

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A Nos. 103 & 104/Agra/2016
(ASSESSMENT YEARS.-2007-08 & 2008-09)**

Pt. Deen Dayal Upadhyay Jagriti, 43, New Coloney, Chaugurji, Etawah. PANNo.AABAP1386Q (Assessee)	Vs.	CIT,-(Exemption), Lucknow. (Revenue)
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Assessee by	Shri M.M. Agarwal, AR
Revenue by	Shri Inderjit Singh, CIT.DR.

Date of Hearing	28.03.2018
Date of Pronouncement	17.04.2018

ORDER

PER, A. D. JAIN, JUDICIAL MEMBER:

These are assessee's appeals for assessment years 2007-08 and 2008-09. The ld. CIT(E), vide orders dated 29.02.2016, passed u/s 263 of the IT Act, for A.Ys. 2007-08 and 2008-09, has held the assessment orders passed on 28.03.2014 for these two assessment years, to be erroneous and prejudicial to the interests of the Revenue. The assessee Society is in appeal.

2. The ld. CIT(E) has observed that as per the notices (reproduced in the impugned orders) issued u/s 263 of the IT Act, the assessee Society was disqualified from availing exemption u/s 10(23C)(iiia) of the IT Act, but after

issuance of notice u/s 148 of the Act and also due to denial of registration, on second thought, the assessee had presented a second set of undated accounts, in order to claim exemption u/s 10(23C)(iiiad) of the IT Act, and the AO had not made necessary inquiries regarding the two sets of balance sheets and accounts.

3. The Id. CIT(E) has, as such, held the assessment orders for both the years to be erroneous and prejudicial to the interests of the Revenue. Both the assessments have been set aside, to be framed afresh.

4. The Id. Counsel for the assessee has contended that the Id. CIT(E) has failed to consider that exemption u/s 10(23C)(iiiad) of the IT Act, the only reason for which the notice u/s 263 were issued to the assessee for both the concerned years, has not been granted to the assessee by the AO for either of the years and so, the assessment orders for both the years are neither erroneous, nor prejudicial to the interests of the Revenue.

5. The Id. DR, on the other hand, has placed strong reliance on both the orders under appeal.

6. Having heard the parties, we find the grievance of the assessee to be correct. The notices u/s 263 for both the years were issued proposing to cancel the assessment orders for want of inquiry regarding the two sets of balance sheets and accounts on the basis of which, exemption u/s 10(23C)(iiiad) of the IT Act had been claimed by the assessee, though the assessee was disqualified from claiming such exemption. Both the orders under appeal have also been passed on this very

basis, cancelling the assessment as erroneous and prejudicial to the interests of the Revenue and directing them to be framed afresh.

7. However, in the assessment order passed for both the years, no exemption u/s 10(23C)(iiiad) of the IT Act, has been allowed to the assessee. Therefore, both the assessment orders are not erroneous, much less has any prejudice been caused thereby to the interests of the Revenue. That being so, neither of the necessary requirements of the provisions of section 263 of the Act has been fulfilled and, therefore, as rightly contended, the orders under appeal are unsustainable in law.

8. In view of the above, both the orders under appeal are cancelled and both the assessment orders are revived.

9. In the result, both the appeals are allowed.

Order pronounced in the open court on 17/04/2018.

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

Dated 17/04/2018

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR