vi) of the Act.

#### **7. Elements of normal schooling must exist**

Though the words '*Educational activities*' are the words of wide amplitude, the element of imparting education to the students or element of normal schooling where there are teachers and taught, must be present so as to fall within the ambit of Section 10(22) of the Act. Such an institution may, incidentally take other activities for the benefit of students or in furtherance of their education. This was laid down in the case of *CIT Vs. Sorabji Nusserwanji Parekh [1993] 201 ITR 939 (Guj.)*

In this context, another judgement of Gujarat High Court in the case of *Gujarat State Co-operative Union Vs. CIT [1992] 195 ITR 279 (Guj)*, is also relevant. It was held in this case that though in the context of provision of Section 10(22), the concept of education need not be given any wide or expanded meaning, it surely would encompass systematic dissemination of knowledge and training in special subjects. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to the recipients.

#### **8. Affiliation to any University / Board is not a pre-requisite**

It is not necessary that an educational institution to be eligible for exemption under Section 10(22) / 10(23C)(vi) should be affiliated to any university or any Board. This view was expressed in the following judgements-

(i) *CIT Vs. Doon Foundation [1985] 154 ITR 208 (Cal.)*

(ii) *Addl. CIT Vs. Aditanar Educational Institution [1979] 118 ITR 234 (Mad.), and*

(iii) *CIT Vs. Academy of General Education [1984] 150 ITR 135 (Karn.)*

#### **9. Exemption cannot be denied merely because there is a surplus**

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. In evaluating or appraising the above aspect, one should also bear in mind the distinction / difference between the corpus / objects and the powers of the concerned entity. This view was expressed by the Apex Court in the case of *Aditanar Educational Institution Vs. Addl. CIT [1997] 224 ITR 310 (S.C.)*.

#### **10. Person having multiple sources of income, is entitled to exemption on any income from running an educational Institution / University**

A person may have income from different sources. But if a particular income is from an educational institution or a university, which exists solely for educational purposes and not for purposes of profit, then that income would be entitled to exemption. Such a view was expressed in the case of *Birla Vidya Vihar Trust Vs. CIT [1982] 136 ITR 445 (Cal.)*

In this context, it is also relevant to note that income from any other source will also be exempt if that income is used for educational purposes.

Besides, if an Institution exists 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 fall within the ambit of Section 10(22) of the Act. This was laid down in the case of *Brahmin Educational Society Vs. ACIT [1996] 89 Taxman 434 (Ker.)*

### **III. Other relevant issues**

In this context, there are other relevant issues which impact the exemption under Section 10(22) / Section 10(23C) (vi) in respect of income of an educational institution. For this purpose the relevant Circulars and Instructions of the CBDT and relevant legal precedents will be referred to. These issues are discussed as follows-

#### **1. Voluntary contributions or donations are not treated as income in case of a trust, etc. covered under Section 10(23C)**

Third proviso to Section 10(23C) deals with application and accumulation of **income**.

We have now to examine the definition of income as laid down under Section 2 (24). As per Section 2(24)(iia), income includes voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23) or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) of clause (23C) of Section 10.

From the aforesaid definition of **income**, it is quite clear that voluntary contribution or donation received by an educational institution, which is covered under Section 10(23C)(vi), will not be treated as income and, therefore, the same will not be required to be applied or accumulated as per third proviso to Section 10(23C) of the Act.

Besides, as per Section 12(1) of the Act, any voluntary contributions received by a charitable or religious trust (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of Section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of Section 11 and Section 13 shall apply, accordingly. It is, thus, clear that the aforesaid provisions of Section 12(1) do not apply to Section 10(23C) of the Act. Further, as per Section 11(1)(d), the income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution, shall not be included in the total income of the person in receipt of the income.

Voluntary contribution does not generally have the character of income as per the following judgements-

- (i) *CIT Vs. Groz Beckert Saboo Ltd. [1979] 116 ITR 125 (S.C.)*, and
- (ii) *CIT Vs. Kaira Dist. Co-operative Milk Producers Union Ltd. [2001] 247 ITR 314 (Guj.)*

However, the same is deemed as income in case of non-corpus donation to enforce the requirement of application of prescribed part of income for public purposes.

As per Circular No.712, dated 25.7.1995 and Circular No.372, dated 8.12.1983, of the CBDT, conditions under Sections 11 and 13 would have no application, if the institution itself is exempt under erstwhile Section 10(22) and present Section 10(23C)(vi) of the Act.

From the aforesaid discussion, it is quite evident that voluntary contributions or donations received by an educational institution, will not be treated as income and, therefore, the same will not be required to be applied or accumulated as per third proviso to Section 10(23C) of the Act.

## **2. Provisions of Sections 11 and 13 do not apply to institutions covered under erstwhile Section 10(22) and present Section 10(23C)(vi)**

As already pointed out, as per Circular No.712, dated 25.7.1995 and Circular No.372, dated

8.12.1983 of the CBDT, conditions laid down under sections 11 and 13 would have no application if the institution itself is exempt under the erstwhile Section 10(22) and present Section 10(23C)(vi) of the Act. Thus, the various conditions laid down under Sections 11 and 13 of the Act will not be applicable to an educational institution covered under Section 10(23C)(vi) of the Act.

**3. In case of non-fulfilment of the conditions under Section 10(23C)(vi) by an educational institution, the provisions of Section 11 may be applied**

In a situation where the income or surplus is used for non-educational purposes, then it cannot be said that the institution is existing solely for educational purposes and such institution will not be eligible for exemption under the erstwhile Section 10(22) and present Section 10(23C)(vi) of the Act.

However, 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 under Section 11 of the Act.

This has been laid down in Instruction No.1112, dated 29.10.1977 of the CBDT.

**4. Regarding fulfilment of conditions prescribed in Form No.56D**

As per column 16 of Form No.56D, details of shares, securities or other property purchased by or on behalf of the university or other educational institution, etc. referred to in serial number one from any interested person as specified in Section 13(2), are required to be furnished.

Similarly, as per column 17 of Form No.56D, information is required to be furnished, whether any part of the income or any property of the university or other educational institution, etc. referred to in serial number one was used or applied in a manner which results directly or indirectly in conferring any benefit or amenity or perquisite on any interested person as specified in Section 13(3) of the Act.

As per Board's Circular No.557, dated 19.3.1990, the fact that the aforesaid information / details are required to be furnished; does not imply that the provisions of Section 11 and Section 13 will be applied to institutions covered under Section 10(23C), it will only enable the prescribed authority i.e. DGIT(E), to know broadly that the institution / trust is working genuinely towards its objects.

#### IV. Requirement of filing of return of income by an educational institution

Important changes were effected in Section 139, vide Finance Act, 2002, in respect of the requirement of the filing of returns of income by educational, medical or other such institutions.

After sub-section (4B), sub-section (4C) was inserted, vide Finance Act, 2002, with effect from 1.4.2003, the aforesaid sub-section (4C) of Section 139 reads as follows-

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**Section 139**

(4C) Every—

- (a) scientific research association referred to in clause (21) of section 10;
- (b) news agency referred to in clause (22B) of section 10;
- (c) association or institution referred to in clause (23A) of section 10;
- (d) institution referred to in clause (23B) of section 10;
- (e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any University or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10;
- (f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10,

*shall, if the total income in respect of which such scientific research association, news agency, association or institution, fund or trust or University or other educational institution or any hospital or other medical institution or trade union is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).*

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 From the aforesaid provisions of Section 139 (4C), it may be seen that certain entities, whose income is exempt under Section 10 of the Act would also have to file their returns of income. As per clause (e) of the aforesaid Section 139(4C), a university or an educational institution approved under Section 10(23C)(vi) will furnish the return of income of the previous year in the prescribed and verified in the prescribed manner, if the total income of such university or other educational institution, without

giving effect to the provisions of Section 10, exceeds the maximum amount which is not chargeable to income-tax viz. rupees one lakh for and from the assessment year 2006-07, relevant to financial year 2005-06.

## V. Conclusion

All the relevant provisions relating to an educational institution as contemplated under Section 10(23C)(vi) of the Act, have been dealt with in detail in the earlier paras.

It may be noted here that even a foreign university or educational institution which does not exist in India, may be entitled to the exemption provided under Section 10(23C)(vi) of the Act, if it is imparting education in India or has some educational activity in India.

All the present and prospective educational institutions may plan their affairs in the light of the aforesaid discussion, in order to be eligible for exemption under Section 10 (23C)(vi) of the Income-Tax Act, 1961.

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