आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1012/JP/2016

M/s Singhania University Pacheri Bari, Jhunjhunu.	बनाम Vs.	The CIT (Exemptions), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAJS 3900 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri S. R. Sharma (C.A.) &
राजस्व की ओर से/ Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख/ Date of Hearing : 25/11/2019
उदघोषणा की तारीख/Date of Pronouncement : 03/01/2020

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. CIT(E), Jaipur dated 14.09.2016 withdrawing the approval granted to the assessee u/s 10(23C)(vi) of the Income Tax Act.

2. The assessee is a University established under a statute by the State of Rajasthan vide Act No. 6 of 2008 namely, Singhania University Pacheri Bari (Jhunjhunu) Act, 2008. The assessee University was granted exemption under Section 10(23C)(vi) of the Income Tax Act vide Notification No.06/2009 dated 29.07.2009 for the Assessment Year

2009-10 onwards. During the assessment proceedings for the A.Y. 2013-14, the Assessing officer made a reference to the Ld. CIT(E) for withdrawal of exemption under Section 10(23C)(vi) of the Income Tax Act. Thereafter, a show cause notice no. F.No./10/CIT(E)/JPR/Withdwl-10(23C)(vi)/2015-16/648 dated 3.05.2016 was issued asking the assessee University to show cause as to why the exemption granted under Section 10(23C)(vi) of the Income Tax Act should not be withdrawn. The assessee University submitted its reply dated 06.06.2016 to the aforesaid show cause notice. However, the Ld. CIT(E) vide impugned order dated 14.09.2016 withdrawan the exemption given to the assessee University under Section 10(23C)(vi) of the Income Tax Act from the A.Y 2013-14 and onwards which is under challenge before us.

3. In its appeal, the assessee University has raised the following grounds of appeal:

> *"1 That on the facts and circumstances of the case and in law, the CIT (Exemptions) erred in withdrawing, from assessment year 2013-14 onwards, exemption granted to the appellant under section 10(23C)(vi) of the Income-tax Act, 1961 (`the Act').*
>
> *2. That the CIT (Exemptions) erred grossly on facts and in law in treating the Appellant, a self-regulated autonomous statutory body established by an Act of State Legislature, as a society and passing the impugned order based on that.*
>
> *3. That the CIT (Exemptions) erred on facts and in law in overlooking that the Appellant is a separate and distinct class from 'other educational institution existing solely for the educational purposes and not for purposes of profit'.*

4. That the CIT (Exemptions) erred on facts and in law in overlooking that being separate and distinct classes, 'other educational institutions' are established as Trust or Society and may have objectives other than education, however, Assessee like all other universities in the country is established by an Act of State Legislature and cannot carry out any activity other than education.

5. That the CIT (Exemptions) erred on facts and in law in withdrawing exemption alleging that activities of the appellant were not genuine:

5.1 That the CIT (Exemptions) erred on facts and in law in holding that the exemption u/s 10(23C) (vi) was proved to the Appellant for running only specific courses and that fresh approval was required to be sought on addition of every new course .

5.2 That the CIT (Exemptions) erred on facts and in law and acted without jurisdiction in overlooking that the Appellant is governed by the UGC Act, which has overriding effect over State Act, and as such entitles the Appellant to impart education in all courses as per Section 22 of the UGC Act as held by the Hon'ble Supreme Court of India in the case of Maharshi Mahesh Yogi Vedic Vishwidyalaya v. State of M.P. & Ors. reported in (2013) 15 SCC 677.

5.3 That the CIT (Exemptions) erred on facts and in law and acted without jurisdiction in overlooking that the Appellant is empowered to award degrees in all courses of education which are sui-generis valid and is not required to obtain prior approval of other authorities as held by the Hon'ble Apex Court and various High Courts.

6. That the CIT (Exemptions) erred on facts and in law alleging that the appellant was not existing solely for educational

purposes on the ground that the appellant was running a hospital:

6.1 That the CIT (Exemptions) erred on facts and in law in holding that the expense debited in the relevant assessment year was towards construction of a hospital whereas the expense was debited towards construction of a building comprising of classrooms, labs and library which is evident from the Tehsildar report, relied upon by the CIT (Exemptions), itself.

6.2 That the CIT (Exemptions) erred on facts and in law in not appreciating that practical training and hospital teaching amounts to imparting education.

6.3 That the CIT (Exemptions) erred on facts and in law in overlooking that it is the function of the Appellant to provide for health care facilities to its staff and students."

4. At the outset, the ld. AR sought permission to raise the following additional ground of appeal:-

"That the impugned order passed by CIT(E), Jaipur is bad in law as show cause notice dated 03/11-05-2016, U/s 10(23C)(vi) is issued and signed by the Income Tax Officer (Hqrs.) as it should have been issued and signed by CIT(E)."

5. The ld. AR of the assessee has submitted that the additional ground is legal in nature and all relevant facts are available on record as emerging out of the notice issued by the ITO (Hqr.) u/s 10(23C)(vi) of the Act. Since, no new facts are required to be evaluated nor any further enquiry is needed and the issue raised in the additional ground can be adjudicated on the basis of the facts and material available on record and by applying the provisions of law, therefore, the additional

ground raised by the assessee be admitted for adjudication. In support of his contention, he has relied upon the decision of the Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT 229 ITR 383. Thus, the ld. AR has contended that the Hon'ble Supreme Court has held that u/s 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeal is thus expressed in the widest possible terms. There is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. Both the assessee as well as Department has a right to file an appeal/cross objection before the Tribunal and therefore, there is no reason why the Tribunal should be prevented from considering the questions of law arising in assessment proceedings although not raised earlier. The ld. AR has thus pleaded that the additional ground may be admitted for adjudication.

6. On the other hand, ld. DR has objected to the admission of the additional ground and submitted that the assessee did not raise this ground before the ld. CIT(E) despite appropriate opportunity being given to the assessee.

7. We have considered the rival submissions as well as relevant material on record. There is no dispute that the additional ground raised by the assessee is purely legal in nature and goes to the root of the matter. It is also not disputed that no new facts are required to be examined nor any further enquiry is needed for adjudication of the

issue raised in the additional ground. Further, this is first appeal against the impugned order and not a case of raising a fresh plea for the first time before the Tribunal without raising the same before the first appellate authority. Accordingly, in the facts and circumstances of the case when the additional ground raised by the assessee is purely legal in nature and does not require any new facts to be examined or further enquiry to be conducted for adjudication of this issue, then in view of the decision of Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT(supra), we admit the additional ground raised by the assessee for adjudication.

8. Firstly, we shall take up the additional ground of appeal wherein the assessee University has challenged the validity of the show-cause notice. In this regard, the ld. AR has submitted that the show cause notice dated 03.05.2016 being signed and issued by the Income Tax Officer (Hqrs.) and not by the CIT(E), is not signed and issued by the prescribed authority and hence, the consequential impugned order dated 14.09.2016 passed by the CIT(E) is without jurisdiction, void *ab-initio* and the impugned order is liable to be quashed on this ground.

9. It was submitted by the ld AR that under law, the show cause notice dated 03.05.2016 being a statutory legal document is required to be issued and signed by the competent authority i.e. *persona designata* as laid down by this Tribunal in the case of Modern School Society v. CIT(E) *(ITA No.1118/JP/2016 dated 20.12.2017).* It was submitted that the case of the assessee University is squarely covered by the case of Modern School Society (supra) as paragraphs 2 and 6 of the impugned

show cause notice dated 03.05.2016 are identical to the paragraphs considered by the Tribunal in the Modern School Society case (supra). Our attention was drawn to paragraphs 2 and 6 of the impugned cause notice dated 03.05.2016 which is reproduced herein below:

> *"2. In this regard, I am directed to state that your institution/society has violated the provisions of Section 10(23C)(vi) of the Act in respect of following issues:-*
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> *6. Your case is fixed for hearing before the Commissioner of Income Tax (Exemptions), Jaipur on 25.07.2016 at 12.30 P.M. in the Income Tax office (Exemptions) room No. 303, 3rd floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur. You may attend either personally or through an authorized representative in this behalf (holding valid Power of Attorney). Any failure to comply may lead to the conclusion that the assessee has nothing further to say from his side in this regard, and the case may therefore, be accordingly decided."*

10. Our attention was drawn to the operative part of the Tribunal's decision which reads as under:

> *"6. ……. Thus, it is settled proposition of law that the notice issued by the authority other than the prescribed authority is not valid and consequential order passed by the ld. CIT(E) is without jurisdiction. The show cause notice confers the jurisdiction to proceed and to pass the order. In case the notice itself is not valid then the jurisdiction assumed by the prescribed authority based on the invalid notice become invalid and consequential order passed by the authority is invalid and void an initio for want*

of jurisdiction. Further, invalid show cause notice vitiates the proceedings and consequential order. Hence, we are of the considered opinion that the impugned order passed by the ld. CIT(E) is invalid and liable to quash on this ground."

11. It was submitted that the aforesaid decision of the Tribunal has since been upheld by the Hon'ble Rajasthan High Court in D.B.I.T.A. No. 172/2018 and which has been affirmed by the Hon'ble Supreme Court of India in SLP© No. 4190/2019. It was submitted that the present case is squarely covered by the aforesaid Modern Education School Society case in which in an identical manner show cause notice Under 13th proviso of Section 10(23C)(vi) was issued by Income Tax Officer (Hqrs.) instead of the prescribed authority and the consequential order was held to be void *ab initio* for want of jurisdiction. Thus, as per the finding of this Tribunal in the Modern School Society case, the show cause notice dated 03.05.2016 is invalid for want of jurisdiction and consequent jurisdiction obtained by the CIT(E) is invalid and therefore, the impugned order dated 14.09.2016 is liable to be quashed on this ground.

12. It was further submitted that reference to extraneous material such as internal noting etc. by the ld. CIT/DR is irrelevant as according to this Tribunal in the Modern School Society judgment (supra), what is relevant is the language and tenor of the show cause notice and it is the show cause notice itself that should bring out the thought process and application of mind of the CIT(E). Thus, reference to extraneous material is not relevant. Further, in cases where any matter is reduced

in writing, then as per the Evidence Act, 1872 any extraneous matter such as internal noting etc. referred by the DR is neither relevant nor admissible.

13. It was accordingly submitted that the impugned show cause notice dated 03.05.2016 is not valid, the jurisdiction assumed by the prescribed authority is invalid and therefore, the consequential order passed by the authority is invalid and void abinitio for want of jurisdiction. It has been held by the Hon'ble Supreme Court in a catena of judgments that want of jurisdiction goes to the root of the matter and can be brought out at any stage of the proceeding, even at the stage of execution and any order passed without proper jurisdiction is nullity, *non-est* and dead born i.e. as if it never came into existence. Reference in this regard may be made to the case of Dr. Jagmittar Sain Bhagat v. Dir. Health Services, Haryana & Ors. reported in (2013) 10 SCC 136 wherein the Hon'ble Supreme Court held as under:

> *"7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/in executable once the forum is found to have no jurisdiction."*

14. In his submissions, the ld. CIT/DR has submitted that in the present case, the show cause notice issued u/s 10(23C)(vi) dated 03.05.2016 was signed by the ITO(Hqrs.) for and on behalf of the ld. CIT(E) by taking prior approval from the ld. CIT(E) vide order sheet entry dated 03.05.2016. It was submitted that the ITO(Hq.)/AC/DC(Hq.) does not have any independent power to issue such notices. They act on behalf of ld. CIT(E) while issuing these notices and prior to issuance of notices approval/permission was taken on order sheet/note sheet from the ld. CIT(E), Jaipur.

15. It was further submitted by the ld CIT/DR that on perusal of records, it is noticed that the draft of show cause notice was not only perused by the ld. CIT(E), but corrections were also made by him and after making corrections/modifications, the same was approved by the ld CIT(E) which brings out the thought process and application of mind by the ld CIT(E) in issuance of the show cause notice. The language of the show cause notice also strengthens the fact that the notice was issued as per direction and the satisfaction of the ld. CIT(E). Therefore, the notice issued and consequential order passed by the ld. CIT(E) were valid and within jurisdiction. It was further submitted that ld. CIT(E), Jaipur personally conducted the hearing as visible from notings on order sheet on 14.06.2016 in his hand writing.

16. It was submitted by the ld CIT/DR that the notification U/s 10(23C)(vi) was withdrawn as per the 13th proviso to the said section. The said proviso reads as under:-

*"**Provided also** that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or is approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—*

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer."

Thus it can be seen that there is no requirement of issuing notice under the clause. It is only the reasonable opportunity to be provided to the assessee of being heard and which has been provided in the instant case.

17. Regarding the case law relied upon by the assessee in the case of Modern School Society Vs CIT(E), Jaipur in ITA No. 1118/JP/2016, the ld. CIT/DR further submitted that in that case, it has *inter-alia* been observed by the Tribunal as follows:

> *"The language and tenor of the show cause notice do not exhibit any thought process of ld. CIT(E). The matter would have been different if the show cause notice brings out the thought process and application of mind by the ld.CIT(E)but was only signed by the DCIT (Hqr.)".*

Therefore, in order to demonstrate due application of mind on the part of the CIT(E), Jaipur, the original folder relating to assessee was produced before the Bench during the course of hearing with specific mention of the draft of show-cause notice put up for approval of CIT (E) vide order sheet dated 03.05.2016 (mentioned as DFA- Draft For Approval) and copy of said order-sheet has already been submitted as part of paper book on 05.03.2018. It was submitted that the corrections were made to each page of the said notice by CIT(E) himself as evidence from the changes/additions to text made in his own handwriting. Particularly para-5 has been totally hand written and added. Kindly see backside of page-4 of notice. All these changes are reflected in the final show-cause issued. These show due application of mind on the part of CIT(E). Further, the CIT(E) has himself conducted the hearing on 14.06.2016 as evident from the order-

sheet noting of even date in his handwriting, which also shows due application of mind. It may also be noted that only uncorrected draft was put up before CIT(E) vide order sheet noting dated 03.05.2016 as evident from the noting "DFA (Draft For Approval) of show cause letter issued to the assessee is put up for kind perusal, approval and signature please." Thus, there is complete application of mind on the part of CIT(E).

18. It was further submitted that the provisions for issue of show cause notice u/s 263 and under thirteenth provision to section 10(23C) are *pari materia* vide a later judgement of this Tribunal in the case of Shri Hari Ram Yadav Vs PCIT *(ITA No. 215/JP/2018 dated 31.12.2018)* wherein the issue has been decided in favour of the Department and therefore, the decision in case of Modern School Society stand distinguishable.

19. The ld CIT/DR further drawn our attention to the Sec. 292BB of the IT Act, 1961, which read as under:-

> *"292BB. Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—*

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner:

***Provided** that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."*

It was submitted by the ld CIT/DR that any defect in the notice can be raised before the completion of the proceedings. In the present case assessee appeared in the proceedings, submitted its replies, which leads to believe that notice under the provision of law has been correctly issued. No defect was mentioned by the assessee till the completion of the proceedings. Once assessee has participated actively in the proceedings and principal of natural justice regarding opportunity of being heard has been observed, it precludes himself from raising procedural defects in notice. The irregularities, if any got cured by subsequent conduct of the assessee. Section 292BB is curative in nature which cures all infirmities in notice, if responded. In support, reliance was placed on the decision of Coordinate Bench in case of Chandra Bhan vs. Assistant Commissioner of Income Tax *(in ITA No. 4/Agra/2002 dated 13.10.2005)* wherein it was held that:

"It is seen that the assessee appeared before the ld. AO through his Authorized Representative from time to time and various aspects of the case were discussed the assessee was accorded full opportunity to produce or cause to be produced any evidence

on which the assessee would rely in support of the return u/s 158BC. The assessee was given full opportunity to substantiate all his claims. Thus, the want of issue of notice u/s 143(2) on the part of the AO, if there is indeed any such lapse, is only a procedural error to be cured by suitable directions to the ld. AO. In the Instant case, there is no prejudice to the assessee and the assessee has himself requested that no curative steps be taken. Hence, no further action appears to be necessary."

20. It was accordingly submitted by the ld CIT/DR that all the objections/claims should have been raised by the assessee before the ld. CIT(E) during rescinding/withdrawals proceedings, which was never done by the assessee. Instead of raising the objection before ld. CIT(E) the assessee raised this ground as additional ground in the appellate proceedings after lapse of so much time, which very well establishes the fact that it is an afterthought, and assessee fears to lose the ground on merit. It was accordingly submitted that the additional ground of appeal so taken by the assessee should be dismissed.

21. We have heard the rival contentions and pursued the material available on record. The ld AR has placed heavy reliance on the decision of the Coordinate Bench in case of Modern School Society Vs CIT(E), Jaipur (supra) and we therefore deem it appropriate to refer to its relevant findings which are reproduced *in verbatim* as under:

"10. We have considered the rival submissions as well relevant material on record. The first objection of the assessee is

regarding the validity of show cause notice that it was not signed by the competent authority and therefore, it is invalid. The power and jurisdiction to withdraw the approval granted u/s 10(23C)(vi) of the Act is provided under 13th proviso to the said section which reads as under:-

*"**Provided also** that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government [7][or is approved by the prescribed authority, as the case may be,] or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—*

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or

any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer"

The 13th proviso to section 10(23C)(vi) confers the power/ jurisdiction to withdraw the approval to the Government or the prescribed authority. It further postulates that the prescribed authority, if satisfied that such fund or institution has not complied with the conditions as provided thereunder, can withdraw the approval. For Initiation of proceedings to withdraw the approval the mandatory pre-condition is the satisfaction of the prescribed authority. Undisputedly the prescribed authority is the ld. CIT(E) and the satisfaction of the prescribed authority is a must before issuing the show cause notice for withdrawal of the approval granted u/s 10(23C)(vi) of the Act. Therefore, what is material and mandatory condition is the satisfaction of the prescribed authority and non else. In case in hand the impugned show cause notice dated 08.07.2016 was signed by the DCIT (Hqr.) and issued as per directions of the ld. CIT(E). In paras 2 and 6 Of the show cause notice in our opinion are relevant to the issue and the same are reproduced as under:-

"2. In this regard, I am directed to state that your institution/society has violated the provisions of Section 10(23C)(vi) of the Act in respect of following issues:-

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6. Your case is fixed for hearing before the Commissioner of Income Tax (Exemptions), Jaipur on 25.07.2016 at 12.30 P.M. in the Income Tax office (Exemptions) room No. 303, 3rd floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur. You may attend either personally or through an authorized representative in this behalf (holding valid Power of Attorney). Any failure to comply may lead to the conclusion that the assessee has nothing further to say from his side in this regard, and the case may therefore, be accordingly decided."

The language and tenor of the show cause notice do not exhibit any thought process of ld. CIT(E) but it reveals it was issued and signed by DCIT(Hqr.) as per instructions and directions of ld. CIT(E). The matter would have been different if the show cause notice brings out the thought process and application of mind by the ld. CIT(E) but was only signed by the DCIT (Hqr.). In case in hand it is apparent that the ld. CIT(E) delegated its powers to DCIT (Hqr.) to issue show cause notice and therefore, it is based on the satisfaction of the DCIT (Hqr.) and not of ld. CIT(E). para 2 and 6 of the impugned show cause notice clearly manifest that it was issued by the DCIT (Hqr.) and not by the CIT(E). The language of the show cause notice does not give any impression or inference that it is an expression of the satisfaction of ld. CIT(E). The Kolkata Bench of this Tribunal in case of Arun Kanti vs. CIT (supra) while considering the issue of validity of show cause notice issued u/s 263 of the Act not signed by the ld. CIT has observed in para 5 and 5.1 as under:-"

"A similar view was taken by the Kolkata Bench of this Tribunal in case of M/s Assam Bangal Carriers vs. CIT (supra) in paras 7 and 8 as under:-

"7. We have considered the rival submissions. A perusal of the records shows that the show cause notice u/s 263 of the Act dated 26.02.2013 was signed by A.C.I.T.(HQ)-XXI, Kolkata and not by C.I.T. The question regarding validity of the order passed u/s 263 of the Act when the show cause notice u/s 263 of the Act is not signed and issued by C.I.T. and had come for consideration before this Tribunal in the case of Bardhman Co-op Milk Producers' Union Ltd. Vs CIT, Burdwan (supra). This Tribunal on identical facts as in the present case has held as follows :- "4. We have carefully considered the submissions and perused the record and we find that delay of 290 days in filing in these cases has been attributed to mistake on the part of assessee's counsel. The counsel has clearly admitted the mistake on his part. When the delay in filing of these appeals is attributed to the mistake of the consultant, in our considered opinion, assessee should not be penalized on this count. The case law referred by the Ld. counsel for the assessee also supports this proposition. Accordingly, we condone the delay. 5. As regards the matter in appeal, we note that the same is against order passed by the Ld. CIT u/s. 263 of the Act. At the outset, in this case, Ld. counsel for the assessee pointed out that the notice to the assessee u/s. 263 of the Act in these case, was issued by letter dated 06-03-2007. The said notice was signed by ACIT, Hqrs., Burdwan for Commissioner. Referring to this aspect, the Ld. counsel for the assessee pleaded that Section 263 of the Act provides for notice and adjudication by the Ld. CIT. Ld. counsel for the assessee claimed that since notice u/s. 263 of the Act has not been signed by the Ld. Commissioner. The jurisdiction assumed is defective and the order u/s 263 of the Act, is liable to be quashed on this ground itself. In this regard, Ld. counsel for the assessee referred to the

decision of Hon'ble Allahabad High Court in the course of cit v. Rajesh Kumar Pandey (2012) 25 taxmann.com 242 (All.). The Ld. counsel for the assessee further referred to the decision of the Tribunal in the case of Satish Kumar Kashri v. ITO 104 ITD 382 (Pat). ITA No.706/Kol/2013 M/s. Assam Bengal Carriers. A.Yr.2008-09 4 6. Ld. DR on the other hand submitted that above is not the material defect and he submitted that there is no reason to set aside the order u/s. 263 of the Act, on this account. 7. We have carefully considered the submissions and perused the record. We find that Section 263(1) of the Act provides as under:- "The CIT may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the AO is erroneous insofar as it is prejudicial to the interest of Revenue he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing fresh assessment." Now we can also refer to the notice u/s. 263 of the Act issued to the assessee. This notice was signed as under:- " Yours faithfully Sd/- Vikramaditya (Vikramaditdya) ACIT, Hqrs., Burdwan, For Commissioner." From the above, it is clear that the said notice u/s. 263 of the Act ha s not been signed by the "Commissioner of Income Tax" rather it has been signed by ACIT, Hqrs., Burdwan. The Hon'ble Allahabad High Court in the case of Rajesh Kumar Pandey (supra) has expounded that when the Ld. CIT has not recorded his satisfaction, but it was the satisfaction of the Income Tax Officer (Technical) who is not competent to revise his order u/s. 263 of the Act, the order passed was liable to be set aside. The relevant portion of the order of Hon'ble Allahabad High Court reads as under:- "6. On perusal of the aforesaid provisions, it will be abundantly clear that the provisions of Section 299-BB deals with the procedure for service of notice and in case, there is a defective service of notice, it provides that if the assessee has cooperated, it will not

be open for him to raise the plea, whereas in the instant case, it is not the case of the service of notice, but the initial issuance of notice, which has not been signed by the competent authority as a finding has been recorded by the Tribunal that the notice has been issued under the signature of Income-tax (technical), whereas in view of the provisions of powers under Section 263(1), it is only the Commissioner of Income-tax to issue notice. It is also relevant to add that pleas can be raised only out of the judgment passed by the Tribunal or other authorities, but the plea, which was not raised at any stage, cannot be raised for the first time before this Court. No other arguments have been advanced in respect of other questions framed in the memo of appeal." 8. Similarly, we note that in the case of Satish Kr. Keshari (supra), the Tribunal had held that when the notice u/s. 263 of the Act was not under the seal and signature of Ld. CIT and suffered for want of details on the basis of which Ld. CIT came into conclusion that the order of Assessing Officer is erroneous and prejudicial to the interest of Revenue, assumption of jurisdiction u/s. 263 of the Act by the Ld. CIT was invalid. ITA No.706/Kol/2013 M/s. Assam Bengal Carriers. A.Yr.2008-09 5 9. From the above discussion regarding the provision of law and the case law in this regard, it is clear that for a valid assumption of the jurisdiction u/s. 263 of the Act, the notice issued u/s. 263 of the Act should be issued by the Ld. CIT. In this case, it is undisputed that notice was issued by ACIT, Hqrs, Burdwan who is not competent to assume jurisdiction u/s. 263 of the Act. Hence, the notice was not under the seal and signature of Ld. CIT. Hence, as per the precedents referred to above, the assumption of jurisdiction u/s. 263 of the Act in this case is not valid. Accordingly, the order u/s. 263 of the Act passed in these cases are quashed." 8. Facts of the present case being identical to the case referred to above, respectfully following the aforesaid decision we hold that the assumption of jurisdiction u/s 263 of the Act in the present case is not valid. Order u/s 263 of the Act is accordingly quashed and the appeal of the assessee is allowed.

In view of the above conclusion, the other grounds of appeal are not taken into consideration."

The Hon'ble Allahabad High Court in case of CIT vs. Rajesh Kumar Pandey (supra) while dealing with the validity of notice and applicable of the provisions of section 299BB has observed as under:-

"299BB Notice deemed to be valid in certain circumstances—
Where as assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was--
(a) not served upon him; or
(b) not served upon time in time; or
(c) served upon him in an improper manner;
Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

Thus, it is settled proposition of law that the notice issued by the authority other than the prescribed authority is not valid and consequential order passed by the ld. CIT(E) is without jurisdiction. The show cause notice confers the jurisdiction to proceed and to pass the order. In case the notice itself is not valid then the jurisdiction assumed by the prescribed authority based on the invalid notice become invalid and consequential order passed by the authority is invalid and void abinitio for want of jurisdiction. Further, invalid show cause notice vitiates the proceeding and consequential order. Hence, we are of the

considered opinion that the impugned order passed by the ld. CIT(E) is invalid and liable to quash on this ground."

22. The *ratio decidendi* of the above decision rendered by the Coordinate Bench is that the 13th proviso to section 10(23C)(vi) confers the power/ jurisdiction to withdraw the approval to the prescribed authority i.e, ld. CIT(E) and therefore, the satisfaction of the ld CIT(E) is a must before issuing the show cause notice for the proposed action of the withdrawal of the approval granted u/s 10(23C)(vi) of the Act. Therefore, what is material and mandatory condition is the satisfaction of the ld CIT(E) and no one else. Further, the language and tenor of the show cause notice must exhibit the thought process and application of mind by the ld. CIT(E) and thus an expression of the satisfaction of ld. CIT(E) even though the same may be signed by the DCIT (Hqr.) or any other subordinate authority. However, where the ld. CIT(E) has delegated his powers to any other authority to issue show cause notice and it is based on the satisfaction of that other authority and not of ld. CIT(E), it won't satisfy the mandatory condition.

23. In the instant case, we find that the draft of the show-cause notice was prepared by ITO (Hqrs) and put up for perusal, approval and signature of the ld CIT(E) on 3.5.2016. Thereafter, the ld CIT(E) has carried out certain corrections/modifications in the language, as evident from the draft of the show-cause and the corrections/modification so made by the ld CIT(E) in his own hand writing, and thereafter, after seeking the approval of the ld CIT(E) as evident from the order sheet, the show-cause notice was finally issued to the assessee which was signed by the ITO(Hqs) on behalf of ld CIT(E), Jaipur. The draft of the

show-cause notice and the corrections/modification so made by the ld CIT(E) are part of the records and are not extraneous material as so contended by the ld AR. The only rational basis to discern the language and thought process of the ld CIT(E) is either to watch him dictating the language of the show-cause to his juniors or to see his personal notings/corrections on the draft so prepared and put up for his review and approval. In the instant case, his notings/corrections are clearly apparent from the records so produced before us by the ld CIT/DR which reflects his mind and satisfaction to the proposed action. In light of these undisputed facts which are clearly emerging from the records, we are of the considered view that the language and tenor of the show cause notice do clearly exhibit the thought process and application of mind by the ld. CIT(E) with inputs from the ITO (Hqr.) and the Assessing officer, and thus an expression of his satisfaction of the proposed action to withdraw the exemption so granted to the assessee university. Therefore, Para 2 of the show-cause notice where the ITO (Hqr.) states that "he has been directed to state that your institution has violated the provisions of section 10(23C)(vi) of the Act" and thereafter, in Para 6, where he states that "your case is fixed for hearing before the CIT(E), Jaipur" and finally, his signature on behalf of the ld CIT(E) have to be seen and read in context of satisfaction recorded by the ld CIT(E) and not that of ITO(Hqs) of the proposed action of withdrawal of exemption. The legal proposition so emerging from the said decision in fact supports the case of the Revenue. In light of the same, we are unable to accede to the contention of the ld AR that the present proceedings are vitiated for want of signature of ld CIT(E) on the show-cause notice when the entirety of facts clearly

demonstrate that the show-cause notice reflects the thought process and application of mind and the satisfaction so recorded of the ld. CIT(E). In the result, the additional ground so raised by the assessee is hereby dismissed.

24. Now, we refer to other grounds of appeal on merits of the case and the contentions advanced by both the parties.

25. The ld AR has submitted that the assessee University is established under a statute by the State of Rajasthan vide Act No. 6 of 2008 namely, Singhania University Pacheri Bari (Jhunjhunu) Act, 2008. It is submitted that a University is a different and distinct class from societies, trusts and other educational institutions. Unlike trusts, societies and other educational institutions that can have different objects and may undertake activities other than education, a University is established with the sole object of education. Similarly, the Appellant University is an autonomous, statutory, existing solely for the purpose of education and not-for-profit body and all the powers and functions of the Appellant University are related to its sole object of education. Furthermore, the Appellant University being a statutory body belongs to the public and is not a private property of any person and its objects cannot be changed and continue to be only education till its legal status as a University is intact.

26. It was submitted that being a university established under a State Act i.e. the Singhania University Act, the Appellant University is recognised under Section 2(f) of the University Grants Commission Act,

1956 which empowers the Appellant University under Section 22 of the UGC Act to grant degrees in all courses of education and impart education in all courses of education. It is respectfully submitted that the UGC Act, being a specific statute governing the universities in the country and being a Central Act, overrides and prevails over inconsistent provisions of any State Act.

27. It was submitted that the Appellant University received exemption under Section 10(23C)(vi) of the Income Tax Act vide Notification No.06/2009 dated 29.07.2009 for the Assessment Year 2009-10 onwards. It was submitted that the Appellant University's entitlement for exemption under Section 10(23C)(vi) is as a University and not as other educational institution. It was further submitted that the said exemption was granted to the Appellant University without any condition i.e. for imparting education and not for only some limited courses. It is reiterated that all the universities are established with the sole object of education. The universities being established by a statute are State/Public Authority within the meaning of Article 12 of the Constitution of India and have got the power to make rules and regulations for its autonomous functioning which have got force of law and overriding effect over inconsistent provisions of the State Act.

28. It was submitted that assessments for the AY 2009-10, AY 2010-11, AY 2011-12 and AY 2012-13 have been completed on returned NIL income under Section 143(3) of the Income Tax Act and exemption has been allowed under Section 10(23C)(vi) of the Income Tax Act. It is pertinent to state that in the Assessment Order for AY 2012-13, the

Assessing Officer has categorically noted that the Appellant University is purely educational institution.

29. It was further submitted by the ld AR that during the assessment proceedings for the A.Y. 2013-14, the AO also did not find that the Appellant University was pursing any activity other than education nor was the Appellant University found carrying any activity for profit only. Rather, all the receipts for the said assessment year were from education and all the application was towards education. However, the AO instead of finalising the assessment, and without any show-cause notice and without affording any opportunity of being heard in gross violation of principles of natural justice, made a reference to the Ld. CIT(E) for withdrawal of exemption under Section 10(23C)(vi) of the Income Tax Act. Thereafter, a show cause notice no. F.No./10/CIT(E)/JPR/Withdwl-10(23C)(vi)/2015-16/648 dated 03.05.2016 was issued by the Income Tax Officer (Hqrs.) asking the Appellant University to show cause as to why the exemption granted under Section 10(23C)(vi) of the Income Tax Act should not be withdrawn. The Appellant University submitted its reply dated 06.06.2016 to the aforesaid show cause notice. However, the Ld. CIT (E) vide impugned order dated 14.09.2016 passed order of withdrawal of the exemption given to the Appellant University under Section 10(23C)(vi) of the Income Tax Act from the AY 2013-14 and onwards which is the subject matter of present appeal.

30. It was submitted that the case of the ld CIT(E) for withdrawing the exemption of the Appellant University under Section 10(23C)(vi) is

summed up in paragraph 9 of the impugned order dated 14.09.2016 as under:

> *"9. In the case of Applicant the condition mentioned in the clause (vi) of Sec. 10(23C) that the society must exists solely for education is violated and also university has not carried out the activities as per the objects by running courses beyond its objects and approved by State Legislature as well as prescribed authority under Section 10(23C)(vi). Therefore, its activities cannot be held as genuine charitable activities. Therefore, the Proviso 13th of Sec. 10(23C) is attracted. In the light of the discussion made above, exercising the power given under the above said Proviso, it is held that the activities of the Appellant are not genuine as being carried out beyond the approved objects and it is not an educational institution which is existing solely for educational purposes, therefore, exemption under Section 10(23C)(vi) granted earlier vide Notification No.01/2008-09 dated 04.04.2008 is hereby withdrawn."*

31. The CIT(E) has further explained his reasoning in Paragraphs 6.2 and 6.3 of the impugned Order that how the society has ceased to exist solely for education and the activities of the Appellant University are beyond its objects as under:

> *"6.2 From the reply of the assessee, it can be seen that the assessee is trying to draw benefit from clause 14(s) which talks about arrangements for promoting the health and general welfare of the employees of the university. The assessee is submitting that the function of the assessee university is to provide for health care of its staff and carry out all incidental and ancillary act in this regard and hence, maintaining a teaching hospital is part of the object and also incidental to education. The contention of the assessee that the hospital has been there to take care of the health of the staff of the university, does not hold good as in its submission, the assessee has himself stated that the hospital run by university is a part of prerequisite educational facility for clinical training and medical courses. Thus, assessee is itself*

claiming that the hospital is being run by the university for the medical courses, the courses which are not permitted to be run by the university and are not part of the objects approved under Section 10(23C)(vi).

6.3 As the medical courses are being run by the university without any legal authority, it cannot be held as genuine courses and once the courses itself are held not as genuine, the hospital cannot be held part of the educational courses. As the university is running a hospital, it cannot be held to be existing solely for education."

From the above, it may be seen that the withdrawal of exemption by the CIT(E) is on the primary ground that the Appellant University is running some courses like A.N.M., G.N.M. and B.Ed. without legal authority and hence, these courses cannot be held to be genuine courses. It is not the case of the CIT(E) that the Appellant University is doing any activity other than education or that the hospital is being run for commercial purpose or any purpose other than teaching as a lab for medical courses and taking care of the health and welfare of the students and staff of the Appellant University.

32. It was submitted that the finding of the CIT(E) is grossly erroneous, presumptive, without any basis, in ignorance of the relevant law governing universities and suffers from non-application of mind by treating the Appellant University as a society and not as a university being a statutory body established under a State Act and governed by the provisions of the UGC Act. It is submitted that even factually, there is nothing on record to show that the courses run by the Appellant University are invalid rather as a matter of fact, the pass-out students

of the Appellant University are well placed and employed in various State/ Central Government and Private jobs and the pass-out students going abroad for higher studies and jobs get their degrees verified and certified by the State Government itself as valid degrees for visa and scholarship purposes. Thus, the whole case of the CIT(E) is based on his own assumptions and surmises and contrary to the correct factual and legal position.

33. It was submitted that question of law that whether the degrees awarded by the Appellant University in courses of A.N.M., G.N.M. and B.Ed. are valid is well settled and fully covered by the judgments of the Hon'ble Rajasthan High Court at Jodhpur in cases titled Rajasthan Nursing Counil vs Singhania University & Others (D.B.S.A.W No. 671/2018), Sunil Bishnoi & Ors. v. State of Rajasthan & Ors., *S.B. Civil Writ Petition No.8149/2015* (decision on A.N.M. and G.N.M. courses) and Shanti Lal v. State of Rajasthan, *S.B. Civil Writ Petition No.9198/2017* (decision on B.Ed. course). The Hon'ble High Court relying on the judgments of the Hon'ble Supreme Court held that the degrees of A.N.M., G.N.M. and B.Ed. are awarded by the Appellant University under authority of law which are completely valid, the Appellant University being a statutory body needs no recognition from any other authority and the pass out students are automatically entitled for jobs and recognition by various councils. The relevant extract of the judgments is reproduced hereinbelow for convenience of ready reference:

> "*As stated earlier, it is not in dispute that the Respondent No.3-University is a University established under the statute and, therefore, in view of the law laid down in the above referred*

cases that a degree, diploma or any qualification awarded by any University, established under the statute, is automatically recognized and needs no recognition by any other authority (Sunil Bishnoi (supra) Page 792 Paper Book 5)."

"7. After hearing the counsel for the parties and after perusing the record, this Court finds that the precedent law cited by the learned counsel for the petitioner is absolutely covering the present dispute as this Court has held in the aforementioned precedent law that the respondent Singhania University is a University established under the Statute and, therefore, in view of the precedent law, it is automatically recognised and needs no recognition by any other authority… (Shanti Lal (supra) Page 800 Paper Book 5)."

It was submitted that when it is settled proposition of law that degree/diplomas or any other qualification awarded by the Appellant University are sui-generis and self-validating and need recognition of no other authority, it naturally follows that the Appellant University can run and impart education in those courses. It cannot be said that running of courses is not valid but resulting degrees are valid. Thus, it is settled position of law that the Appellant University can run all courses of education.

34. It was submitted that reference to Section 4 of the Singhania University Act is not relevant and the position in law that whether a university requires approval from State Government for running any course is well settled and squarely covered by the judgment of the Hon'ble Supreme Court in the case of *Maharshi Mahesh Yogi Vedic Vishwavidyalaya v. Sate of M.P. & Ors.* reported in (2013) 15 SCC 677 in which it has been held that neither the State Government nor the State Legislature is empowered to regulate running of courses by a

university or to require the university to take State Legislature's or State Government's approval for running any courses.

35. In Maharshi Mahesh Yogi case (supra), Section 4 of the Maharshi Mahesh Yogi Act was similar to Section 4 of the Singhania University Act to the effect that it required the Maharshi Mahesh Yogi University to take prior approval of the State Government before starting courses not mentioned in the Maharshi Mahesh Yogi University Act. Section 4 of the Maharshi Mahesh Yogi Act is reproduced hereinbelow for convenience of ready reference:

> *"4. The University shall have the following powers, namely:-*
> *(i) to provide for instruction only in all branches of Vedic Learning and Practices including Darshan, Agam Tantra, Itihas, Puranas, Upvedas and Gyan-Vigyan and the promotion and development of the study of sanskrit as the University may from time to time determine and to make provision for research and for the advancement in the above fields and in these fields…*
>
> *…. Provided that no course shall be conducted and no centres shall be established or run without prior approval of the State Government."*

36. From the above, it may be seen that Section 4 of the Maharshi Mahesh Yogi Act, being similar to Section 4 of the Singhania University Act, stipulated that the Maharshi Mahesh Yogi University will run only Vedic courses and will require prior approval of the State Government before running courses. Maharshi Mahesh Yogi University started running courses like B.Tech., MBA etc. without any approval of the State Government and this issue was brought up before the Hon'ble

Supreme Court. The Hon'ble Apex Court while upholding the judgment of the Division Bench of the Madhya Pradesh High Court held that such a provision is not valid being overridden by the relevant provisions of the UGC Act, 1956 i.e. Section 12 and 22 of the UGC Act, 1956 which empowers a university to grant degrees in all courses of education and therefore, the said clause is ultra vires and beyond the competence of the State Government. The Hon'ble Apex Court further held that it is the fundamental right of a university to impart education in all courses of education and it is the fundamental right of the students to receive education in any course of education of their choice guaranteed under Article 14, 19 and 21 of the Constitution and any such provision which requires a university to take prior approval of the State Government before starting any course is ultra-vires and hence, null and void and of no effect. The relevant portion of the Maharshi Mahesh Yogi judgment are extracted hereinbelow for convenience of ready reference:

> *"68. Having heard the learned senior counsel for the Appellant, as well as the learned Counsel for the State, and having bestowed our serious consideration to the respective submissions and having perused the scholarly judgment of the Division Bench and other material papers, at the very outset we are of the view that providing education in an University is the primary concern and objective, while all other activities would only be incidental and adjunct.(Page 180 Paper Book 2)*
>
> *80. ….we have held that the establishment of the Appellant University was mainly for the purpose of imparting education, while promotion of Vedic learning is one of the primary objectives of the University. Any attempt on the part of the State to interfere with the said main object viz., imparting of education, would amount to an infringement of the Fundamental Right guaranteed under the Constitution. Consequently, the amendment, which was introduced under*

the 1995 Act to Section 4(1) and also the insertion of the proviso, has to be held ultra-vires. (Page 184 Paper Book 2)

105. In our considered opinion, Section 12 of the University Grants Commission Act, 1956 would encompass apart from determining the course contents with reference to which the standard of teaching and its maintenance is to be monitored by the University Grants Commission, would also include the infrastructure that may be made available, either in the University or in other campuses, such as the centers, in order to ensure that such standard of education, teaching and examination, as well as research are maintained without any fall in standard. Therefore, while upholding the conclusion of the Division Bench that it is beyond the legislative competence of the State Legislature to stipulate any restriction, as regards the conduct of the courses by getting the approval of the State Government, in the same breath, such lack of competence would equally apply to the running of the centers as well."

37. It was submitted that the Appellant University is recognized under Section 2(f) of the UGC Act and governed by the provisions of the UGC Act. All the universities are duly empowered to run all courses of education and award all degrees to its pass out students after imparting education in such courses as per Section 22 of the UGC Act there being no requirement to take approval from the State Legislature or from any other authority. As per law, UGC Act being a Central Act has overriding effect over inconsistent provisions, if any, of the State Act. Accordingly, it has been settled by the Hon'ble Supreme Court in the Maharshi Mahesh Yogi judgment (supra) that the State Legislature has no legislative competence to make any law which is inconsistent with the UGC Act and therefore, Section 4 and all other provisions of the State

Act which are inconsistent with the Central Act are overridden by the UGC Act and thus, wholly irrelevant.

38. It was submitted that reference to Section 4 of the Singhania University Pacheri Bari (Jhunjhunu) Act, 2008 ("University Act") is misplaced and not relevant as it deals with "*undertaking of research and studies in disciplines*". Thus, it speaks of "disciplines" and not "courses". Regarding "running of courses" there is another provision i.e. Section 5(e) in the Singhania University Act which provides that the Appellant University may provide instructions in all such courses as it may determine. Section 5(e) of the Singhania University Act is reproduced as under:

> "*5. Powers and functions of the University: The University shall have the following powers and functions, namely:*
> *(e) to provide instruction, including correspondence and such other courses, as it may determine*"

39. It is fundamental principle of law that no words can be added or deleted from the statute and literal and plain interpretation should be given to the provisions of the statute. Thus, Section 4 cannot be held to be regarding running of courses and it is Section 5(e) that speaks of courses. Rather, Section 5(e) empowers the Appellant University to run all such courses as it may determine. Further, Section 4 speaks about "undertaking research and studies" and not "running of courses" which are two different things. It is submitted that running of courses is related to awarding of degrees. Reference in this regard may be made to Section 2(w) of the University Act which provides as under:

> *"2. Definitions:*

(w) "student of the University" means a person enrolled in the University for taking a course of study for a degree, diploma or other academic distinction duly instituted by the University, including a research degree"

Thus, the aforesaid makes it amply clear that it is upon the Appellant University to determine all such courses that it would want to run and award degrees in.

40. It was submitted that the Appellant University is empowered under the UGC Act and the Singhania University Act to impart education and award degrees to its pass-out students in all courses of education, including medical courses, establish specialized laboratories or other units for research and instructions, and do all such acts as may be required for the object of education. Reference in this regard may be made to Sections 5(b), 5(e), 5(j) and 5(z) of the Singhania University Act which provide for the powers and functions of the Appellant University as under:

"5. Powers and Functions of the University- The University shall have the following powers and functions, namely-

5(b) to grant, subject to such conditions as the University may determine, diplomas or certificate, and confer degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

"5(e) to provide instructions, including correspondence and such other courses, as it may determine;

5(j) to establish study centers and maintain schools, institutions and such centers, specialized laboratories or other units for research and instructions as are in the opinion of the University, necessary for the furtherance of its object;

5(z) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the University."

41. It was submitted that the Appellant University, being a university established under the State Act, is established for the sole object of education. It is not in dispute that the Appellant University is undertaking any activity other than education. It is submitted that it has been held in a catena of judgments that so long as the university is imparting education and its existence is not for profit only, it is entitled for exemption under Section 10(23C)(vi). Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of Queen's Educational Society v. CIT reported in 372 ITR 699 (SC). wherein it was held as under:

"24. …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 exemption under Section 10(23C). Imposing such a condition which is not contained in the statute would lead to perversion of the basic purpose for which such exemption have been granted to educational institutions. Knowledge in contemporary times is technology driven. Educational institutions have to modernize, 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."

42. Reference was also drawn to the judgment of the Hon'ble Supreme Court in the case of Oxford University Press v. CIT, (2001) 3 SCC 359 wherein the Hon'ble Court held that in case of a university, the condition required to be satisfied for exemption under Section 10(23C)(vi) (earlier Section 10(22)) is that the university should imparting education in India and should be existing as not for profit only. Thus, when it is not in dispute that the Appellant University is imparting education and existing as not for profit only, then the required test under Section 10(23C)(vi) is met and there is no legal basis for denying the exemption to the Appellant University.

43. It was submitted that in the case of Chief Commissioner of Income Tax v. Geetanjali University Trust reported in reported in (2011) 16 taxmann.com 274, the Division Bench of Rajasthan High Court has held that a plain reading of Section 10(23C)(vi) reveals that what is required for the purpose of seeking approval under Section 10(23C)(vi) is that the University or other educational institution should exist 'solely for educational purposes and not for purposes of profit'. Therefore, violation of any of the prescribed rules in running of the courses cannot lead to the institute losing the character as an entity existing solely for the purpose of education and the institute is entitled for exemption under Section 10(23C)(vi). Thus, the CIT(E) has failed to apply the correct test under Section 10(23C)(vi) as it is not in dispute that the

Appellant University is not doing any activity other than education and that it is existing not for purpose of profit.

44. Regarding the objection of the CIT(E) in the order dated 14.09.2016 that why there is different figure in the correct Form 10BB filed by the auditor than the figure given in the earlier wrong Form 10B filed by the auditor, it was submitted as under:

i. It is submitted that the auditor had inadvertently filed the audit report on wrong form 10B which is applicable to an assessee availing benefit under Section 11 & 12 of the Income Tax Act. During assessment, the Assessing Officer required the Appellant University to ask the auditor to refile the audit report in the correct Form 10BB and the auditor filed the correct audit report in Form 10BB as per Section 10(23C).

ii. It is submitted that the figure of Rs.1,61,05,529/- shown as accumulation in Column No.11 of the Form 10BB is given after proper and correct calculation as prescribed under Section 10(23C) of the Income Tax Act and the figure is calculated as under:

S. No.	Particulars	Amount
1.	Total receipts of the Appellant in the previous year	Rs.21,44,86,849/-
2.	Amount of receipts of the previous year applied during the previous year	Rs.16,62,08,293/-

3.	Amount to the extent of 15% of the total receipts = 15% of Rs.21,44,86,849/-	Rs.3,21,73,027/-
4.	Amount of receipts exceeding 15%, accumulated in accordance with clause (a) of the third proviso to Section 10(23C)	Rs.1,61,05,529/-

iii. Without prejudice, it is submitted that during the course of hearing before the Hon'ble Tribunal, the Ld. DR accepted the submission of the Appellant University in this regard and submitted that the grievance of the CIT(E) in this regard was that no explanation was given earlier which has been satisfied now.

45. It was further submitted that the Ld. CIT/DR relying on the judgment of the Maharshi Mahesh Yogi case (supra) submitted that the Apex Court has settled that the State Government has no power to impose restrictions on the university and it is the UGC that has the power. The Ld. DR then placed reliance on the judgment dated 04.12.2015 of the Hon'ble Delhi High Court in the case of Sam Higginbottom University of Agriculture, Technology & Science v. University Grants Commission, W.P.(C) No.486/2015 to submit that the Hon'ble High Court in the said case had held that Sam Higginbottom University required UGC approval before starting courses and therefore, by same logic, the Appellant University also requires approval of UGC. Thus, the Ld. CIT/DR accepted the submission of the Appellant University that State Government cannot place any restriction and that reference to Section 4 has no relevance.

46. Regarding the contention of ld CIT/DR that prior approval of UGC is required, reference may be made to paragraphs 9 and 14 of the same judgment i.e. Sam Higginbottom case (supra) wherein clear distinction has been made between a university established under the State Act and a Deemed University and it is admitted by UGC itself that a university established by State Act does not require approval of UGC for setting up a new department or commencing a new courses. The relevant extract of the judgment is reproduced for ready reference:

> "*9. We had during the hearing enquired from the counsel for the Respondent UGC whether the UGC insists upon a University as distinct from a deemed University to seek prior approval before commencing a new Course/ Department/ Programme. The counsel for the Respondent UGC responded that the UGC does not, if the new Course/ Programme or Department is within the confined of Section 22.*
>
> *14. …The counsel for UGC has admitted, as aforesaid, that there is no requirement for a University established by a Central/ Provincial/ State Act to seek prior approval of UGC for setting up a new department or commencing a new course to confer degrees specified in Notifications issued under Section 22(3).*"

47. It was submitted that reference may be made to Section 2(f) and Section 3 of the UGC Act which defines two separate categories of universities. One category under Section 2(f) of the UGC Act consists of those universities that have been established under a Central, Provincial or a State Act i.e. like the Appellant University which is established by the State Act viz. Singhania University Act; the second category under Section 3 of the UGC Act consists of institutions that are not statutory

bodies but their status has been upgraded to be deemed to be a University i.e. like the Sam Higginbottom University, a Deemed University. Thus, both are two different and distinct classes. Reference may be made to paragraph 1of the Sam Higginbottom case (supra). The finding of the Hon'ble Court that prior approval of UGC is required for running courses applies to Deemed Universities. Regarding the universities which have been established by a State Act, such as the Appellant University, the position is very clear that no prior approval of UGC is required and such university can run all courses as per Section 22 of the UGC Act. Thus, by Ld. DR's own submissions, the Appellant University's case is proved and it is settled that the Appellant University does not require either the permission of the State Government or the UGC for running of courses. As submitted above, Appellant University is an autonomous, self-regulated, statutory body established by State Act with the sole object of education and empowered to impart education in all courses of education.

48. Without prejudice to the foregoing, it was submitted that the Appellant University has been running the hospital in a small portion of the old Administrative Block building since 2015 and neither the hospital nor the medical courses were running in the A.Y 2013-14 or in A.Y 2014-15 and A.Y 2015-16. Thus, there is nothing on record and there is no basis whatsoever for withdrawing the exemption from the A.Y 2013-14 onwards. It was further submitted that the said teaching hospital is completely non-commercial and there are no earnings from the operation of the said hospital. As such, it is a teaching hospital with the sole object of providing teaching and training to the students in medical

courses such as Nursing, Paramedical etc. and also taking care of general healthcare and wellness of the students and staff of the Appellant University. It is important to submit that this is not even the case of the CIT(E) in the impugned order dated 14.09.2016 that the hospital was being run by the Appellant University for commercial purpose or any purpose other than teaching and taking care of the health and welfare of the students and staff of the Appellant University.

49. It was finally submitted that the grounds on which the exemption has been withdrawn i.e. in the operative part of the impugned Order of CIT(E) i.e. (Para 9) that the society must exist solely for education, is violated and some courses are being run without the approval of State Legislature for which exemption has not been granted under Section 10(23C)(vi) and activities are not genuine, are without any basis as submitted hereinabove. There is no such law which provides that a University recognised under Section 2(f) of the UGC Act requires State Legislature approval to run courses likewise, exemption under Section 10(23C)(vi) is also granted to the appellant University because it is a University established by a State Act for the sole object of education and it continues to exists for sole object of education and not for profit. In view of the aforesaid, it is submitted that the impugned order dated 14.09.2016 is without jurisdiction, against law, based on irrelevant considerations and may be quashed and the exemption of the Appellant University under Section 10(23C)(vi) of the Act may be restored.

50. Now, coming to the contentions advanced by the ld CIT DR. It was submitted by the ld CIT DR that the ld AR has contended that approval

u/s 10(23C)(vi) of the Act has been granted to it because of its status of being a "university", as it was established by an Act of State Legislature and so long, it is imparting education and its existence is not for profit only, it is entitled for exemption u/s 10(23C)(vi) of the Act. In this regard, it was submitted that in the case of Visvesvaraya Technological University vs ACIT [2016] 68 taxmann.com 287 (SC), the assessee-University had been constituted under the Visveswaraiah Technological University Act, 1994 ('VTU Act') and the issue before the Hon'ble Apex Court was whether the assessee university was eligible for exemption u/s 10(23)(iiiab) of the Act. It has been held by the Hon'ble Apex Court that the entitlement for exemption under section 10(23C)(iiiab) is subject to two conditions. Firstly the educational institution or the university must be solely for the purpose of education and without any profit motive. Secondly, it must be wholly or substantially financed by the government. Both conditions will have to be satisfied before exemption can be granted under the aforesaid provision of the Act. It has been further held that since the appellant University does not satisfy the second requirement spelt out by section 10(23C)(iiiab) of the Act, as it is neither directly nor even substantially financed by the Government so as to be entitled to exemption from payment of tax under the Act. Thus, it is evident from the above judgement of Hon'ble Apex Court that the approval u/s 10(23C)(vi) of the Act is not granted to a University as such on account of its status, being established under the Act of State Legislature, as claimed by the ld AR. The exemption is granted only as long as the assessee University fulfill the conditions prescribed in that section.

51. It was submitted by the ld CIT DR that there is no dispute that the exemption u/s 10(23C)(vi) was granted to the assessee University on the basis of its object filed at the time of grant of approval and according to which the assessee University can impart education in the various fields as stated in Schedule II of the Gazette Notification, as reproduced on page 9 to 11 of the order of ld. CIT(E). This is an undisputed fact that the various courses as appearing on page 6 of order of ld CIT(E) were started by the assessee University without there being any mention of the same in Schedule II and without seeking any approval from the State Government as stipulated in section 4 of the Singhania University Act, through which the assessee University was established.

52. It was submitted by the ld CIT DR that the ld AR has relied upon the case of Mahrishi Mahesh Yogi and other judicial pronouncements to support his contention that since it is a University established by law, therefore, it is not required to obtain any permission from any authority for establishing a medical institution or for starting a new course of study medicine etc. In this regard, it is submitted that all the judicial pronouncements as relied upon by the Ld. AR are related to technical institutions providing technical education, which are regulated by All India Council for Technical Education Act, 1987 (AICTE Act).

53. It may be mentioned that in the case of Bharathidasan University & Ors. Vs AICTE AIR 2001 SC 2861, as relied upon by the ld AR, the issue before the Hon'be Apex Court was that:

Whether the appellant University created under the Bharathidasan University Act, 1981 should seek prior approval

of AICTE to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection?

The Hon'ble Apex Court after analyzing the provisions of AICTE Act has concluded that the said Act has made a distinction between a "University" and a "technical institution". The Hon'ble Apex Court has also held that the Regulations made by the AICTE under section 10(1)(k) of AICTE Act requiring a University also to seek its prior approval for starting a new programme or course in technical education cannot be enforced against a "University" as it is not in consonance with the provisions of AICTE Act.

54. It may be mentioned that in the instant case, the assessee has also started MD (Doctor of Medicine) courses, which is covered by the provisions of Indian Medical Council Act, 1956 (IMC Act). Further, provisions of section 10A of IMC Act specifically prohibit establishment of an medical institution or starting of a new course of study without the previous approval of the Central Government. It is evident from the above provisions of section 10A of IMC Act that this section has overriding effect not only on the other provisions of IMC Act but also on other Acts for the time being in force. Further, as per section 10A(1) of IMC Act, no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of section 10A(1) of IMC Act. Here, it may be mentioned that according to Explanation 1 to section 10A, "person" includes any University or a trust but does not include the Central

Government. It would be appropriate to mention here that as per section 2(m) of IMC Act, "University" means any University in India established by law and having a medical faculty. Since the Singhania University is created by law, therefore, it is covered under the definition of 'University' as defined in section 2(m) of IMC Act and consequently, it falls under Explanation 1 to section 10A of IMC Act i.e. it is a 'person' and thus, the provisions of section 10A of IMC Act are clearly applicable to it for establishing a new medical institution or for starting a new study course etc. i.e. it is required to obtain a permission from the Central Government for establishing a medical institution or starting a new study course etc. It may be mentioned that a Public Notice was published wherein it was stated that assessee University has not been approved by MCI for starting medical courses. Thus, it is humbly submitted that conducting new courses in disciplines not covered by Schedule II of the Singhania University Act, especially in the field of Medical courses were not in accordance with the objects for which exemption u/s 10(23C)(vi) was granted and the activities of the assessee University were not genuine.

55. Referring to the findings of the ld CIT(E), the ld CIT/DR submitted that the ld CIT(E) was well within his rights in withdrawing the exemption granted to the appellant University. The ld CIT/DR also took us through the provisions of Singhania University Act and submitted that the appellant University is conducting courses without the approval of the State Government. The ld. CIT/DR referring to the findings of the ld. CIT(E) has submitted that once the assessee university is approved by the State Legislature, certain framework of rules are to be observed in verbatim and if any amendment is required

then it has to go to the competent authority. Although, the university is an autonomous body yet it is always regulated through the clauses of the respective Act passed by legislature for its enactment and it cannot perform any activity beyond its respective Act. It is not only the approval granted by the State Government but the approval U/s 10(23C)(vi) of the Act which was also granted based on the objects presented before the prescribed activity. Any Departure from the approved objects needs prior approval of the prescribed authority and in the present case, the assessee university has violated the regulations laid down in the Act beyond its approved objects, which were definitely the subject matter of approval of exemption U/s 10(23C)(vi) of the Act. Referring to the objects of the university and the Gazette Notification dated 29.03.2008 of the Government of Rajasthan, the ld. CIT/DR submitted that the assessee university is approved to undertake courses as per scheduled-II of the Gazette Notification. It was submitted that it is not an open ended schedule and inclusive in nature. Rather all the courses which the university can conduct has been specifically listed and as per approval granted, the university can conduct only the courses listed in the Schedule-II, however, it was noticed by the Assessing Officer that the university is conducting courses which are not listed in Schedule-II. And some of these courses are B.Ed., M.Ed., ANM, GNM, M.D. (Doctor of Medicine), Public Health, Pharmceutical, Medical Laboratory Technology and Physiotherapy.

56. It was submitted by the ld CIT/DR that the university is conducting the courses which are not as per its objects and the said schedule is not a standardised schedule and is specific to each

approved university and they have to give the list of the courses proposed to be run by it. Any change in the schedule needs prior approval of the competent authority. It was accordingly submitted that as per section 10(23C)(vi) of the Act, the approved organisation needs to carry out activities as per the objects only and any activities beyond its objects renders the activities as non genuine and as the university is conducting the courses beyond its objects, its activities cannot be held as genuine charitable activity.

57. It was further submitted by the ld. CIT/DR that the university cannot be considered as existing solely for education purpose as it is also running a hospital and a number of evidences such as copy of income and expenditure account where expense has been booked on account of hospital construction, purchase of hospital equipments, field enquiry report of Tehshildar/ SDM were collected by the Assessing Officer during scrutiny assessment and the fact of running of the hospital is also not challenged by the assessee's society. The contention of the assessee university that the hospital is required to be maintained in order to provide training and practical experience to the students enrolled in medical courses was also not found tenable. It was submitted by the ld. CIT/DR that the courses for which the assessee university has mentioned the pre-requirement of hospital setup are the courses for which the assessee university is not entitled to run and these are also not part of the objects which were approved by the prescribed authority U/s 10(23C)(vi) of the Act.

58. The ld. CIT/DR has further submitted that they were other discrepancies also which were noticed by the ld. CIT(E) such as non-

maintenance of student attendance register and the documentary evidence in support of actual classroom activities, in absence of which it cannot be ascertained whether income is being applied for the stated objects or not. Further, certain discrepancies were noticed in Form 10BB regarding accumulation of the funds under Section 11(2) of the Act and the assessee has failed to offer any explanation in that regard and our reference was drawn to the contents of para 9 and 10 of the order of the ld. CIT(E) wherein he has finally concluded his observations which are reproduced as under:-

> *"9 In the case of applicant the condition mentioned in the clause (vi) of Sec. 10(23C)(vi) that the society must exists solely for education is violated and also the university has not carried out the activities as per the objects by running courses beyond its objects and approved by State legislature as well as prescribed authority us 10(23C)(vi). Therefore its activities cannot be held as genuine charitable activities. Therefore, the proviso 13th of Sec. 10(23C)(vi) is attracted. In the light of the discussion made above, exercising the power given under the above said Proviso, it is held that the activities of the assessee are not genuine as being carried out beyond the approved objects and it is not an education institution which is existing solely for education purposes, therefore, exemption u/s 10(23C)(vi) granted earlier vide Notification No. 01/2008-09 dated 04.04.2008 is hereby withdrawn.*
>
> *10. Date of Withdrawal of Exemption:- In this case, the conditions for granting approval U/s 10(23C)(vi) were violated on*

start of hospital. From the details submitted before the Assessing Officer. It is seen that the hospital activities (construction of hospital, hospital equipment purchase etc) were started during F.Y. 2012-13 onwards. Considering this, the exemption u/s 10(23C)(vi) is withdrawn from A.Y. 2013-14 & onwards."

59. The ld. CIT/DR further placed reliance on the judgment of the Hon'ble Delhi High Court in the case of Sam Higginbottom University of Agriculture, Technology & Science v. University Grants Commission, *(W.P.(C) No.486/2015 dated 04.12.2015*) to submit that the Hon'ble High Court in the said case had held that Sam Higginbottom University required UGC approval before starting courses and applying the same reasoning, the appellant University also requires approval of UGC and which has not been taken. It was accordingly submitted that there is no infirminity in the order passed by Ld CIT(E) withdrawing the exemption to the assessee University and the same be upheld.

60. We have heard the rival contentions and purused the material available on record. In order to appreciate the rival contentions, we refer to the provisions of section 10(23C)(vi) of the Act which read as under:

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included:

(23C) any income received by any person on behalf of—

(vi) ***any university or other educational institution existing solely for educational purposes and not for purposes of***

profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; *or*

Provided that the fund or trust or institution [87][or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [87][or sub-clause (vi) or sub-clause (via)] shall make an application in the prescribed form[88] and manner to the prescribed authority[89] for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) [90][or sub-clause (vi) or sub-clause (via)] :

[91][Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf:]

Provided also that the fund or trust or institution [92][or any university or other educational institution[93] or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [92][or sub-clause (vi) or sub-clause (via)]—

[94][(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and]

[95][(b) does not invest or deposit its funds, other than—

(i) any assets held by the fund, trust or institution [96][or any university or other educational institution[97] or any hospital or other medical institution] where such assets form part of the corpus of the fund, trust or institution [98][or any university or other educational institution or any hospital or other medical institution] as on the 1st day of June, 1973;

[99][(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;]

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution [1][or any university or other educational institution[2] or any hospital or other medical institution] before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) [3][and sub-clause (ia)], by way of bonus shares allotted to the fund, trust or institution [4][or any university or other educational institution or any hospital or other medical institution] ;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of

section 11:]

Provided also that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, [5][1993] :

[6][Provided also that the exemption under sub-clause (vi) or sub-clause (via) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001:]

[7][Provided also that the exemption under sub-clause (iv) or sub-clause (v) [6][or sub-clause (vi) or sub-clause (via)] shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution [8][or any university or other educational institution or any hospital or other medical institution], otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:]

Provided also that nothing contained in sub-clause (iv) or sub-clause (v) [9][or sub-clause (vi) or sub-clause (via)] shall apply in relation to any income of the fund or trust or institution [9][or any university or other educational institution or any hospital or other medical institution], being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Provided also that any [10][notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President[*], shall, at any one time[11], have effect for such assessment year or years, not exceeding three assessment years] (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:]

[12][Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President,[*] every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under [13][sub-clause (iv) or sub-clause (v) or] sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:

Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form[14] duly signed and verified by such accountant and setting forth such particulars as may be prescribed:]

[15][Provided also that any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G [16][in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake

in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, [17][2004] shall be deemed to be the income of the previous year and shall accordingly be charged to tax:]

Provided also that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established :

Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government [20][or is approved by the prescribed authority, as the case may be,] or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:]

[21][Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be [22][made on or before the 30th day of September of the relevant assessment year] from which the exemption is sought :]

[23][Provided also that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income :]

[24][Provided also that all pending applications, on which no notification has been issued under sub-clause (iv) or sub-clause

(v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day:]

[25][Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded :]

[26][Provided also that where the fund or institution referred to in sub-clause (iv) or the trust or institution referred to in sub-clause (v) has been notified by the Central Government or approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), has been approved by the prescribed authority, and the notification or the approval is in force for any previous year, then, nothing contained in any other provision of this section [other than clause (1) thereof] shall operate to exclude any income received on behalf of such fund or trust or institution or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year.

Explanation.—In this clause, where any income is required to be applied or accumulated, then, for such purpose the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this clause in the same or any other previous year."

61. On perusal of the above provisions, the power to withdraw the exemption is granted to the appropriate authority provided he is satisfied that the University has not applied its income in accordance

with third proviso or has not invested or deposited its funds in accordance with the third proviso or the activities of the University are not genuine or are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved initially. These are the only scenarios which have to be examined in the facts of each case by the ld CIT(E) before he decides to invokes the exemption granted earlier. In other words, the power to withdraw the exemption is circumscribed by and subject to satisfaction of one or more of the above conditions and the ld CIT(E) cannot travel beyond the same. Similarly, we also note that the cancellation of registration granted to any educational institution under Section 12AA(3) of the Act can happen in two scenarios; one where the activities of the educational institution are not genuine and secondly, where the activities of the educational institution are not being carried out in accordance with the objects for which the educational institution has been established.

62. The legislature has thus envisaged a distinction between an activity not being genuine and an activity which is not in accordance with the stated objects. An activity therefore could be genuine even though the same may not be in accordance with the stated objects. Therefore, merely because an activity is not in accordance with the stated objects, it will not result in such activity to be classified as non-genuine. The term "genuine" has been defined to mean true, authentic, real, actual, original and in context of a person or action means sincere, honest, truthful, straightforward, direct, frank, candid, and open. The genuineness of the activity thus has to be tested on the touchstone of above parameters. Where the activities are not carried

out in accordance with the stated objects or necessary approvals/permission/clearances are not obtained before carrying out such activities, there may be violation, irregularity or even a case of illegality which is subject matter and domain of the relevant authority. However, even such activities which satisfy the test as stated above would be classified as genuine activities.

63. In the instant case, we find that the whole case of the Revenue rest on the finding that the assessee university has not carried out the activities as per the objects by running certain courses beyond its objects and which are not approved by State Legislature as well as prescribed authority under Section 10(23C)(vi). Therefore, its activities cannot be held as genuine charitable activities. The challenge is therefore not the nature and stream of the courses being conducted by the University, the courses which are undisputedly educational in nature, rather the challenge is that such courses are not approved or in other words, the University has not sought approval of the concerned authorities before conducting such courses in terms of admission, running of classes and finally, awarding the degree/diploma to the students on qualifying the examination.

64. On the question of whether the activities of the university of conducting these courses are genuine or not, we do not have to travel too far, as we noticed from perusal of record and pointed out during the course of hearing to both the parties, as the answer is given by the Revenue itself where it has subsequently granted approval to the assessee university as a charitable institution under section 12AA of the Act vide its order dated 28.06.2017 with effect from 1.04.2016. The

impugned notification for exemption under section 10(23C)(vi) was withdrawn vide order dated 14.09.2016 (with effect from AY 2013-14). Subsequently, the assessee moved an application seeking registration under section 12AA on 13.12.2016 and registration under section 12AA was granted on 28.06.2017 with effect from April 1, 2016.

65. Though these are two independent provisions, there are similarities in the sense that at the time of grant of registration/approval, the genuineness of the activities are examined by the ld CIT(E) in both the cases and similarly, at the time of withdrawal, the test of non-genuineness is applied in both the cases, as we have noted earlier. In the instant case, we wonder how the University can be said to be carrying on non-genuine activities by conducting such courses resulting in withdrawal of exemption under section 10(23C)(vi) and conducting the same courses as genuine activities resulting in grant of approval under section 12AA of the Act within a span of less than a year when the same courses are being conducted during this period. Interestingly, the registration granted under section 12AA is with effect from 1.4.2016 even covering the period prior to date of withdrawal of approval under section 10(23C)(vi) of the Act and the same has been granted by the same ld CIT(E) who has withdrawn the approval earlier.

66. Further, we find that the show-cause notice dated 23.06.2017 issued by the Revenue before grant of registration under section 12AA talks about the same reasons in terms of conducting courses not in approved list which are subject matter of withdrawal of exemption under section 10(23C)(vi) of the Act and after taking the assessee's

submissions which is on the same lines as in the instant appeal, has granted the registration under section 12AA of the Act.

67. To our mind, where the Revenue has already accepted the genuineness of the activities of assessee University, the withdrawal of exemption under section 10(23C)(vi) of the Act on this ground is not warranted.

68. Further, we find that where the degrees awarded by the assessee University in courses of A.N.M., G.N.M. and B.Ed. are held valid by the Hon'ble Rajasthan High Court in case of Rajasthan Nursing Counil vs Singhania University & Others (supra), Sunil Bishnoi & Ors. v. State of Rajasthan & Ors. (supra) and Shanti Lal v. State of Rajasthan (supra), there cannot be any dispute regarding genuineness of the activities of the assessee University whereby such courses are genuinely conducted by the assessee University. We are therefore of the considered view that the genuineness of conducting such courses which are undoubtedly in the field of education cannot be disputed and on this ground itself, the withdrawal of exemption is not warranted and is liable to be set-aside.

69. In this regard, we refer to the decision of the **Hon'ble Rajasthan High Court** in case of **CCIT vs Geetanjali University Trust vs. CCIT, Udaipur** (supra). In that case, the facts of the case were that the assessee-trust was running a medical college. During the relevant year 2008-09, the admissions by the assessee-trust were not made on the basis of merit list/waiting list prepared on the basis of

RPMT-2008 Examination, which system had been approved by the Medical Council of India. A writ petition was filed before the High Court and Single Judge held that Medical Council of India Regulations were mandatory and had to be complied with. The Division Bench upheld the order of the Single Judge. Thereupon, the assessee-trust approached the Apex Court by filing a special leave petition and the matter was still pending before the Supreme Court. In the meantime, the Chief Commissioner taking a view that illegality in admission was committed by the assessee-trust in the year 2008, and, a profit motive in the same could not be ruled out, rejected the assessee's application filed under section 10(23C)(vi) of the Act. In the above facts, the Hon'ble High Court has ruled in para 5 to 10 which are reproduced as under:-

> *"**5.** Having heard the learned counsels, this Court is of the opinion that the since question of legality of the admissions made by the petitioner Trust is still a matter sub judice before the Apex Court, of course, the Rajasthan High court has held against the petitioner Trust that such admissions were not made in accordance with law vide judgment of learned Single Judge as aforesaid and affirmed by the Division Bench, it cannot be said finally yet that petitioner has committed any such illegality and no such opinion could be formed by the learned Chief Commissioner of Income Tax so long as the matter is pending before the Supreme Court of India and is not decided against the petitioner Trust.*
>
> *6. Right to litigate a particular issue in the Court of Law is a legal right of any Institution or a Charitable Trust, who is seeking exemption from income tax for which sanction is required by the*

competent authority within the parameters like no profit motive, or object of education of the Trust etc. laid down under Section 10(23C) of the Act which are relevant and not the admission procedure undertaken by the petitioner Trust. Nexus between the profit motive and alleged illegal admission is too remote and cannot be presumed without any other adverse material on record against the assessee, for drawing such adverse inference. Learned Chief Commissioner of Income Tax vide order dated 27/1/2010 has only assigned one single reason as stated above to deny the approval under Section 10(23C) of the Act. The relevant portion of the impugned order dated 27/1/2010 is reproduced hereunder for ready reference:-

"11. It is also apparent that the Trust is not satisfying essential condition for exemption u/s 10(23C)(vi) and (via). As per the relevant clause, any income received by any person on behalf of any university or other educational purposes. Moreover, the income earned should be applied wholly and exclusively to the objects for which it is established, i.e. for educational purpose. In the institution's case, the Hon'ble High Court has held that the admissions made for Academic Year 2008-2009 were illegal. The purpose of education would not be served, if the education is for students who have been illegally admitted. The purpose of education as contemplated in the section would be served only if the students have been legally admitted and not otherwise. The spending of funds on education of students who have been admitted illegally will not amount to application of income for the purpose of education. In the Trust's case, neither the condition

regarding existence for the purpose of education nor the application of funds for the objects, are being fulfilled.

12. Keeping in view the above discussion and the decision of the Hon'ble High Court, I hereby reject the trust's application for approval under Section 10(23C)(vi) and (via) for A.Y. 2008-09 onwards.

Sd/-

(Mukesh Bhanti)

Chief Commissioner of Income-tax, Udaipur."

***7.** The subsequent order granting such approval passed on 17/1/2011 subject to usual conditions reads as under: -*

"In exercise of powers conferred on me by the sub-clause (vi) of clause (23C) of Section 10 of the Income tax Act, 1961 (43 of 1961) read with rule 2CA of the I.T. Rules, 1962, I Chief Commissioner of Income tax, Udaipur hereby accord approval to M/s. Geetanjali University Trust, Udaipur (PAN: AAATG9525E) for the purpose of the said section for the assessment year 2010-11 and onwards subject to conditions mentioned hereunder:"

8. If the alleged illegal admissions made by the petitioner Trust in the year 2008-09 could be a valid criteria or relevant consideration for denying approval under section 10(23C) of the Act, such alleged illegal admissions continued in the subsequent years also as those students continued to be in the college for subsequent years also and the same authority on the same set of facts, once denied the approval and subsequently granted such approval for subsequent years. This incongruity in the two orders

itself repels the argument of learned counsel for the respondent Revenue.

9. In the opinion of this court also, this ground alone as such could not be relevant and a valid basis for refusing the approval under Section 10(23C) of the Act to the petitioner Trust especially since the matter is still pending before the Hon'ble Supreme Court. Of course, the authority concerned is free to apply its mind and take into account the relevant consideration while deciding the case of petitioner Trust under Section 10(23C) of the Act as laid down in the provisions of Section 10(23C) itself and if there are other grounds made out of rejection of its case under Section 10(23C) of the Act or say if Hon'ble Supreme court of India also holds against the petitioner, the authority concerned may be justified in denying the exemption under Section 10(23C) of the Act.

***10.** Consequently, the present writ petition is allowed & setting aside the impugned order Annex. 16 dated 27/1/2010 passed by the learned Chief Commissioner of Income Tax under Section 10(23C) of the Act, the said authority is left free to decide afresh the said proceedings for A.Y. 2008-09 and onwards till A.Y. 2010-11 by passing fresh speaking order under Section 10(23C) of the Act for Assessment Year 2008-09 to Assessment Year 2010-11 after affording opportunity of hearing to the petitioner Trust. No order as to costs."*

70. As held by the Hon'ble High Court, the parameters like no profit motive and object of education of the Trust etc. laid down under

Section 10(23C) of the Act are relevant and not the admission procedure undertaken by the petitioner Trust which is sub-judice before the Hon'ble Supreme Court. The relevant consideration while deciding the case of petitioner Trust under Section 10(23C) of the Act are as laid down in the provisions of Section 10(23C) itself and if there are any violations thereof, the same may be a basis for rejection seeking approval under Section 10(23C) of the Act. On the same analogy, we find that the relevant consideration for withdrawal of the approval already granted under Section 10(23C)(vi) are well laid down in the provisions of section 10(23C)(vi) and the authority concerned is required to be strictly guided by such considerations and only on non-fulfillment of such conditions, the action for withdrawal of exemption can be taken. As we have noted above, the assessee university is carrying out genuine education activities and there is thus no violation of any such conditions by the assessee university which can form the basis for withdrawal of approval as so provided in the 13th provisio to section 10(23C)(vi) of the Act.

71. It is also relevant to note that in this case of Geetanjali University, the approval was initially denied and subsequently granted on the same facts by the appropriate authority and the Hon'ble High Court has held that:

> *"if the alleged illegal admissions made by the petitioner Trust in the year 2008-09 could be a valid criteria or relevant consideration for denying approval under section 10(23C) of the Act, such alleged illegal admissions continued in the subsequent years also as those students continued to be in the college for*

subsequent years also and the same authority on the same set of facts, once denied the approval and subsequently granted such approval for subsequent years. This incongruity in the two orders itself repels the argument of learned counsel for the respondent Revenue."

72. We find that the facts of the instant case are *pari-materia* in the sense that in the instant case, same educational courses were being conducted when the approval was withdrawn under section 10(23C)(vi) and subsequently approval was granted though under section 12AA of the Act which clearly bring out the incongruity which cannot be sustained in the eyes of law. Further, in the instant case, there is no adverse material against the assessee University rather the latter has submitted the decisions of the Hon'ble Rajasthan High Court where the degrees awarded by the assessee University in courses of A.N.M., G.N.M. and B.Ed. are held valid. The ld CIT/DR has drawn reference to regulations of Indian Medical Council and a public notice stating that the assessee University has not been approved by MCI for starting medical courses. In our view, whether the assessee University is required to obtain approval from MCI for conducting medical courses is a matter for the MCI or concerned appellate authority to decide, as far as the genuineness of activities of conducting such courses is concerned, there is no adverse material on record. Therefore, we find that the aforesaid decision in case of Geetanjali University support the case of the assessee university.

73. Regarding other contention of the ld CIT(E) that the assessee university is running a hospital, there is nothing on record to suggest that such hospital was run on commercial basis and there are any earnings from such hospital. Even the income and expenditure account which has been relied upon by the Revenue only talks about the hospital construction expenditure and not actually running and maintenance expenditure or any earnings from such hospital. Therefore, we find force in the arguments of the ld AR that it is a medical research and teaching hospital with the sole object of providing teaching and training to the students in medical courses such as Nursing, Paramedical etc. and also taking care of general healthcare and wellness of the students and staff of the assessee University.

74. Further, regarding accumulation of funds u/s 11(2), the assessee university has filed the necessary details and there is no specific finding recorded by the ld CIT(E) regarding any violation as specified in third proviso to section 10(23C)(vi) of the Act. In absence of any specific and adverse finding recorded by the ld CIT(E), it cannot be said that assessee university has violated the specified condition and which could form the basis for withdrawal of approval.

75. In the entirety of facts and circumstances of the case and in light of above discussions and respectfully following the decision of the Hon'ble Rajasthan High Court referred supra, we are of the considered view that there is no basis for withdrawing the exemption so granted to the assessee university under section 10(23C)(vi) of the Act and we

accordingly direct the ld CIT(E) to restore the exemption approval under section 10(23C)(vi) of the Act from the date the same was withdrawn.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 03/01/2020.

Sd/-	Sd/-
(विजय पाल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 03/01/2020.
*Santosh
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s Singhania University, Jhunjhunu.
2. प्रत्यर्थी/ The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 1012/JP/2016}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar.