

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'A', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

ITA Nos. 664 to 668/Chd/2014

Assessment Years: 2006-07 to 2009-10 & 2011-12

M/s Katiani Education Society,
Kullu (H.P.)
C/o Shri Tej Mohan Singh,
Advocate, # 527, Sector 10-D,
Chandigarh

Vs.

The DCIT,
Mandi (HP)

PAN No. AABTK3076H

(Appellant)

(Respondent)

Appellant By : Shri Tej Mohan Singh, Advocate

Respondent By : Smt. Chanderkanta, Addl. CIT

Date of hearing : 23.04.2018

Date of Pronouncement : 23.04.2018

ORDER

Per Bench:

The present bunch of appeals have been preferred by the assessee against the common order dated 08.05.2014 of the Commissioner of Income Tax (Appeals), [hereinafter referred to as CIT(A)], Shimla.

2. Since the issues involved in all the appeals are identical in nature, hence, the same have been heard together and are being disposed of by this common order.

3. Identical grounds have been taken in all the appeals, hence, for the sake of convenience, **ITA No. 664/Chd/2014** for assessment year 2006-07 is taken as a lead case, wherein following grounds have been raised by the assessee:-

- 1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the reopening of assessment framed by the Assessing Officer resorting to the provisions of Section 148 of the Act without complying with the mandatory requirements of the said section which is arbitrary and unjustified and as such the assessment merits annulment.*
- 2. That there being no escapement of income leading to formation of reason to believe, the resort to the provisions of Section 148 of the Act is illegal, arbitrary & unjustified.*
- 3. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding that the assessee society is not eligible to claim exemption u/s 10(23C)(iiiad) as it was not existing solely for educational purpose which is contrary to the facts on record and as such the order of Commissioner of Income Tax (Appeals) is arbitrary and unjustified.*
- 4. That all the reasons mentioned in the order to deny exemption are based only on suspicion, conjectures and surmises and have been picked up only from the order of the Chief Commissioner denying exemption u/s 10(23C)(vi) without any independent application of mind by both the Commissioner of Income Tax (Appeals) and Assessing Officer.*
- 5. That the Ld. Commissioner of Income Tax (Appeals) has further erred in holding that the assessee Society does not fulfill the required conditions for claiming exemption u/s 11 to 13 of the Act which is arbitrary and unjustified.*

6. That the Ld. CIT(A) has further erred in upholding the addition of Rs. 6,09,784/- brushing aside the explanation rendered during the course of appellate proceedings which is arbitrary and unjustified.

7. That the Ld. CIT(A) has further erred in upholding the charging of interest u/s 234-A, B and C of the Act which is not chargeable in the face of the case.

8. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus untenable.

4. The Ld. Counsel for the assessee has invited our attention to the grounds of appeal. The assessee in this appeal has taken as many as eight grounds of appeal. Ground Nos. 1 & 2 are regarding the legal issue challenging the reopening of the assessee u/s 148 of the Income-tax Act, 1961 (in short 'the Act'). Ground No.3 is relating the claim of the assessee for exemption u/s 10(23C)(iiiad) of the Act. Ground No.4 is relating to the claim of exemption u/s 10(23C)(vi) of the Act. Ground No. 5 is relating to the claim of exemption as per the provisions of section 11 to 13 of the Act. Vide ground No.6, the assessee has agitated the addition of Rs. 6,09,784/- on merits, in the facts and circumstances of the case. Ground No.7 is relating to the charging of interest u/s 234A, B and C of the Act. Ground No.8 is General in nature.

5. Now coming to ground Nos. 1 & 2 of the appeal, which are relating to the reopening of the assessment, the Ld. counsel has reiterated the submission as were made before Ld. CIT(A) on this issue. The brief facts relating to the issue is that the assessee had applied for approval u/s 10(23C)(vi) of the Act for assessment year

2011-12 but the same was rejected by the competent authority on the ground that the assessee society does not exist solely for educational purposes but for the purpose of making profit also. Since the identical condition for running the educational institution also finds mention under the provisions of section 10(23C)(iiiad) also, hence, the Assessing officer noticed that for earlier assessment years the assessee had been wrongly claiming exemption u/s 10(23C) (iiiad) of the Act, he, therefore, reopened the assessments for assessment years 2006-07 to 2009-10 and assessment year 2011-12.

6. The contention of the assessee before CIT(A) was that no fresh material had come to the Assessing officer to reopen the assessments and that the Assessing officer had not applied his mind independently to form an opinion that income of the assessee had escaped assessment.

7. We are not convinced by the above submissions of Ld. AR on this issue. Since the application for approval u/s 10(23C) (vi) of the Act was rejected by the CCIT, hence, the reasonable conclusion was that the assessee was not running the institution solely for educational purposes. In view of this, there was a reasonable belief to the Assessing officer that income of the assessee had escaped assessment because of the wrong claim of the exemption u/s 10(23C)(iiiad) of the Act for the aforesaid assessment years. In view of this, we do not find any merit in ground Nos. 1 & 2 of the appeal and the same are accordingly dismissed.

8. Now coming to the ground No.3 of the appeal, which is relating to the claim of exemption u/s 10(23C)(iiiad) of the Act, the Ld. AR of the assessee has been fair enough to furnish a copy of the decision of the Hon'ble Jurisdictional High Court of Himachal Pradesh at Shimla passed in CWP No. 7235 of 2012 vide order dated 4.3.2015 and submitted that, in fact, the assessee had challenged the denial of approval u/s 10(23C)(vi) before the Hon'ble High Court by way of writ petition, which has been dismissed by the Hon'ble High Court holding that the assessee was not running the institution solely for educational purposes but profit element was involved. Since, the essential parameter of running of institution solely for educational purposes and not for profit is also there as a pre-condition under the provisions of section 10(23C)(iiiad) of the Act, hence, the findings arrived at by the Hon'ble High Court vide order dated 4.3.2015 (supra) would squarely apply to the issue regarding the claim of exemption u/s 10(23C)(iiiad) of the Act also. There is no merit in the ground and the same is accordingly dismissed.

9. So far as the ground No.4 is concerned, the decision of the Hon'ble High Court dated 4.3.2015 is squarely applicable, hence, ground No. 4 of the appeal is accordingly dismissed.

10. So far as the ground No.5 is concerned, admittedly, the assessee is not registered as a charitable institution under the provisions of section 12A of the Act, hence, the assessee is not entitled to the exemption as per the provisions of sections 11 to 13

of the Act. In view of this, ground No.5 of the appeal is also dismissed.

11. Now coming to ground No.6 of the appeal, the Ld. counsel has invited our attention to the impugned order of the Assessing officer to state that the Assessing officer has made the impugned addition of Rs. 6,09,784/- into the income of the assessee on account of corpus fund received as contribution from the members. The Ld. Counsel has submitted that even though the assessee may not be found eligible to claim exemption under the provisions of section 10(23C) and / or sections 11 to 13 of the Act, however, it was incumbent upon the Assessing officer to examine the nature of the receipts. The Ld. Counsel has submitted that the assessee's claim is that the said receipts were capital in nature and further that even if the same are to be treated as a Revenue receipts, the assessee would be entitled to the deduction of eligible expenditure. The Ld. Counsel has submitted that the Assessing officer has not examined the nature of the receipts. He has further submitted that the matter be restored to the file of the Assessing officer to examine the nature of receipts. The Ld. counsel has further brought our attention to the impugned order of the CIT(A) to state that even the Ld. CIT(A) has not deliberated on this aspect of the nature of the income.

12. The Ld. DR though has vehemently relied on the findings of the lower authorities.

13. After considering the rival submissions, we find merit in the submissions of the assessee. Though the assessee may not be entitled to the claim of exemption under the exemption provisions as claimed by the assessee, however, still the nature of receipts / income is required to be examined at the hands of the Assessing officer. We, therefore, restore the issue raised vide ground No.6 of the appeal to the file of the Assessing officer for adjudication afresh.

14. Ground No.7 is regarding levy of interest u/s 234A, B and C of the Act, which is consequential in nature, does not require any adjudication at this stage.

15. Ground No. 8 is general in nature and does not need any adjudication.

The appeal of the assessee stands partly allowed

ITA No. 665/Chd/2014 (A.Y. 2007-08)

16. Now coming to the assessee's appeal for assessment year **2007-08**. The Ld. Counsel for the assessee, at the outset, has submitted that so far as ground Nos. 1 to 5 are concerned, they are identical as taken by the assessee in appeal for assessment year 2006-07. In view of our findings given above, grounds Nos. 1 to 5 of the appeal are accordingly dismissed.

17. So far as ground Nos. 6 & 7 are concerned, the Ld. Counsel for the assessee has pleaded that the same are required to be restored to the file of the Assessing officer for adjudication afresh

in respect of the nature of receipts and taxability of income as directed while adjudicating ground No.6 of the appeal of the assessee for assessment year 2006-07.

In view of our findings given above while adjudicating the ground No. 6 of the appeal for assessment year 2006-07, ground Nos. 6 &7 of this appeal are restored to the file of the Assessing officer for decision afresh.

18. Ground No.8 which is relating to charging of interest u/s 234A, B & C of the Act, which is consequential in nature, whereas, ground No.9 is general in nature and need not to be adjudicated.

In view of this, the appeal of the assessee for assessment year 2007-08 is also treated as partly allowed.

ITA No. 666/Chd/2014 (A.Y 2008-09)

19. In this appeal, the assessee has taken as many as 08 grounds of appeal, which are almost identical as taken by the assessee in its appeal for assessment year 2006-07.

20. In view of our observations made above, ground No.6 of the appeal is restored to the file of the Assessing officer for adjudication afresh whereas other grounds of appeal are dismissed in view of our findings given in the appeal of the assessee for assessment year 2006-07.

The appeal of the assessee is partly allowed.

ITA No. 667/Chd/2014 (A.Y. 2009-10)

21. In this appeal, the assessee has raised as many as 10 grounds of appeal. The Ld. counsel for the assessee was fair enough to admit that the ground Nos.1 to 5 of the appeal are identical to that have been taken in assessee's appeal for assessment year 2006-07. In view of our findings given above for the earlier assessment year i.e. assessment year 2006-07, ground Nos.1 to 5 of the appeal are hereby dismissed.

22. Ground Nos. 6 & 7 & are relating to the disallowance made by the Assessing officer under the provisions of section 40A(3) of the Act on account of payments made more than the prescribed limit by cash on a single day.

23. The Ld. counsel, in this respect, has submitted that this issue was specifically raised through grounds of appeal before the Ld. CIT(A). However, Ld. CIT(A) has failed to adjudicate on the same. The Ld. counsel has further submitted that since the assessee was under bonafide belief that the assessee was entitled to exemption u/s 10(23C)(iiiad) of the Act, hence, the assessee could not furnish the relevant evidences / explanation for making payments more than prescribed limit in cash. The Ld. Counsel has further submitted that the assessee be given an opportunity to present its case before the Assessing officer in this respect.

24. The Ld. DR, on the other hand, has relied on the findings of the Assessing officer on this issue.

25. We have considered the rival submissions. The fact on the file is that the Ld. CIT(A) has failed to adjudicate on this issue. The other appeals of the assessee have already been restored to the file of the Assessing officer though on different issue. The assessee has submitted that to avoid multiplicity of the litigation, the issue may be restored to the file of the Assessing officer so that he may be able to furnish the necessary explanation / evidences on this issue.

Considering the overall facts and circumstances of the case, we are of the view, that no prejudice will be caused to the Revenue if the issue is restored to the file of the Assessing officer for adjudication afresh; we order accordingly.

26. Now, coming to ground Nos. 8 of the appeal. The assessee has agitated the addition for Rs. 2.5 lacs made by the Assessing officer on account of unsecured loans applying the provisions of section 68 of the Act.

27. The Ld. Counsel for the assessee has submitted that in this respect, the assessee may be given an opportunity to furnish explanation / evidences regarding the unsecured loan of Rs. 2.5 lacs. The Ld. DR, on the other hand, has relied on the findings of the authorities below and has submitted that the assessee has failed to furnish the requisite explanation before the lower authorities on this issue.

28. After considering the rival submissions and in view of the submissions of the assessee that it could not furnish the requisite information during assessment proceedings, because of the entire stress of the assessee was on the claim of exemption provisions. In our view, the assessee should be given an opportunity to furnish the explanation / evidences on this issue also. This issue is also accordingly restored to the file of the Assessing officer for fresh adjudication.

29. Ground No. 9 relating to charging of interest under section 234-A, B and C which is consequential in nature, whereas, ground No.10 is general in nature and need not to be adjudicated.

In view of this, the appeal of the assessee is treated as partly allowed.

ITA No. 668/Chd/2014 (A.Y. 2011-12)

30 Now coming to assessee's appeal for assessment year 2011-12. The assessee in this appeal has taken as many as 12 grounds of appeal, which are reproduced below:-

- 1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the reopening of assessment framed by the Assessing Officer resorting to the provisions of Section 148 of the Act without complying with the mandatory requirements of the said section which is arbitrary and unjustified and as such the assessment merits annulment.*
- 2. That there being no escapement of income leading to formation of reason to believe, the*

resort to the provisions of Section 148 of the Act is illegal, arbitrary & unjustified.

- 3. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding that the assessee society is not eligible to claim exemption u/s 10(23C)(iiiad) as it was not existing solely for educational purpose which is contrary to the facts on record and as such the order of Commissioner of Income Tax(Appeals) is arbitrary and unjustified.*
- 4. That all the reasons mentioned in the order to deny exemption are based only on suspicion, conjectures and surmises and have been picked up only from the order of the Chief Commissioner denying exemption u/s 10(23C)(vi) without any independent application of mind by both the Commissioner of Income Tax(Appeals) and Assessing Officer.*
- 5. That the Ld. Commissioner of Income Tax(Appeals) has further erred in holding that the assessee Society does not fulfill the required conditions for claiming exemption u/s 11 to 13 of the Act which is arbitrary and unjustified.*
- 6. That the Ld. CIT(A) has further erred in upholding the addition of Rs. 92,997/- disallowing the depreciation brushing aside the explanation rendered during the course of appellate proceedings which is arbitrary and unjustified.*
- 7. That the Ld. CIT(A) has further erred in upholding the addition of Rs. 60,551/- disallowing the petrol expenses for alleged perusal use by the Principal brushing aside the explanations rendered during the course of appellate proceedings which is arbitrary and unjustified.*
- 8. That the Ld. CIT(A) has further erred in upholding the addition of Rs. 8,000/- disallowing the refreshment expenses brushing aside the*

explanations rendered during the course of appellate proceedings which is arbitrary and unjustified.

9. *That the Ld. CIT(A) has further erred in upholding the addition of Rs. 1,09,470/- disallowing 1/5th of the expenditure claimed under the heads telephone, sanitary, repair, printing and stationery, pantry and advertisements and publicity brushing aside the explanations rendered during the course of appellate proceedings which is arbitrary and unjustified.*

10. *That the disallowances / additions challenged in ground 6 to 9 are uncalled for as the assessee is not carrying out any business or profession as provided for in Chapter IV Part D of the Act and as such the additions made are illegal, arbitrary and unjustified.*

11. *That the Ld. CIT(A) has further erred in upholding the charging of interest u/s 234-A, B and C of the Act which is not chargeable in the face of the case.*

12. *That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus untenable.*

31. The Ld. Counsel for the assessee has been fair enough to state that ground Nos. 1 to 5 are identical to the grounds taken by the assessee in appeal for assessment year 2006-07. In view of our findings giving above, while adjudicating the appeal for assessment year 2006-07, ground Nos. 1 to 5 of this appeal are accordingly dismissed.

32. Vide ground Nos. 6 to 9 of the appeal, the assessee has agitated various additions / disallowance made the Assessing officer.

33. We have heard the rival submissions. The Ld. DR had drawn our attention to the impugned order of the Assessing officer and stated that Assessing officer has discussed in detail regarding the various additions / disallowances made by the Assessing officer which have been agitated before us through ground Nos. 6 to 9 of the appeal. She has also invited our attention to the impugned order of the CIT(A) on this issue. We have gone through the impugned order of the CIT(A). The Ld. CIT(A) after considering the submissions of the assessee has given observation that the assessee is not entitled to the depreciation of Rs. 92,997/- since the building was not ready for use. We do not find any infirmity in the order of the CIT(A) on this issue and, hence, ground No. 6 of the appeal is dismissed.

34. Now coming to ground Nos. 7 to 9 of the appeal, which are relating to the certain expenses regarding which the assessee could not furnish the justifiable explanation. The Ld. CIT(A) has disallowed a part of the expenses claimed by the assessee, the same being unverifiable and personal in nature.

35. After hearing the Ld. representatives of the parties, we do not think that the order of the CIT(A) on this issue is required any

interference at this stage. Hence, grounds Nos. 7 to 9 of the appeal are accordingly dismissed.

36. Ground Nos. 10 and 12 are general in nature and do not require any specific adjudication.

37. Ground No. 11 relates to charging of interest u/s 234A B and C of the Act which is consequential in nature, does not require any adjudication at this stage.

This appeal of the assessee for assessment year 2011-12 accordingly stands dismissed.

38. In the result, the appeals of the assessee in ITA Nos. 664/Chd/2014 to 667/Chd/2014 for assessment years 2006-07 to 2009-10 are partly allowed whereas ITA No. 668/Chd/2014 for assessment year 2011-12 is hereby dismissed.

Order pronounced in the Open Court.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 23.04.2018
Rkk

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER