

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER**

**ITA No. 4865/Mum./2025**

**(Assessment Year : 2017-18)**

**Fees Regulating Authority,**

305, Government Polytechnic Building,  
Kherwadi, Ali Yagar Jung Marg,  
Bandra East,  
Mumbai – 400051  
PAN : AAAJF0167B

..... Appellant

v/s

**Assistant Commissioner of Income Tax  
(Exemption), Circle - 1,**

6<sup>th</sup> Floor, Cumballa Hill MTNL TE Bldg.  
Dr. Gopalrao Deshmukh Marg,  
Mumbai - 400026

..... Respondent

Assessee by : Shri Mihir Naniwadekar

Revenue by : Shri Ajay Modi, CIT-DR.

Date of Hearing – 15/04/2026

Date of Order – 30/04/2026

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeal against the impugned order dated 04/06/2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds: -

*"1. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre ought to have held that appellant is a State' under Article 289 of the Constitution of India and therefore, not liable to tax under Income Tax Act. 1961.*

*2. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre ought to have held that the appellant is not a 'person' for the purpose of Income Tax Act, and therefore is not liable to file the return of income.*

*3. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre erred in confirming denial of exemption by the learned A.O. to the appellant, under section 10(46) of the Income Tax Act, 1961*

*4. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre erred in confirming denial of exemption by the learned AO to the appellant, under section 11 of the Income Tax Act, 1961.*

*5. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre erred in confirming denial of exemption by the learned A.O. to the appellant, under section 11(2) of the Income Tax Act, 1961 A.O.*

*6. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre erred in confirming disallowance by A.O. of Rs. 2,44,869/-on account of depreciation.*

*7. On facts, in circumstances of the case and in law, li the National Faceless Appeal Centre erred in confirming the taxing by learned AO of lump sum amount of Rs. 4,02,29,320/- received from Shiskshan Shulk Samiti and Pravesh Niyantra Samiti on distribution on closure of the fund of erstwhile Samiti.*

*8. On facts, in circumstances of the case and in law, l the National Faceless Appeal Centre erred in confirming taxing appellant at maximum marginal rate by the learned A.O.."*

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an authority constituted under section 11 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2015. The assessee was established, inter alia, to determine the reasonableness of fees levied by unaided institutions, etc. For the year under consideration, the assessee filed its return of income on 28/03/2018, declaring a total income of INR Nil, claiming exemption under section 10(46)

of the Act. The assessee is also registered as a charitable organisation under section 12AA of the Act. However, during the year under consideration, the assessee claimed exemption under section 10(46) of the Act. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to furnish the necessary evidence so as to prove its eligibility to claim exemption under section 10(46) of the Act. In response, the assessee submitted that it has filed an application under section 10(46) of the Act with the Principal Commissioner of Income Tax-23, Mumbai. The assessee submitted that the said application has also been forwarded to the Central Board of Direct Taxes ("CBDT"). It was submitted that thereafter, the assessee followed up with the office of the Principal Commissioner of Income Tax-23, Mumbai, and submissions were made. However, no response was received from the office of the Principal Commissioner of Income Tax-23, Mumbai, thereafter.

4. The Assessing Officer ("AO"), vide order dated 02/12/2019 passed under section 143(3) of the Act, held that the assessee does not fulfil the conditions as mentioned in section 10(46) of the Act, as it has not been notified by the Central Government for the purpose of clause (c) of this section. Accordingly, the AO rejected the claim of exemption made under section 10(46) of the Act. The AO, considering the alternative submission of the assessee claiming exemption under section 11, as it was registered under section 12AA of the Act, held that the assessee has not fulfilled any of the following conditions under section 11(2) of the Act: –

*"(i) The Trustees should have a specific purpose in mind which will require accumulation of income to be spent over a long period.*

*(ii) Such specific purpose for which the accumulation is done is to be decided by the trustees in their meeting by adopting a resolution because such important decision can only be taken by trustees formally.*

*(iii) On the basis of such resolution, the claim u/s 11(2) can be granted if form No.10 is also filed and submitted within the prescribed time.*

*(iv) The amount should be invested in the prescribed mode u/s 11(5) of the Act. On the basis of such resolution the auditors will also specify the sum accumulated u/s 11(2) of the Act in audit report in Form No.10B."*

5. Accordingly, the AO held that the assessee is not eligible to claim any exemption under section 10(46), and has also not fulfilled the conditions for claiming exemption under section 11 of the Act. Therefore, the surplus of income after allowing for the expenses, as per the income and expenditure account, was taxed in the hands of the assessee as its income under the head "*business income*".

6. The learned CIT(A), vide impugned order, rejected the claim of the assessee seeking exemption under section 10(46) of the Act on the basis that the assessee has not received an exemption certificate from the CBDT. The learned CIT(A) further held that the Act by which the assessee was created has still not been notified in the State Government Gazette, which is the prime condition for granting exemption under section 10(46) of the Act. As regards the alternative claim of seeking exemption under section 11 of the Act, the learned CIT(A) held that the assessee failed to upload the audit report in Form No. 10 within the time prescribed under the Act. Accordingly, the learned CIT(A) held that the claim of the assessee for exemption under section 11 is also devoid of merit. Hence, the addition made by the AO was sustained, and

the appeal filed by the assessee was dismissed. Being aggrieved, the assessee is in appeal before us.

7. Having considered the submissions of both sides and perused the material available on record, we find that the assessee filed its application seeking exemption under section 10(46) of the Act before the Principal Commissioner of Income Tax-23, Mumbai, on 29/01/2018, which was forwarded to the Under Secretary, CBDT, on 30/01/2018. Since no response was received from the office of the Principal Commissioner of Income Tax-23, Mumbai, the assessee again, vide its letter dated 20/11/2023, filed a request before the Under Secretary, CBDT, to notify the assessee under section 10(46) of the Act from the financial year 2016-17 onwards. On 20/10/2020, the assessee received a letter from the CBDT requesting the assessee to exercise the option, in light of the provisions of section 11(7) of the Act, of either continuing with the registration under section 12AA of the Act or opt for notification under section 10(46) of the Act. In its response dated 12/11/2020, the assessee replied to the aforesaid letter received from the CBDT and submitted that it has no objection to the cancellation of its registration under section 12AA of the Act, if its application for notification under section 10(46) of the Act is processed and an exemption is granted under section 10(46) of the Act. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that recently, on 15/01/2026, the assessee again received a communication from the CBDT seeking certain clarification and details, which was duly responded to by the assessee vide its letters dated 23/01/2026 and 06/03/2026.

8. During the hearing, the learned AR also submitted that since the assessee was established under the Act of the State Government, it is an instrumentality of the State, and thus all its income is exempt from tax. From the perusal of the record, we find that the assessee in its return of income only claimed an exemption under section 10(46) of the Act, and in the alternative, claimed exemption under section 11 of the Act on the basis of being registered under section 12AA of the Act. In its appeal before the learned CIT(A), the assessee for the first time made submissions on the aforesaid aspect of non-taxability on the ground that it is an instrumentality of the State. However, the learned CIT(A) did not render any specific finding on this submission of the assessee and, like the AO, restricted its findings only to the exemption claimed under sections 10(46) and 11 of the Act.

9. From the material placed on record, it is evident that the assessee's application for notification under section 10(46) of the Act is currently pending consideration before the CBDT, and recently, certain correspondence has also been exchanged between the assessee and the CBDT in respect of various queries raised in respect of the assessee's application. As per the provisions of section 10(46) of the Act, any income arising to a body or authority or Board of Trust or commission, established or constituted by or under the Central or State legislation, or constituted by the Central Government or the State Government, with the object of regulating or administering any activity for the benefit of the general public, is exempted from taxation, if such body or authority or Board of Trust or commission is not engaged in any commercial activity and is notified in the official Gazette. Thus, once the assessee's

application for notification under section 10(46) of the Act is accepted, all its income shall be exempt from taxation.

10. Therefore, in the facts and circumstances of the present case, we deem it appropriate to restore the issue of taxability of assessee's income to the file of the AO for *de novo* adjudication, after taking into consideration the outcome of assessee's request for being notified under section 10(46) of the Act, which is currently pending before the CBDT. We order accordingly. Since the matter has been restored to the file of the AO for consideration afresh, the assessee, in the alternative, shall be at liberty to bring on record necessary documents for the claim of exemption under section 11 of the Act. Therefore, all the contentions of the assessee for non-taxability of its income are open, including, on the ground of being an instrumentality of the State. Thus, all the contentions of the assessee are kept open. With the above directions, the impugned order is set aside, and the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 30/04/2026

**Sd/-**  
**BIJAYANANDA PRUSETH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 30/04/2026**  
*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai