

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

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND Dr.B.R.R.KUMAR, ACCOUNTANT MEMBER

ITA Nos. 348 & 349 /CHD/2018
A.Ys:2008-09 & 2013-14

Himachal Pradesh Board of
School Education,
Dharamshala, Distt. Kangra
(through its Secretary).
PAN : AAAJH0373

Vs

The DCIT (E),
Circle-2,
Chandigarh.

(Appellant)

(Respondent)

Appellant by : None

Respondent by : Shri Manoj Kumar, Addl. CIT

Date of hearing : 11.06.2018

Date of Pronouncement : 15.06.2018

ORDER

PER DIVA SINGH

The present appeals have been filed by the assessee assailing the correctness of the separate orders dated 21.12.2017 of CIT(A) Palampur pertaining to 2008-09 and 2013-14 assessment year on various grounds.

2. However, at the time of hearing, some office employee of the assessee present in the Court orally stated that his counsel was unable to appear. It was pointed out to the concerned person that even before the CIT(A), the assessee failed to put in an appearance as is evident from para 2 of the said order and impugned order has been passed taking into consideration the past history of the assessee. The office employee was unable to state anything despite a pass over. We further take note of the fact that the impugned orders have been passed ex-parte. For ready reference, para 2 of ITA 348/CHD/2018 in terms of lack of representation before the CIT(A) which is identical in both the cases is reproduced hereunder :

“2. The appeal was fixed for hearing on 09.06.2017, 13.07.2017, 23.08.2017, 12.09.2017, 19.09.2017, 22.11.2017 and 20.12.2017. Written submissions have been filed.”

3. It is seen that the CIT(A) has passed a detailed speaking order relying upon order of the ITAT as would be evident from para 7 of the impugned order which shows that the order passed in 2008-09 assessment year i.e.

ITA 348/CHD/2018 by the ITAT dated 18.01.2016 has been relied upon. The said order, we are informed, till date has not been upset by any Forum. The relevant finding is reproduced as under :

7. *I have considered the facts of the case and find that these are identical to the facts / issues decided by Hon'ble ITAT, Chandigarh in the case of the appellant for A.Y. 2006-07 and A.Y. 2011-12 in the following appeals :*

- i) ITA No. 405/Chd/2012, Assessment year 2006-07, dated 13.09.2013*
- ii) ITANO.673/Chd/2014, A Y 2011-12, dated 18.01.2016*

Hon'ble ITAT dismissed the appeal of the appellant for AY 2006-07 holding as under :

9. We have heard the rival submissions and perused the material available on record. Section 10 (23C)(iiiab) of the Income Tax Act provides as under:-

10(23C).....

[(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiac).....

10. The condition of the above provision would show that University and other educational institutions must exist solely for education purposes and not for the purposes of profits and which is wholly and substantially financed by the government. The Assessing Officer has given a specific finding against the assessee that in the assessment year under appeal, the assessee has not fulfilled the conditions of the above provision. It was also found that in the assessment year under appeal, the assessee has advanced its income to the State Government. The Ld. CCIT Shimla has granted approval u/s 10(23C) (vi) of the Income Tax Act to the assessee AOP from the assessment year 2009-10 onwards subject to certain conditions, therefore, the same would not apply to the assessment year under appeal i.e. 2006-07. The Ld. CIT(A) on examination of the assessment record also found that assessee had never been financed by the Government during the assessment year in appeal and other years. It was also found that assessee has been generating its own income from sale of books and on account of registration fees. The Ld. CIT(A) therefore, on examination of the records found that the aid from the State Government to the assessee is nil and it was wrongly mentioned by the Assessing Officer in the assessment order that the assessee Board is financed and controlled by the state government. In fact, in the assessment year under appeal, the assessee Board has transferred an amount of Rs. 5 crores to the Himachal Pradesh Government from its own income. It was also noted from the record that assessee Board is not directly controlled by the State Govt. but is governed under the Separate Himachal Pradesh Board of School Education Act, 1968. The Ld. CIT(A), therefore, found that assessee does not exist solely for educational purposes. It is in fact earning huge profits and has surplus income and profits. The finding of the fact recorded by Ld. CIT(A) clearly suggests that assessee did not have fulfill the terms and conditions of section 10(23C)(iiiab) of the I.T.Act. The appeal was adjourned many times but the assessee did not take any steps to produce any evidence before the Tribunal to contradict the findings of fact recorded by Ld. CIT(A) in the impugned order. Even during the course of arguments, Ld. Counsel for the assessee was specifically required to point out any error in the order of Ld. CIT(A) on the basis of evidence or material on record but it was stated that no evidence or material has been filed on record to contradict the above finding of fact recorded by Ld. CIT(A). The

Ld. Counsel for the assessee only relied upon the two unreported judgments as above, however, the said judgments could not be considered favorable in favour of the assessee in the absence of any evidence or material on record in favour of the assessee. Thus, the findings of fact recorded by Ld. CIT(A) above have not been rebutted through any material, therefore, we conclude that assessee miserably failed to satisfy the requirement of section 10(23C)(iiiab) of the Income Tax Act in the assessment year under appeal.

11. In view of the above discussion, we do not find any error in the order of Ld. CIT(A) in rejecting the claim of the assessee u/s 10(23C) (iiiab) of the I.T. Act.

12. In the result, the appeal of the assessee is dismissed.

On identical facts, the assessee's appeal for A.Y. 2011-12 was also dismissed by Hon'ble ITAT by holding as under :

.....

8. We have heard ld. Representatives of both the parties and perused the material on record.

9. It is admitted fact that the ld. CIT(Appeals) dismissed the appeal of the assessee following the order of his predecessor for assessment year 2006-07 dated 28.02.2012 which order has been confirmed by ITAT Chandigarh-A Bench in the case of same assessee in ITA 405/2012, assessment year 2006-07 vide order dated 13.09.2013 and appeal of the assessee has been dismissed. The findings of the Tribunal in paras 9 to 12.....

10. In assessment year 2006-07, it was found that the assessee does not exist solely for educational purposes. It is earning huge profits and has surplus income and profits. The finding of fact recorded by the ld. CIT(Appeals) clearly suggest that assessee did not fulfill the terms and conditions of Section 10(23C)(iiiab) of the Income Tax Act. It was also found that assessee Board is no directly controlled by the State Government but is governed under separate Himachal Pradesh Board of School Education Act, 1968. Ld. Representatives of both the parties submitted during the course of arguments that the above order of the Tribunal dated 13,09,2013 has not been challenged by the assessee in further appeal before High Court. It is also stated that assessee has filed Miscellaneous Application before ITAT Chandigarh Bench against the order of the Tribunal dated 13.09.2013 which is also dismissed. The ld. counsel for the assessee stated that the assessee has preferred appeal against the order passed on the Miscellaneous Application. Therefore, it stands clear that the finding of fact recorded in assessment year 2006-07 in appeal of the assessee has reached finality as the order of the Tribunal dated 13.09.2013 has not been challenged in appeal before the High Court.

11. The Assessing Officer on perusal of the Audit Report on record found that assessee has received Rs. 24,66,13,426/- from the Director of Education, Himachal Pradesh for utilization of funds for the financial year 2010-11 under consideration with specific direction for free distribution of textbooks to the students belonging to Other Backward Classes, Scheduled Caste and Scheduled Tribes, following the order of the Government of Himachal Pradesh through Notification dated 21.11.1996, copy of which is attached as annexure to the assessment order. The Assessing Officer, therefore, noted that the funds allotted by the Directorate of Education to the assessee Board at Rs. 24.66 Cr was earmarked for the free distribution of textbooks to the students belonging to the specific class of students, but the Board has failed to utilize funds for the earmarked purposes. The Assessing Officer further noted that the Board has utilized Rs. 11,90,38,662/- out of the earmarked fund of Rs. 24.66 Cr for fulfillment of other objects for meeting of establishment, administration and office expenses for which the fund was not allocated. Thus, the assessee violated the provisions of Section 11(4) of the Income Tax Act. The Assessing Officer further noted that the assessee Board has stated to have utilized only Rs. 12.75 Cr for printing of textbooks which includes establishment and office expenses of Rs. 2.05 Cr, payment of Audit Fees of Rs. 12 lacs, Royalty to authors of Rs. 1.58 Cr, purchase of paper of Rs. 6.11 Cr, printing of textbooks of Rs. 2.07 Cr and payment of rent of Rs. 21,91,055/- etc. Thus, Board has incurred only Rs. 10,00,01,870/- on printing of the books from which the Board has printed 69,50,143 textbooks for free distribution

to the specified class of the students as per Himachal Pradesh Government Notification but the Board even has not distributed these total textbooks to these categories of students but sold major portion of these textbooks in the open market through Book Depots with the motive of earning profits and earned profit of Rs. 9,48,34,214/-. The Assessing Officer, therefore, found that assessee was found to be carrying out activities of printing, publishing and sale of textbooks which is in the nature of commerce, trade and business to earn profit.

11(i) The Assessing Officer further found that assessee is engaged in carrying out the activities of conducting of the examination and in-fact, not imparting any education in terms of training and schooling directly to the students. The Secretary of the Board has categorically denied having imparting any education directly or indirectly to the students in terms of training or schooling. The assessee has received income from schools as examination and other fees etc. The Board has not received any financial support wholly or substantially from the Government. Out of the total funds of Rs. 24.66 Cr, the Board has misappropriated and utilized the funds for other purposes other than funds allotted with specific direction to distribute the textbooks on free basis to the backward classes, scheduled castes and scheduled tribes. The assessee has shown income from sale of books of Rs. 34.19 Cr and debited expenditure at Rs. 17.06 Cr. The Assessing Officer, in totality of the facts and circumstances, found that assessee has earned profit on sale of the books. The assessee, however, denied the observations of the Assessing Officer, therefore, the Assessing Officer in order to find out the exact utilization of earmarked funds allocated by the Directorate of Education for free distribution of textbooks to the students belonging to other backward classes and schedule castes and schedule tribes and whether the Board has received any mandate or requested for utilization of earmarked funds for other purposes to the Directorate of Education and to find out exact nature of the activities and status of the Board, issued summons under section 131 to the Secretary of the Board and the Secretary of the assessee Board Smt. Rakhi Kahlon attended the proceedings before Assessing Officer and her statement was recorded. The question Nos. 1 to 8 and their answers are reproduced in the assessment order which read as under :

Q. No.1- Please explain whether the Board has received payment from Directorate of Education, Himachal Pradesh for supply distribution of free text books to the students belonging to other backward classes, schedule caste and schedule tribes during the financial year 2010-11. If yes, please quantify the amount received under this head.

Ans:- Yes, the Board has received Rs. 24,66,13,426/- for distribution of free text books to the students from class 1 to 10th to the students belonging to other backward classes, schedule caste & schedule tribes.

Q.No.2- Please explain whether there was a mandate from the Directorate of Education that payment allocated for free distribution of text books to the students belonging to other backward classes, schedule caste and schedule tribes for utilizing this allocated fund for other purposes such as sale of the books to the other category-.of students through book depots and utilizing the fund for examination or other purposes.

Ans:- No, we have not received any mandate from the Directorate of Education for utilized of above mentioned allocate funds for other purpose such as sale of books and utilization of fund for exam.

Q.No.3. Please explain whether the fund allocate of Rs. 24,66,13,426/-for the purpose of distribution of free text books to the students belonging to other backward classes and schedule caste & schedule tribe had been utilized for other purposes, other than purpose for specific direction for utilization. If yes, please quantify the same.

Ans:- Yes, we have utilized Rs. 11,90,38,662/- for the examination purposes of all students. The balance amount of Rs. 12,75,74,764/- had been utilized for printing of text books out of which we sold the text books through depots amounting to Rs. 9,48,34,214/- and balance books has been distributed on free basis to the students belonging to other backward classes, schedule cast & schedule tribe. The books distributed to these categories of students have already been submitted.

Q. No. 4:- Please explain whether the Board has carried out the activities in the nature of printing of text books and sale of the books which is in the nature of commerce, trade and business

Ans:- Yes, the Board has carried out the activities of printing and publishing of text books and sold the text books through depots out of total stock printed as per

object No. 12 of the bye laws of the Board, but the activities of printing and sale of text books are not in the nature of commerce and trade.

Q. No. 5:- Please explain whether the Board is carrying out any activities of schooling, training or imparting any type of education directly or indirectly to the students other than holding of exams for classes 8th, 10th & 12th.

Ans:- We are conducting examination for testing the knowledge of classes 8th, 10th, 11th & 12th but not imparting any type of education directly or indirectly to the students other than holding of exam for classes 8th, 10th & 12th.

Ans:- We are conducting examination for testing the knowledge of classes 8th, 10th, 11th & 12th, but not imparting education to the students directly or indirectly. Apart from that we also distribute scholarship to the meritorious students.

Q. No.6:- Please explain whether you have maintained separate books of accounts for printing and sale of books?

Ans:- No, we are not maintaining separate books of accounts for printing and sale of books.

Q. No.7:- Please explain whether Board has earned profit from printing and sale of books made through Book Depots?

Ans:- The Board has not earned any profit from these activities. But yes the Board has earned surplus or expenditure from the activities of printing, publishing and sale of books. It is also brought to your notice that the surplus so generated from these activities has been utilized for examination activities.

Q. No:8:- Please explain whether the Board has received any type of wholly or substantially financial support from Govt. for running of day to day activities and for fulfilment of objects of Board other than allocation of fund made by Director of Education, H.P. of Rs.24,66,13,426/- for distribution of free text books for the students belonging to Backward classes, Schedule cast & Schedule caste ?

Ans:- No, we have not received any financial support from the Govt. of H.P. for functioning/fulfilment of objects of the Board other than funds mentioned above for distribution of free text books for specific objective to the students belong to other backward classes, Schedule Cast & Schedule Tribe.

12. *The Assessing Officer in view of the statement of the Secretary of the assessee Board and material on record found that the assessee Board has received Rs. 24.66 Cr for free distribution of textbooks to the backward classes, SC & ST students but the same have been utilized in contravention of the objects for which the funds were allocated. The assessee has not received any mandate from the Directorate of Education for utilizing the abovesaid earmarked funds for the purposes other than the purpose/object for which the fund was allocated. The funds were utilized for the purpose other than the objects of the assessee. The textbooks were sold and profit was earned. The Secretary denied to have imparted any education directly or indirectly to the students in the nature of schooling or training. The assessee has also stated that assessee Board has not received any type of financial support from the Government wholly or substantially for functioning and fulfillment of the objects of the Board other than the earmarked fund of Rs. 24.66 Cr received from free distribution of textbooks to the specified class of students. The Assessing Officer, therefore, added the amount as income of the assessee and after completing the assessee's assessment on other issues, computed the total income at Rs. 23,89,36,053/-. Section 10(23C)(iiiab) of the Income Tax Act provides as under :*

10(23C).....

[(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

13. *The condition of the above provision would show that University or other educational institution must exist solely for education purpose and not for the purpose of profit which is wholly and substantially financed by the Government. All the conditions shall have to be cumulatively satisfied before seeking exemption under the above provisions. The Assessing Officer has given a specific finding against the assessee that assessee has received Rs. 24.66 Cr from Directorate of Education, Himachal Pradesh for utilization of these funds with specific directions for free distribution of textbooks to the students belonging to other backward classes, SC and ST. The Assessing Officer referred to the Notification of Government of Himachal Pradesh dated 21.11.1996 in this regard through which funds have been allocated to the assessee for free distribution of the textbooks to the specified class of the students. It is also brought on record that except this amount, which was given for specific purpose of free distribution of the textbooks to*

backward class students etc., assessee Board has not received any financial support wholly or substantially from the Government. It is also brought on record that whatever funds were given for specific purpose of free distribution of the textbooks to specified class of students, have been misused in violation of the Notification. The Board has failed to utilize earmarked funds given by the State Government for the specific purpose. It is also not in dispute that textbooks which have been printed by the assessee Board have been sold in open market through book depots with the motive of earning profits and assessee earned Rs. 9.48 Cr. The copy of the revised Income & Expenditure Account for the year ending 31.03.2011 is filed at page 163 of the Paper Book which shows that assessee has received income from students' fees in a sum of Rs. 17.89 Cr and also received book income of Rs.34.19 Cr. The ld. counsel for the assessee has filed details of income from books (private) in assessment year under appeal which shows that assessee has received income on sale of books through private depots in a sum of Rs. 9,53,65,751/- and the amount reimbursed by the Himachal Pradesh Government was of Rs. 24.60 Cr and thus, the total book income received by the assessee was of Rs. 34.19 Cr. including the interest income. The Income & Expenditure Account also shows assessee has income from other heads as well. In this Income & Expenditure Account, assessee has not shown any amount received or financed by the Government. The funds of Rs. 24.66 Cr have been received by assessee from Directorate of Education for the purpose of free distribution of textbooks to the backward class students, therefore, the same could not be construed to be wholly and substantially financed by the Government. When the Assessing Officer examined the Secretary of the assessee Board Smt. Rakhi Kahlon under section 131 of the Income Tax Act, she has admitted in answer to question No. 8, as reproduced above, that assessee Board has not received any financial support from Government of Himachal Pradesh for functioning/fulfillment of the objects of the Board other than funds mentioned above for distribution of free textbooks for specific objective to the students belonging to backward class etc. She has also admitted in answer to question No. 2 above that assessee Board has not received any mandate from the Directorate of Education for utilization of the fund of Rs. 24.66 Cr for other purposes such as sale of books and utilization of funds for exams. She has also admitted to have sold the textbooks through private depots amounting to Rs. 9.48 Cr. She has also admitted that assessee Board is not imparting education to the students directly or indirectly. It is also admitted that Board has earned surplus over the expenditure from the activities of printing, publishing and sale of books. Therefore, there is a clear admission on the part of the Secretary of the assessee Board that assessee Board has not received any financial support from the Government of Himachal Pradesh for functioning/fulfillment of the objects of the assessee Board. The assessee Board is not imparting any education and was selling textbooks on which profit have been earned. Therefore, admission of the Secretary of the Board clearly disentitle the assessee for claiming any relief under section 10(23C)(iiiab) of the Income Tax Act.

14. The ld. counsel for the assessee during the course of arguments submitted that Secretary of the Board has made a wrong statement before the Assessing Officer. However, he has admitted that Secretary of the Board has never retracted from her statement at any stage later on. It, therefore, stands clear that the statement of the Secretary of the Board was clear admission on the part of the assessee Board to prove that assessee is not entitled for any exemption/deduction under section 10(23C)(iiiab) of the Act.

.....

18. The finding of fact recorded in earlier assessment year 2006-07 have not been rebutted through any material on record in which the ld. CIT(Appeals) found that assessee does not exist solely for educational purposes and it is a fact that assessee earning huge profits and has surplus income and profits. These findings of fact have been confirmed by the Tribunal vide order dated 13.09.2013. The ld. counsel for the assessee sought several adjournments to produce sufficient material and evidence on record to distinguish the case of the assessee from the assessment year 2006-07 but ld. counsel for the assessee did not produce any material or evidence to prove that facts are all together different from the finding of fact recorded in assessment year 2006-07. As noted above, no amount is given by the State Government to the assessee Board for any educational purpose. Therefore, there is no question of government wholly or substantially financing the assessee Board. The assessee Board has independent source of income i.e. income from students' fees, books income, interest income and other income etc. Income & Expenditure Account is supported by the statement of the Secretary of the Board recorded during the course of assessment proceedings, in which the Secretary of the assessee Board has admitted that Board has not received any financial support from the Government of Himachal Pradesh for

functioning/fulfillment of the objects of the Board. The Board has received Rs. 24.66 Cr for distribution of free textbooks to the students belonging to OBC/SC/ST and according to the Income & Expenditure Account, the cost of the books has been shown in a sum of Rs. 17.06 Cr and ultimately the total book income of the assessee including interest has been shown at Rs. 34.19 Cr and as such, the assessee Board has misused the funds provided by the State Government for limited purposes. Thus, the assessee is not wholly or substantially financed by the Government. The assessee earned Rs. 9.48 Cr on sale of textbooks which were sold through private booksellers for other students, so the funds given by the State Government for the benefit of OBC/SC/ST students have not been utilized by the assessee Board. The Notification of the Govt. of Himachal Pradesh dated 21.11.1996, thus, has been violated by the assessee Board.

18. *Similarly, when the assessee raised the issue before CCIT, Shimla in connection with approval under section 10(23C)(vi) of the Income Tax Act, the assessee was informed of the order of ld. CCIT, Shimla vide letter dated 11.03.2010 (supra). The assessee was intimated that from the record maintained alongwith application under section 10(23C)(vi), it was seen that the assessee is not wholly or substantially financed by the Government hence, the Board does not appear to satisfy the conditions of Section 10(23C)(iiiab) of the Income Tax Act. It is not clarified by the ld. counsel for the assessee whether assessee challenged the aforesaid order of the CCIT, Shimla intimated through letter dated 11.03.2010 before any appropriate forum. This is also incriminating finding against the assessee.*

18(i). *The ld. counsel for the assessee contended that since assessee received Rs. 24.66 Cr from the State Government, therefore, conditions of Section 10(23C)(iiiab) have been satisfied. The contention of ld. counsel for the assessee is not tenable. The Secretary of the Board in her statement recorded under section 131 of the Income Tax Act in answer to question No. 1 has categorically admitted that Board has received Rs. 24.66 Cr for distribution of free textbooks to the students belonging to reserved categories. The total book income on this issue was of Rs. 34.19 Cr which would clearly prove that assessee Board exists for the purpose of profit. The ld. counsel for the assessee further contended that no fact is mentioned in the Notification dated 21.11.1996 that private sale cannot be done by the assessee which is the object of the assessee Board. The copy of the Himachal Pradesh Board of School Education Act, 1968 is placed on record in which in Section 10(12), it is specified that Board shall arrange for the preparation, writing, compilation, printing, publishing and sale of textbooks, other educational material and undertake the publication of any other educational work, books or periodicals, but this Section does not authorize the assessee Board to earn any profit in violation of the Notification of the Government issued for specific purpose to provide free textbooks to the reserved category students. The contention of ld. counsel for the assessee is also not tenable as per answer to question No. 1 above of the Secretary of the assessee Board that assessee Board received Rs.24.66 Cr for distribution of free textbooks to reserved category students is corroborated by the receipts issued by the assessee Board on receipt of the aforesaid amount in which it is specifically mentioned that amounts in question have been received for supply of free textbooks. Therefore, assessee cannot earn profit out of the same transaction which is specifically directed by the State Government. The contention of ld. counsel for the assessee is, therefore, rejected that assessee can print and publish the textbooks for other students out of the same amount which was received for a specific purpose.*

18(ii) *The ld. counsel for the assessee lastly contended that principle of res-judicata does not apply to the income tax proceedings, however, ld. DR submitted that rule of consistency does apply to the income tax proceedings and issue is covered in favour of the revenue by order of ITAT Chandigarh Bench in the case of same assessee for assessment year 2006-07 dated 13.09.2013 (supra).*

19. *In view of the above discussion and finding of fact recorded by the authorities below, it is clear that assessee has failed to rebut the finding of fact recorded by the authorities below in assessment year under appeal as well in preceding assessment year 2006-07 decided earlier. Though the principle of res-judicata does not apply to the income tax proceedings but the rule of consistence does apply to the income tax proceedings. Hon'ble Delhi High Court in the case of ARJ Securities Printer 264 ITR 276 held that "For the sake of consistency and finality of litigation, earlier decision on same question should not be reopened unless new facts came to the knowledge". Hon'ble Supreme Court in the case of Radhasoami Satsang Vs CIT 193 ITR 321 and Hon'ble Madhya Pradesh High Court in the case of Godavari Corporation Ltd. 156 ITR 835 held that, "Rule of consistency shall*

have to be maintained in income tax proceedings". In the present case, despite giving several opportunities to the ld. counsel for the assessee, no evidence or material is produced before us to distinguish the case of the assessee from that of assessment year 2006-07 in which the identical issues have been decided against the assessee Board. Therefore, ld. DR is justified in contending that the issue is covered against the assessee by earlier order of the Tribunal in the case of the same assessee dated 13.09.2013.

.....
21. Considering the above discussion, in the light of the finding of fact recorded by the authorities below and earlier decision in the case of the assessee, we are of the view assessee has failed to satisfy requirements of Section 10(23C)(iiiab) of the Income Tax Act, therefore, assessee would not be entitled for exemption under the above provisions. The appeal of the assessee, thus, has no merit and same is accordingly dismissed.

22. Since we have dismissed appeal of the assessee, therefore, no appeal is pending so as to consider the Stay Application. The same has thus, become infructuous and is accordingly dismissed.

23. In the result, the appeal of the assessee and Stay Application are dismissed.

In the present case, despite being given several opportunities of hearing, the appellant has not produced any evidence or brought any material on record nor filed any written submissions during appeal to distinguish the facts of the present case from the assessment years 2006-07 and 2011-12. The appellant has been granted approval under section 10(23C)(vi) by worthy CCIT, Shimla, on 30.06.2009 w.e.f. AY 2009-10 onwards . There is a clear finding of fact approved by the Hon'ble ITAT in appeal orders for A.Y. 2006-07 and A.Y. 2011-12 above that the appellant is neither wholly or substantially financed by the government nor existing solely for educational purposes and not for profit as required for claiming exemption u/s 10(23C)(iiiab) / 10(23C)(vi) . The appellant has not brought any material on record to rebut the above finding of fact in respect of the year under reference.

Keeping in view the totality of above facts and following the decisions of Hon'ble ITAT, Chandigarh, in assessee's own case for AYs 2006-07 and 2011-12, the denial of exemption under section 10(23C)(iiiab) and 10(23C)(vi) of the Act by Ld.AO is upheld. The appellant also does not have any registration under section 12AA of the Act.

In the absence of any books of accounts produced by the appellant, the disallowance of expenditure of Rs. 54,00,000/- under the head 'secrecy fund' is upheld. In the absence of any books of accounts or written submissions filed by the appellant during appeal, there is no reason before the undersigned to interfere with the disallowance of the claim of depreciation of Rs. 1,73,95,085/-as well.

In view of the above, the action of Ld. AO of treating the excess of income over expenditure of Rs. 47,39,788/- as taxable income is upheld.

Ground of appeal is dismissed.

In the result, the appeal is dismissed."

(emphasis supplied)

4. It is seen that in the subsequent assessment year also, the CIT(A) following the same reasoning as in the earlier year, concluded the issue at page 17 of the 18 paged order holding as under :

"Keeping in view the totality of above facts and following the decisions of Hon'ble IT AT, Chandigarh, in assessee's own case for AYs 2006-07 and 2011-12, the denial of exemption under section 10(23C)(iiiab) and 10(23C)(vi) of the Act by Ld.AO is upheld. The appellant also does not have any registration under section 12AA of the Act. In the absence of any books of accounts or written submissions filed by the appellant during appeal, there is no reason before the undersigned to interfere with the disallowance of the claims of depreciation, capital expenditure of Rs. 1,78,37,206/- and provision for interest on GPF of Rs. 1,65,07,790/-.

In view of the above, the action of Ld. AO of treating the excess of income over expenditure of Rs. 2,57,12,418/- as taxable income is upheld."

(emphasis supplied)

5. Accordingly, in the peculiar facts and circumstances as noted above, we are of the view that since the grievance of the assessee still remains wherein the assessee admittedly has not participated in the proceedings before the CIT(A) who specifically takes note of the fact that neither the books were made available nor the arguments or any written submissions on account of which constraints, he had no alternate but to pass the order. Accordingly, in the interests of substantial justice, the impugned orders are set aside back to the file of the CIT(A) for passing the orders in accordance with law after giving the assessee a reasonable opportunity of being heard. While so directing, it is made clear that the assessee in its own interest is directed to participate in the proceedings fully and fairly as failing which, the CIT(A) would be at liberty to pass the order in accordance with law. Said order was pronounced in the Open Court at the time of hearing itself.

6. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 15th June,2018.

Sd/-
(Dr.B.R.R.KUMAR)
ACCOUNTANT MEMBER

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

‘Poonam’

Copy to:

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

Asstt. Registrar
ITAT,Chandigarh.