

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'D', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6266/Del/2015

AY: 2014-15

Nav Sthali Education Society C/o Dr.Ravi Gpta E-6A, Kailash Colony New Delhi 110 048  PAN: AABTN8528K	vs.	CCIT, CGO Complex 1 Hapur Chungi Kamla Nehru Nagar Ghaziabad
--	-----	---

(Appellant)

(Respondent)

**Assessee by :** Sh. Ravi Gupta, Adv.  
**Department by :** Sh. JK Mishra, CIT, DR

**Date of Hearing :** 26/02/2019  
**Date of Pronouncement:** 27/02/2019

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 28/09/2015 passed by Ld.CCIT, Ghaziabad pertaining to A.Y. 2014-15 on following grounds of appeal:

*" 1. That on the facts and in the circumstances of the case and in law, the order passed u/s 10(23C) (vi) is bad in law.*

*2. That on the facts and in the circumstances of the case and in law, the CCIT erred in not appreciating that the society exists 'solely for the purpose of education' as contemplated u/s 10(23C)(vi) of the Income Tax Act.*

3. *That on the facts and in the circumstances of the case and in law, the CCIT has erred on facts that the society is a profit making entity.*
4. *That on the facts and in the circumstances of the case and in law, the CCIT has erred on facts that the society has diverted its surplus for the personal use of its members.*
5. *That the impugned order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.*
6. *That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal."*

At the outset assessee filed adjournment application stating that Ld.Counsel was out of town. But keeping in view the smallness of the matter, the same is rejected.

**2. Brief facts of case are as under:**

**2.1.** Assessee is a Society which is running a school by name N.S.Public School at Noida. It claimed that it is existing solely for educational purposes and not for profit. Assessee filed application on 22.09.2014 for obtaining exemption u/s 10(23c)(vi) of the Income Tax Act, 1961 (the Act). Ld.CIT rejected application vide order dated 28.09.2015.

**2.2.** Against the rejection order by Ld.CIT, assessee preferred appeal before this Tribunal.

**2.3.** At the outset, Ld.CIT,DR submitted that present appeal cannot be filed before this Tribunal as impugned order has been passed by Ld.CIT u/s 10(23c)(vi). Sec.253 does not include an order passed u/s 10(23c)(vi).

**3.** We have perused Sec.253 of the Act and are not in agreement with Ld.CIT, D.R. Sec.253(1)(f) has been amended vide Finance Act, 2015 w.e.f. 01/06/2015. It is observed that impugned order was dated 28/09/2015 and present appeal has been filed on 26/11/2015. We therefore reject this argument of Id.CIT,D.R.

**3.1.** However, it is observed that Ld.CIT(A) has not verified the objectives of assessee and no explanation has been called for in regard to excess surplus, and diversion of funds found in the accounts. We therefore remit this issue to Id.CIT and direct him to call for explanation/submissions/evidences by granting proper opportunity to assessee. Assessee shall establish its claim to the satisfaction of Ld.CIT within principles of law which would govern the issues observed by Hon'ble Supreme Court in case of Visveswaraiah Technological University vs. ACIT reported in(2016) 68 taxmann.com 287.

**4.** In the result appeal filed by Assessee stands allowed for statistical purposes.

Order pronounced in open court on 27<sup>th</sup> February, 2019.

*Sd/-*

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

*Sd/-*

**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dt. 27<sup>th</sup> February, 2019

\*GMV

Copy forwarded to: -

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

	Date
Draft dictated on	18.02.19 27.02.19
Draft placed before author	19.02.19 27.02.19
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on & Order uploaded on :	27.02.19
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	