

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2615/Del/2017
(Assessment Year: 2013-14)

Seth Anandram Jaipuria Education Society, Sector-14C, Vasundhara, Ghaziabad PAN:AAAAS0860P	Vs.	DCIT (Exemption), Exemption Circle, Ghaziabad
(Appellant)		(Respondent)

Revenue by :	Sh. RS Singhvi, CA
Assessee by:	Smt Paramita Tripathy, CIT DR
Date of Hearing	26/07/2017
Date of pronouncement	29/09/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A), Ghaziabad dated 28.03.2017 for the Assessment Year 2013-14.
2. The assessee has raised the following grounds of appeal:-
 - “1. (i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified upholding the order of assessing officer denying benefit of exemption u/s 11 of the Income Tax Act, 1961 without appreciating the nature of educational activities carried out by the appellant society.
 - (ii) That the Ld. CIT(A) has grossly erred in holding that the appellant society is carrying out activities in the nature of trade and commerce in terms of proviso to section 2(15) in total disregard to objects and activities of the society and past history.
- 2(i) That on facts and circumstance of the case, the Ld, CIT(A) was not justified in holding that income from royalty is in the nature of trade or commerce even though the same is intrinsically linked with overall object of imparting education to the students and used for educational activities.
- (ii) That the royalty receipts being in respect of publication of books for in-house teaching and exclusively for children studying in schools run by the society, the same is incidental to educational object of the society and as such there is no ground or basis for drawing any adverse inference.

- (iii) That even otherwise, the total receipts on account of royalty being less than Rs. 25 lakhs, the proviso to section 2(15) is not applicable to the facts of the case.
- 3(i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified in making adverse observation regarding receipts from hostel and transport facilities provided to the students of the society even though there was no such dispute to the effect that same was part of education activities being pursued by the society.
- 4(i) That there being no dispute regarding utilization of the receipts and same having being utilized for the purpose of carrying out charitable activities and towards meeting out the objects of the society, the disallowance of claim of exemption u/s 11 is misconceived and without proper understanding of law.
- (ii) That the Ld CIT(A) has made distorted observation regarding total utilization of funds by the society and the adverse observation in regard of provisions of section 11(1) is based on wrong premise and same is irrelevant and unsustainable under the facts and law.
- 5. That the orders of the lower authorities as framed are against the facts of the case and bad in law.

Facts of the case:-

- 3. Assessee is a society registered under the societies act and also registration was granted under section 12 A of the income tax act. Wide order dated 26/02/2002 as it is engaged in the running of educational societies. Assessee filed its return of income on 29/09/2013 declaring nil income. During the course of assessment proceedings it was noted by the Ld. assessing officer that assessee is earning royalty income and therefore is engaged in the business and profession of writing and publishing books and selling them. Ld. assessing officer perused the agreement entered into by the assessee along with the other party, wherein the assessee will receive 30% of the profit of the books sold as royalty. According to the Ld. assessing officer, this activity is not allowed as per the objects of the society. Therefore, the Ld. assessing officer held that as the royalty is received as 30% of the copy of the books actually sold and therefore the assessee is engaged in the business activity and hence the income of the assessee is assessable as business income as Association of persons. Consequently, the Ld. assessing officer passed an assessment order under section 143 (3) of the income tax act, 1961. On 19/01/2016 treating the income as per income expenditure account of Rs. 13, 21, 05, 419/- as taxable income and charged to tax the same maximum marginal rate. For the assessee aggrieved by the order of the Ld. assessing officer preferred an appeal before the 1st appellate authority.

Appeal before the 1st appellate authority:-

- 4. Ld. 1st authority by its order dated 28/03/2017 dismissed the appeal of the assessee. Before the Ld. CIT (A). The assessee submitted that that income from the royalty for books for the own students of the society and was an essential activity to the objects of the society and the

society itself was not engaged in the business of printing or publication of the books. He submitted that that syllabus of the classes is duly approved by the board and exercise books are not books are devil at my school itself as per their requirement for development of the students. It was further submitted before him that the books developer schoolteachers on behalf of the school and published by the particular outside party and curriculum development activities for kindergarten to 12th school of the society. It was further explained before him that in preparing the exercise books and notebooks for the students of the society, there is any involvement of the teachers and professional of the school. The outside party merely publishes those books and gives after deduction of the cost 30% profit to the assessee in the form of the royalty. It was further submitted that it is considered in the object of the educational society, as it is advancement of the education and for development of character of students and to educate them in various activities. However, the Ld. CIT (A) rejected the contention of the holding that during the year the appellant has received tuition free of Rs. 24.39 crores, transportation fee of Rs. 2.85 crores and annual charges of Rs. 4 and half crores in the under the head other sum of Rs. 2.89 crores beside receipt under the different other at such a sale of application form interest dividend etc and a royalty income. Therefore according to him the activities carried on by the assessee are in the nature of the business. He further held that the hostel and transportation activities along with the charging of use fees by the appellant resulted in excess of receipt or expenditure to the tune of Rs. 13.12 crores and therefore appellant is imparting education, mainly for the purposes of the profit and this cannot be held to be charitable activities. Therefore he confirmed the finding of the Ld. assessing officer. Aggrieved by the order of the Ld. CIT (A) the assessee is in appeal before us.

Submission of the authorized representative

5. The Ld. authorized representative submitted the same facts before us as were submitted before the lower authorities. He submitted that in assessment year 2013 – 14 where the identical facts and circumstances of the case, the Ld. assessing officer is accepted the contention of the assessee that assessee is not engaged in the business activities and granted the deduction under section 11 and 12 of the income tax act. For this he produced the assessment order for assessment year 2014 – 15 dated 24/08/2016 passed under section 143 (3) of the income tax act, 1961 where the claim of the assessee was accepted. He further submitted that now the issue is squarely covered by the decision of the Hon'ble Delhi High Court in case of Delhi bureau of textbooks in ITA No. 807/2015 dated 03/05/2017 wherein it has been held that preparation and distribution of textbooks certainly contributes to the

process of training and development of the mind and the character of the students. Therefore it does not have to be a physical school foreign institution eligible for exemption. What is important is the activity test to be intrinsically connected to the education. He submitted that the activity of the publishing of the books on which the royalties received for the purpose of the school only. He further submitted that curriculum is though guided by the board. However, for the development of the students the particular books in consonance with that curriculum the society develops book and which is sold to the students. Therefore, it was submitted that the lower authorities have wrongly held that assessee is carrying on the business. He further stated that the entire surplus generated from all these activities of the educational society are used for the purpose of the educational purposes only. In view of this he submitted that the assessee is entitled for the exemption under section 11 and 12 of the income tax act on all the income earned by the society.

Submission on behalf of the revenue

6. The Ld. departmental representative vehemently supported the orders of the lower authorities and submitted that the assessee is engaged in the business activity where the books are published and royalties and in a professional manner. He further submitted that the assessee is earning huge surplus from the various activities and therefore assessee is not engaged in the educational activities. But in business activities.

Reasons and decision

7. We have carefully considered the rival contention and also perused the orders of the lower authorities. It is an established fact that the assessee is engaged in the educational activities. Admittedly, the assessee is also earning income from royalty for publishing of the books from third-party in terms of agreement entered into with that party. However, it has not been denied that the books were used by the students of the society, were pertaining to curriculum of the school and society, the funds have not been used for any other purpose of the educational purposes, the books are on any other subject other than the education imparted by the society. The Hon'ble Supreme Court in case of t Queens education society 372 ITR 699 approving the decision of the Hon'ble Punjab and Haryana High Court has held as under:-

“23. The Punjab and Haryana High Court, by the impugned judgment dated January 29, 2010, expressed its dissatisfaction with the view taken by the Uttarakhand High Court in the case of Queens' Educational Society as follows* :

"8.8 We have not been able to persuade ourselves to accept the view expressed by the Division Bench of the Uttarakhand High Court in the case of Queens' Educational Society** (supra). There are variety of reasons to support our opinion. Firstly, the scope of the third proviso was not under consideration, inasmuch as, the case before the Uttarakhand High Court pertained to section 10(23C)(iiiad) of the Act. The third proviso to section 10(23C)(vi) is not applicable to the cases falling within the purview of section 10(23C)(iiiad). Secondly, the judgment rendered by the Uttarakhand High Court runs contrary

* Page 116 of 327 ITR.

** [2009] [319 ITR 160](#) (Uttarakhand).

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to the provisions of section 10(23C)(vi) of the Act including the pro visos thereunder. Section 10(23C)(vi) of the Act is equivalent to the provisions of section 10(22) existing earlier, which were introduced with effect from April 1, 1999, and it ignores the speech of the Finance Minister made before the introduction of the said provisions, namely, section 10(23C) of the Act (see observations in American Hotel and Lodging Association Educational Institute's case (supra)). Thirdly, the Uttarakhand High Court has not appreciated correctly the ratio of the judgment rendered by the hon'ble the Supreme Court in the case of Aditanar Educational Institution (supra) and while applying the said judgment including the judgment which had been rendered by the hon'ble the Supreme Court in the case of Children Book Trust (supra), it lost sight of the amendment which had been carried out with effect from April 1, 1999, leading to the introduction of the provisions of section 10(23C) of the Act. Lastly, that view is not consistent with the law laid down by the hon'ble the Supreme Court in American Hotel and Lodging Association Educational Institute (surpa)."

It then summed up its conclusions as follows :

"8.13 From the aforesaid discussion, the following principles of law can be summed up :

(1) It is obligatory on the part of the Chief Commissioner of Income-tax or the Director, which are the prescribed authorities, to comply with proviso thirteen (un-numbered). Accordingly, it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.

(2) The provisions of section 10(23C)(vi) of the Act are analogous to the erstwhile section 10(22) of the Act, as has been laid down by the hon'ble the Supreme Court in the case of American Hotel and Lodging Association (supra). To decide the entitlement of an institution for exemption under section 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for

education and not to earn profit (see five-judges Constitution Bench judgment in the case of Surat Art Silk Cloth Manufacturers Association (supra)). It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the

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institution that it exists solely for educational purpose. A workable solution has been provided by the hon'ble the Supreme Court in paragraph 33 of its judgment in American Hotel and Lodging Association's case (supra). Thus, on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deem fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15 per cent. and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. Thereafter, the assessing authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessments are complete with the finding that there is no contravention of the statutory provisions, need not be reopened. However, alter grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in the thirteenth proviso exists, then by following the procedure envisaged in the thirteenth proviso, the prescribed authority can withdraw the approval.

(3) The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.

(4) The educational institutions, which are registered as a society, would continue to retain their character as such and would be eligible to apply for exemption under section 10(23C)(vi) of the Act (see paragraph 8.7 of the judgment-Aditanar Educational Institution's case (supra)

(5) Where more than 15 per cent. of income of an educational institution is accumulated on or after April 1, 2002, the period of accumulation of the amount exceeding 15 per cent. is not permissible beyond five years, provided the excess income has been applied or accumulated for application wholly and exclusively for the purpose of education.

(6) The judgment of Uttarakhand High Court rendered in the case of Queens Educational Society (supra) and the connected matters, is not applicable to cases falling within the provision of section 10(23C)(vi) of the Act. There are various reasons, which have been discussed in paragraph 8.8 of the judgment, and the judgment of Allahabad High Court rendered in the case of City Montessori School* (supra) lays down the correct law."

* [2009] [315 ITR 48](#) (All).

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And finally held :

"8.15 As a sequel to the aforesaid discussion, these petitions are allowed and the impugned orders passed by the Chief Commissioner of Income-tax withdrawing the exemption granted under section 10(23C)(vi) of the Act are hereby quashed. However, the revenue is at liberty to pass any fresh orders, if such a necessity is felt after taking into consideration the various propositions of law culled out by us in para 8.13 and various other paragraphs.

8.16 The writ petitions stand disposed of in the above terms."

24. The view of the Punjab and Haryana High Court has been followed by the Delhi High Court in St. Lawrence Educational Society (Regd.) v. CIT [2011] [53 DTR \(Delhi\) 130](#) . Also in Tolani Education Society v. Deputy Director of Income-tax (Exemptions) [2013] [351 ITR 184](#), the Bombay High Court has expressed a view in line with the Punjab and Haryana High Court view, following the judgments of this court in the Surat Art Silk Manufacturers Association's case and Aditanar Educational Institution case as follows (page 194) :

". . . The fact that the petitioner has a surplus of income over expenditure for the three years in question, cannot by any stretch of logical reasoning lead to the conclusion that the petitioner does not exist solely for educational purposes or, as that the Chief Commissioner held that the petitioner exists for profit. The test to be applied is as to whether the predominant nature of the activity is educational. In the present case, the sole and dominant nature of the activity is education and the petitioner exists solely for the purposes of imparting education. An incidental surplus which is generated, and which has resulted in additions to the fixed assets is utilised as the balance-sheet would indicate towards upgrading the facilities of the college including for the purchase of library books and the improvement of infrastructure. With the advancement of technology, no college or institution can afford to remain stagnant. The Income-tax Act, 1961, does not condition the grant of an exemption under section 10(23C) on the requirement that a college must maintain the status quo, as it were, in regard to its knowledge based infrastructure. Nor for that matter is an educational institution prohibited from upgrading its infrastructure on educational facilities save on the pain of losing the benefit of the exemption under section 10(23C). Imposing such a condition which is not contained in the statute would lead to a perversion of the basic purpose for which such exemptions have been granted to educational institutions. Knowledge in contemporary times is

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technology driven. Educational institutions have to modernise, upgrade and respond to the changing ethos of education. Education has to be responsive to a rapidly evolving society. The provisions of section 10(23C) cannot be interpreted regressively to deny exemptions. So long as the institution exists solely for educational purposes and not for profit, the test is met."

25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief Commissioner of Income-tax's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, the Revenue's appeals from the Punjab and Haryana High Court's judgment dated January 29, 2010, and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to the assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that the Revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in section 10(23C) read with section 11 of the Income-tax Act.”

8. Further more recently Hon’ble Delhi High Court in case of the Liberal of textbooks versus director of income tax (exemption) in ITA No. 807/2015 has held as under:-

“Is the Assessee engaged in the activity of 'education'?”

20. The Court first considers the question of the interpretation placed on the word „education“ occurring in Section 2 (15) of the Act. The exclusive activity of the Assessee is the publication and printing of text books and their distribution to Government schools and schools of the MCD, NDMC, etc. This activity has continued uninterruptedly since the time of its inception, i.e., from AY 1971-72 onwards. The fact that the Assessee is a non-profit organisation is not in dispute. Its essential activities are administered by the BODs comprising of officers of the Government of India as well as GNCTD, in its ex officio capacity. The textbooks are provided by the Assessee to the students at subsidized rates. Even the textbooks books, reading materials and school bags are being distributed free to deserving students. The essential activity of the Assessee is connected with „education“ and nothing else.

21. In *Sole Trustee, Loka Shikshana Trust v. CIT (supra)*, the Supreme Court explained as under: “The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes our wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling.”

22. The preparation and distribution of text books certainly contributes to the process of training and development of the mind and the character of students. There does not have to be a physical school for an institution to be eligible for exemption. What is important is the activity. It has to be intrinsically connected to 'education'.

23.1 In *Assam State Text Book Production and Publication Corporation Limited v. CIT (supra)*, the facts were more or less similar. There, the

Assessee which was initially constituted as „Central Text Book Committee“ changed its name to the „Assam Text Book Committee“ with ten members nominated by the State Government. The Board was then converted into a corporation in 1972. The entire share capital of the corporation was owned by the Government of Assam.

23.2 There again, the AO sought to deny exemption on the ground that the Corporation was not an „educational institution“ under Section 10 (22) of the Act. According to the AO, during the relevant AYs, the Assessee “had income exclusively from publication and selling of text books to the students” and, therefore, the exemption was not available.

23.3 The High Court agreed with the AO and concluded that “the Assessee did not exist solely for educational purposes; that it did not solely impart education and that its income during the relevant assessment years was only from publishing and sale of text books.” The High Court construed this as „profit-earning activity“.

23.4 The Supreme Court disagreed with the High Court. It noted that “the aim of the said Corporation is to implement the State’s policy on education”. It took note of the fact that in the year 1975, the CBDT had granted exemption under Section 10 (22) of the Act to the Tamil Nadu Text Books Society, which had performed activity similar to the Assessee. The Supreme Court also referred to the decision in Commissioner of Income Tax v. Rajasthan State Text Book Board (supra) as well as the decision of the Orissa High Court in Secondary Board of Education v. ITO (supra). It concurred with the approval of the following operative portion of the judgment in CIT v. Rajasthan State Text Book Board (supra): "It is not disputed before us that the aims and objects of the Tamil Nadu Text Book Society and those of the Respondent-Assessee are almost identical. It is also not shown to us that the surplus amount, if any, of the Respondent-Assessee, is used for any other purpose or distributed to other members. The Commissioner of Income-tax (Appeals) as well as the Tribunal have noticed that even if

some amount remains surplus, that is utilised only for the purposes of education. Thus, having regard to the concurrent findings of fact recorded by the Commissioner of Income-tax (Appeals) and the Tribunal and also taking note of the letter of the Central Board of Direct Taxes itself, it is not possible for us to say that the order of the Tribunal is erroneous in any way. In this way, no question of law arises for consideration much less a substantial question of law.”

23.5 The Supreme Court in Assam State Text Book Production and Publication Corporation Limited v. CIT (supra) concluded as under: “Following the judgement of the Rajasthan High Court, we are of the view that, in this case, the High Court, in its impugned judgement, has not considered the historical background in which the Corporation came to be constituted; secondly, the High Court ought to have considered the source of funding, the share-holding pattern and aspects, such as return on Investment; thirdly, it has not considered the letters issued by C.B.D.T. which are referred to in the judgement of the Rajasthan High Court granting benefit of exemption to various Board/Societies in the country under Section 10(22) of the Act; fourthly, it has failed to consider the judgements mentioned hereinabove; and lastly, it has failed to consider the letter of the Central Government dated 9th July, 1973, to the effect that all State-controlled Educational Committee(s)/Board(s) have been constituted to implement the educational policy of the State(s); consequently, they should be treated as educational institution.”

24. In Institute of Chartered Accountants of India v. DGIT (supra), the question that arose before this Court was whether the Petitioner-Institute could be denied exemption in view of the proviso to Section 2 (15) of the Act since it was engaged in activity of „advancement of any other object of general public utility.“ Although the Court held that the Petitioner could not be recognized as an educational institute, it accepted the plea that the Petitioner there was engaged in advancement of any other object of the general public utility. The Court concluded that

merely because there was profit generated as a result of the activity it could not be concluded that the „institute“ should be disentitled to exemption. It was held that “a very narrow view had been taken that the Institute was holding coaching classes and that this amounted to business” and that therefore, „the question whether the Institute carried on business had not been examined with proper perspective.”

25. In Commissioner of Income Tax v. M.P. Rajya Pathya Pustak Nigam (2009) 226 CTR 497 (MP) the Madhya Pradesh High Court held as under: “17. From a perusal of the aforesaid decisions, it is lucid that for the entitlement for getting exemption for the assessment year, it is required to see the activities of the Assessee. That is the acid test. If the income/profit is applied for non-educational purposes, it is decided only at the end of the financial year. It is to be seen whether the Assessee is engaged in any kind of educational activities. The authorities which we have referred to above have laid down the criteria under what circumstances an Assessee can claim exemption being involved in educational purposes and how the income is spent.”

26. In Council for the Indian School Certificate Examinations v. Director General of Income-Tax (Exemptions) (2014) 362 ITR 436 (Del) the Court held the Council for the Indian School Certificate Examinations to be an educational institution and quashed the order which denied it exemption under Section 10 (23c) (vi) of the Act. It was reiterated as under: “It is, therefore, clear that courts have laid emphasis on the activity undertaken, while construing or deciding whether or not a particular institution can be regarded as an educational institution. The courts have repeatedly held that the holding of classes is not mandatory for an institution to qualify and to be treated as an educational institution. If the activity undertaken and engaged is educational, it is sufficient.”

27. Reverting to the case on hand, the Court finds that what the ITAT has held in the impugned order is contrary to the settled law as explained in the above decisions. The ITAT came to the erroneous conclusion that merely because the Assessee had generated profits out of the activity of publishing and selling of school text books it ceased carrying on the activity of „education.“ The ITAT failed to address the issue in the background of the setting up of the Assessee, its control and management and the sources of its income and the pattern of its expenditure. The ITAT failed to notice that the surplus amount was again ploughed back into the main activity of 'education'. The question to be asked was whether the activity of the Assessee contributed to the training and development of the knowledge, skill, mind and character of students? In the considered view of the Court, the answer to that question had to be, in the facts and circumstances outlined above, in the affirmative.

28. The Court, accordingly, concludes that the ITAT was incorrect in setting aside the order passed by the CIT (A) and in denying exemption to the Assessee under Section 11 and Section 12 of the Act. The ITAT erred in holding that the activities carried out by the Assessee fell under the 4th limb of Section 2 (15) of the Act, i.e., „the advancement of any other object of general public utility“ and that its activities were not solely for purpose of advancement of „education“. Questions (i) and (ii) framed by the Court are, therefore, answered in the negative, i.e., in favour of the Assessee and against the Revenue.

Consistency

29. On the issue of consistency, the Court notes that in the present case, continuously from AYs 1971-72 till 2005-06, exemption had been granted to the Assessee under Sections 11 and 12 of the Act. When for AYs 1975-76 and 1976-77 the AO sought to take a different view, the ITAT reversed that view and the decision of the ITAT was not challenged further by the Revenue. Apart from the fact that the Assessee

was earning more profits from its essential activity of education, there was no change in the circumstances concerning the said activity since AY 2005-06 to warrant a different approach in the AYs in question.

30. In *Parashuram Pottery Works Ltd. v. Income Tax Officer* (1977) 106 ITR 1 (SC) the Supreme Court explained the rule of consistency in tax matters as under: "We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

"On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the Assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

31. In *Radhasoami Satsang Saomi Bagh v. Commissioner of Income Tax* (supra), the Supreme Court reiterated the above legal position. This time it quoted with approval the following extract from *Hoystead v. Commissioner of Taxation* 1926 AC 155 (PC): "Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that

principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the Plaintiff and traversable by the Defendant, has not been traversed. In that case also a Defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

32. Recently, in CIT v. Excel Industries (supra), the above legal position was reaffirmed by the Supreme Court. On the facts of that case it was held: "31. It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the Assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it."

33. The decisions relied upon by Mr. Kaushik appear to have turned on their peculiar facts. The question that arose was whether merely because the Revenue did not file appeals against the decisions against it in some of the AYs, it could be precluded from challenging the decisions on the issue against it in the subsequent AYs. The facts here are stark, though. Having adopted a consistent stand for over 34 years, and with there being no change in the circumstances, there was no justification for the Revenue to take a different view in the matter only because it was possible to do so.

34. Question (iii) framed by the Court is also answered in the negative, i.e., in favour of the Assessee and against the Revenue."

9. In the above decision, the Hon'ble high court has considered whether the activity of publication of the textbooks of the society can be considered as business or not. It was further held by the Hon'ble court on the issue of the consistency in favour of the assessee.

The facts of the case before us are not different and Ld. departmental representative could not distinguish the above decision of the Hon'ble Supreme Court as well as of the Hon. Delhi High Court. Therefore we reverse the finding of the Ld. CIT (A) and the Ld. assessing officer is directed to grant benefit of provisions of section 11 and 12 of the income tax act to the assessee considering that the publication of the books is incidental to the main object of 'education' of the assessee and therefore royalty income earned there from cannot be considered as business income. In the result the appeal of the assessee with respect to ground No. 1, 2, 3 and 4 are allowed accordingly.

10. Ground No. 5 and 6 of the appeal are general in nature and therefore they are dismissed.
11. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 29/09/2017

-Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:29/09/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
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