

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Saktijit Dey, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6920/Del/2018 : Asstt. Year: 2014-15

Bhagwant Singh Charitable Trust, C-365, Defence Colony, New Delhi-110024 (APPELLANT)	Vs.	ACIT(E), Circle-1(1), New Delhi (RESPONDENT)
PAN No. AAATB4863A		

Assessee by : Sh. A. K. Batra, CA

Revenue by : Sh. Kanv Bali, Sr. DR

Date of Hearing: 25.04.2023

Date of Pronouncement: 17.07.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-40, New Delhi dated 24.08.2018.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case the CIT (A) has erred in confirming the action of the A.O for not allowing the amount of Rs. 69,72,310/- for purchase of car as application of income for charitable activities by observing that nothing has been brought on record to show how the purchase of high end car was to meet the charitable purpose by ignoring the submissions of the appellant and facts of the case that the appellant trust has deducted the loan amount of Rs.30,00,000/- on the car purchased cost of Rs. 69,72,310/- and claimed only the balance amount of Rs. 39,72,310/- as application of income. The car is not being used by the trustee for personal use and same was used only for activities of the trust. The Id.

CIT(A) is also wrong in holding that the repayment of loan through which the car has been purchased is being claimed as application of incomes will tantamount for allowing double deduction and confirming the action of the A.O. by ignoring the facts that the appellant trust has only considered the repayment of loans as application of income vide CBDT circular no. 100 dated 24.01.1973 decided that repayment of loan is to be treated as application of income for charitable purpose u/s 11(1) of the IT Act. Therefore, there is no claim of double deduction.

2. On the facts and under the circumstances of the case, the Id. CIT (A) has erred in confirming the action of the A.O. in disallowing the expenditure of Rs. 8,48,166/- spent outside India without appreciating the facts that since the expenditure was incurred on behalf of the appellant trust for attending international conference and for the purpose of advancing the objects of the appellant trust.

3. On the facts and under the circumstances of the case, the Id. CTT (A) has erred in confirming the action of the AO in treating the management fee of Rs. 55,66,195/- as commercial receipts and charging them to tax in accordance with the provisions of section 164(2) by ignoring the facts that activities of the appellant trust is charitable in nature as defined u/s 2(15) of the IT Act. The Id. CIT (A) also erred in placing reliance on the decision of Hon'ble Delhi High Court in the case of DIT(E) Vs. Delhi Public School (2010) 403 ITR 49 (Del). Facts which are distinguishable from the case of the appellant trust. Hence, the provisions of section 11(4A) is not applicable in the case of the appellant trust."

Disallowing the Expenditure of Rs. 8,48,166/-:

3. The Assessing Officer noted that an expenditure of Rs.8,48,166/- was claimed on account of Round Square conference expenses incurred outside India at Florida. The assessee submitted that the said expenses have been incurred

in the past also and have been allowed and hence there is no justification in disallowing the said expenses. The assessee relied on the decision of Co-ordinate Bench of ITAT in the case of DDIT Vs. Society for Integrated Development in Urban & Rural areas. The Id. CIT(A) considered the case of DIT Vs. National Association of Software & Services Companies (Del. HC).

4. We have gone through both the orders.

5. The sum and substance of the order in the case of DDIT(Exemp.)-II Vs. Society for Integrated Development in Urban & Rural Areas in ITA No. 674/Hyd/2011 order dated 03.01.2014 is as under:

"11. We have considered the submissions of the parties and perused the material on record as well as the order of the authorities below. In ground No.1, the department has challenged the deletion of Rs.2,90,154/- by the CIT (A). As already stated, the aforesaid amount is expenditure incurred towards attendance of international conferences and training. As can be seen from para17 of the assessment order, the Assessing Officer has disallowed it simply observing that it is not a charitable activity u/s 11(1)(c) of the Act as it is not supported by special or general order of CBDT. In our view, the disallowance of expenditure on such plea is totally contrary to the statutory provisions. It is neither necessary nor required as per the statute that for availing exemption u/s 11 of the Act a particular charitable activity has to be notified in a circular issued by the CBDT. As has been rightly held by the CIT (A), the expenditure was incurred on behalf of the Society for attending international conferences and seminars and for the purpose of advancing the objects of the Society. It is not for the personal

benefit of the Secretary, therefore it cannot be said that the expenditure incurred in that behalf is not for charitable purpose. On the aforesaid view of the matter, we do not find any infirmity in the order of the CIT (A) on this issue. Accordingly, the ground raised by the department is dismissed."

6. We have gone through the relevant extract of the order of the Hon'ble jurisdictional High Court in the case of DIT Vs. National Association of Software & Services Companies (21 taxmann.com 213) (Del. HC) which is as under:

"The next question is whether the expenditure incurred by the assessee-trust on events/activities held in connection with the exhibition in Germany amounts to application of the income in accordance with section 11(1)(a). The argument put forward by the Revenue was that the expenditure, even if it is considered as application of the income, was outside India and the mandate of the section is that the income should be applied in India to charitable purposes and this condition not having been satisfied, the Tribunal was clearly wrong in holding that the expenditure should be considered as application of the income of the trust in India. The argument of the assessee is that there is no such mandate in the section to the effect that the income of the trust should be applied in India and that the only requirement is that the purposes should exist in India and if that is satisfied, the income can be applied for such purposes even outside India. According to the assessee, so long as the purposes are in India, it does not matter as to where the situs of the application is. [Para 13]

A little historical background is necessary to be brought out in understanding the mandate of section 11. Section 11 corresponds to section 4(3)(i) of the Indian Income-tax Act, 1922. [Para 14]

Under the provision as it existed prior to 1-4-1952, there was no difference maintained between application of the income of the trust within or without the taxable territories. The provision as it existed after the amendment made with effect from 1-4-1952 makes a reference to application or accumulation for application of the income of the trust 'to such religious or charitable purposes as relate to anything done within the taxable territories'. The assessee contended that the words 'as relate to anything done within the taxable territories' clearly show that the charitable purposes must be executed within the taxable territories and that it was immaterial where the income is actually applied. It is difficult to conceive of a situation under which the charitable purposes are executed within the taxable territories but the income of the trust is applied elsewhere in the implementation of such purposes. Be that as it may, the position is put beyond doubt by the proviso to section 4(3)(i) of the old Act. It says that the income of the trust shall stand included in its total income if it is applied to religious or charitable purposes throughout/within the taxable territories. The proviso is indicative of the object of the main provision. In the main part, it was provided that the income of the trust should be applied within the taxable territories to religious or charitable purposes and in the proviso an exception was carved out to provide that if the income is applied outside the taxable territories, even though to religious or charitable purposes, the trust will not secure the exemption from tax in respect of such income. Two situations were anticipated for which provision was made in the proviso itself. In these two situations, the Central Board of Revenue (CBR, the present CBDT) was empowered to direct by general or special order, that in such cases the income of the trust shall not be included in the total income merely because the income was applied to charitable purposes outside the taxable territories. The first situation was where the property was held under a trust or other legal obligation created before 1-4-1952. The second situation was where the property was held under trust or other legal

obligation created after the aforesaid date and the income therefrom is applied outside the taxable territories to charitable purposes as are done to promote international welfare in which India is interested. In these two cases the income of the trust could be applied or spent outside India without losing exemption, provided the CBR passes an appropriate order. [Para 17]

It may be noticed that sub-clause (ii) of clause(c) of sub-section (i) of section 11, in substance provides for the same condition which was imposed by sub-clause (i) of clause (a) of the proviso to section 4(3)(i) of the old Act. Sub-clause (i) of clause (c) of sub-section (1) of section 11 is in the same terms as sub-clause (ii) of clause (a) of the proviso to section 4(3)(i) of the old Act. [Para 21]

The assessee's contention that the words 'to the extent to which such income is applied to such purposes in India' appearing to section 11(1)(a) only require that the charitable purposes should be confined to India and the application of the income of the trust to the execution of such purposes can be outside, India, appears to be opposed to the natural and grammatical meaning that can be ascribed to the words. The word 'applied' is a verb used in past tense. In the provision, it is used in the transitive form because it is followed by the words 'to such purposes in India'. It answers three questions which would arise in the mind of the reader: apply what? Applied to what? And where? The answers would then make the meaning obvious. The answer to the first question would be apply the income of the trust. The answer to the second question will be applied to charitable purposes. The answer to the third question will be applied in India. Thus even grammatically speaking it seems that the group of words 'to such purposes in India' qualifies the preceding verb 'applied'. It is a case of a verb being qualified by two prepositions which follow, viz., 'to' and 'in'. So read, it seems clear that grammatically also it would be proper to understand the

requirement of the provision in this way, that is, that the income of the trust should be applied not only to charitable purposes, but also applied in India to such purposes. The submission of the assessee that the words 'in India' qualify only the words 'such purposes' so that only the purposes are geographically confined to India does not appear to be the natural and grammatical way of construing the provision. That would break or clog the natural flow of the entire group of words 'To the extent to which such income is applied to such purposes in India'. The meaning sought to be attached by assessee to the words 'in India' as qualifying only the 'purposes' places a strain on the natural or grammatical interpretation of the group of words. If what assessee contends is correct, then section 11(1)(c) may become redundant and otiose. If as assessee says, the income of the trust can be applied even outside India so long as the charitable purposes are in India, then there is no need for a trust which tends to promote international welfare in which India is interested and which was created after 1-4-1952 to apply to the CBDT for a general or special order directing that the income to the extent to which it is applied to the promotion of international welfare outside India shall not be denied the exemption, nor would it be necessary for a charitable or religious trust created before the aforesaid date to seek such an order from CBDT in respect of its income which is applied to charitable or religious purposes outside India. Therefore, the words 'in India' appearing in section 11(1)(a) and the words 'outside India' appearing in section 11(1)(c) of the Act qualify the verb 'applied' appearing in these provisions and not the words 'such purposes'. [Para 22]

In view of the above, it is held that the amount of Rs. 38,29,535 spent by the assessee-trust in Hanover, Germany cannot be considered as application of the income of the trust in India for charitable purposes....[Para 31]"

7. On going through both the orders, we hold that the ratio and analysis of the Hon'ble Jurisdictional High Court is squarely applicable to the facts of the case before us and hence, we decline to interfere with the order of the Id. CIT(A) which is based on the order of the Hon'ble jurisdictional High Court.

Purchase of Car – Rs.69,72,310/-:

8. The Assessing Officer disallowed an amount of Rs.69,72,310/- paid for purchase of **Audi-Q7** car as application of income for charitable purpose. The Assessing Officer disallowed the said amount holding that organizing of conferences and functions do not authorize the assessee to buy luxury and high end cars in the garb of charitable activity. The Assessing Officer held that no evidence with regard to the uses of cars were given. The assessee submitted that the school organizes international events from time to time and with a view to welcome foreign delegates and to facilitate their movement to participate in conferences, meetings, events and travelling to hotels, the management of the charitable trust decided to purchase an Audi-Q7 car. It has been submitted that since the car is being used for the purpose of the trust and the car is not being used by the trustee for personal purposes, the amount of Rs.69,72,310/- spent on purchase of Audi-Q7 can be considered as application of income. The facts reveal that the car has been purchased by obtaining loan and the loan repayment are being claimed as application of income effectively proving that the purchase cost of the car is being treated as application of income for charitable purpose. The Id. CIT(A) affirmed the action of the AO holding that the purchase of the car on the pretext of welcoming foreign delegates and

local travelling to hotels has not been proved and also that such purchase cannot be treated as application of funds for charitable purpose. Before us, it was submitted that there were about 80 foreign delegates participating in the round square conference, debating competition, public speaking competition and the car has been utilized for their utility purpose. Keeping in view the entire facts of the case, we hold that the expenses incurred by the assessee under this head cannot be considered as application of income for charitable purpose. Since, the quantum amount is disputed by the Id. AR, we direct the AO to recompute the disallowance taking into consideration, the entire cost of the car, loan availed and repayment of the loan from the funds of the trust.

Taxability of Management Fee Received:

9. The Assessing Officer, on perusal of the books of account noted that the assessee had received management fee amounting to Rs.55,66,196/- from "Riveridale Preparatory School Society". Before the AO, the assessee submitted that the fee was received from management services rendered by the assessee trust to "Riveridale Preparatory School Society" which itself is registered under section 12A. The appellant had submitted that the trust was approached by the "Riveridale Preparatory School Society" to provide managerial, technical, educational and co-cordial services including managerial experience, setting the amount of school fee, recruitment of teaching and non teaching staff for running the proposed school against the consideration. It was also submitted that such services fall under clause -2 sub clause (c) and sub clause (f) of the said trust deed. It has also been submitted that no denial of

exemption or any adverse view has been taken in the earlier years.

10. The Id. CIT(A) having considered the assessment order and the submissions of the appellant, School Management and Operation Agreement observed that the assessee trust has entered into an agreement to provide its expertise in consideration of fee. The Id. CIT(A) held that the Memorandum of Association of the assessee society as well as the Management Agreement entered into by the assessee society with the Riveridale Preparatory School Society, validate the motive of educational purpose that the assessee aims through its business activities. The Id. CIT(A) held that these receipts are commercial in nature and according to section 11(4A) receipts from incidental activities will not be exempt unless separate books of accounts are maintained by the trust or institution. The fact that such receipts would be incidental in nature and are to be allowed as charitable purposes if separate books of accounts are maintained has been upheld by the Hon'ble Delhi High Court in the case of DIT(E) vs. Delhi Public School [(2010) 403 TTR 49 (Del)]. The Id. CIT(A) held that no separate books of accounts have been maintained and since separate books of accounts have not been maintained, there is no infirmity in the order of the Assessing Officer in treating these as commercial receipts and charging them to tax in accordance with the provisions of section 164(2).

11. We have gone through the order in the case of Acharya Jiyalal Vasant Sangeet Niketan Vs. ITO(E) 127 taxmann 582 wherein it was held that,

"Section 2(15) of the Income-tax Act, 1961 - Charitable purpose (Proviso to section 2(15) Assessment years 2010-11 & 2012-13 - Whether newly inserted proviso to section 2(15) will not apply in respect of first three limbs of section 2(15), i.e., relief of poor, education or medical relief, and consequently, where purpose of a trust or institution is relief of poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves carrying on of commercial activities - Held, yes - Assessee was a charitable trust engaged in imparting education in field of classical music and light music based on Gurukul Philosophy, where student learns by virtually staying with Guru - Trust had a studio, namely, 'Ajivasan Sounds' which was used for purpose of training students in professional singing and same was also made available to various artists for purpose of recording - It received studio charges from various artists during year under consideration - Assessing Officer observed that activity of making available studio to artist was conducted with an intention to make profits in shield of charitable activities and, accordingly, he brought to tax income of studio charges as business income, by applying provisions of section 11(4A) and further disallowed expenditure incurred by assessee towards 'Adivasan Sounds' whether Maintenance of studio was intrinsic and in pursuance of objects of assessee which was education as teaching of Indian Classical Music was within field of 'education' - Whether since activities of studio were carried on in order to achieve main object of Trust and could not be construed as business, proviso to section 2(15) did not apply - Held, yes [Para 7.2][In favour of assessee]"

12. The Tribunal held that maintenance of studio is intrinsic and in pursuance of the objects of the assessee. In this case, the running of the "studio" is intrinsic part of the activities of the charitable trust and hence, the incidental income derived out of such studio was also treated as charitable in nature.

13. We have also gone through the order of Hon'ble High Court of Karnataka in the case of CIT Vs. Krupanidhi Educational Trust (441 ITR 154), the Hon'ble Court has analyzed the provisions of Section 2(15) and held that the incidental income earned in carrying the activities of charitable purpose is out of the purview of Section 2(15). The relevant part of the order of the Hon'ble High Court is as under:

"In the light of these judgments, we have analyzed the facts of the present case. It is not in dispute that the assessee is imparting education, as such proviso to section 2(15) of the Act introduced by the Finance Act, 2008 would not be applicable. At this juncture, it would be profitable to refer to the Circular No. 11 of 2008 dated December 19, 2008 [(209) 308 ITR (St.) 5] issued by the Central Board of Direct Taxes. Having regard to the proviso inserted to Section 2(15) amended vide Finance Act, 2008 wherein, it has been clarified that the newly inserted proviso to Section 2(15) will not apply in respect of the first three limbs of Section 2(15), i.e. relief of the poor, education and medical relief. Consequently, where the object of trust or institution is, relief to the poor, education or medical relief, it will constitute "charitable purpose" even if it incidentally involves in carrying of commercial activities."

14. The substantial questions dealt by the Hon'ble High Court are as under:

"1. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in holding that there was no violation of Section 13(1)(c) of the Income Tax Act, 1961, while not considering the facts and material brought on record by the Assessing Officer for the period in question; and the Tribunal has erred in not adjudicating on the issue of denial of deduction in its proper perspective?"

2. Whether collection of capitation fees in the name of voluntary contribution and generation of huge surplus would tantamount to commercialization of education by the assessee and, therefore, the assessee - institution was rightly not considered by the Assessing Officer as existing solely for educational purposes within the meaning of Section 2(15) or Section 10(23C) of the Income Tax Act, 1961 and the Tribunal has erred in dismissing the appeal of the Revenue on the issue of generation of huge surplus without appreciating the material on record."

15. In the said case, the Hon'ble High Court of Karnataka held that the incidental income is out of the purview of the provisions of Section 2(15).

16. Further, we have gone through the judgment of Hon'ble Supreme Court in the case of Director of Income-tax (Exemptions) vs. Delhi Public Schools Society [2018] 100 taxmann.com 80 (SC) SPECIAL LEAVE PETITION (CIVIL) DIARY NOS. 38347 OF 2018 NOVEMBER 12, 2018 held as under:

"Section 10(23C), read with sections 2(15) and 11, of the Income-tax Act, 1961 - Educational institutions (Sub-clause (vi)) - Assessment year 2008-09 - Assessee society was set up with main object to establish educational institutions - Assessee had been enjoying exemption under section 10(22) since assessment year 1977-78 and in view of substitution of section 10(22) with section 10(23C)(vi) with effect from 1-4-1999, assessee applied for approval of exemption under section 10(23C)(vi) for assessment year 2008-09 onwards - Additional Director rejected assessee's application on grounds that assessee had entered into franchise agreements for opening schools and franchisee fee received by it from satellite schools in lieu of its name, logo and motto amounted to a

'business activity' with a profit motive and no separate books of account were maintained by assessee for business activity as required under section 11(4A) - High Court by impugned order held that since assessee had maintained accounts in compliance to seventh proviso to section 10(23C)(vi) and section 11(4A) which was audited in detail and, further, surpluses accrued in form of franchisee fee from satellite schools were fedback into maintenance and management of assessee schools themselves, assessee had fulfilled requirements to qualify for exemption under section 10(23C)(vi) - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [Paras 30, 31 and 33] [In favour of assessee]"

17. The Hon,ble supreme court allowed the appeal as the assessee had maintained separate books of accounts as per the provisions of Section 11(4A).

18. In the light of the various judgments mentioned above, we have gone through the relevant facts pertaining to the "School Management and Operation Agreement" entered between the assessee and "Riveridale Preparatory School Society"

19. The relevant portion of the said agreement are as under:

"PERIOD OF AGREEMENT

1. This Agreement shall be effective from the date of signing of this Agreement by both Parties and shall continue to be in full force till the end of twenty five academic sessions i.e. till the 31st day of March 2032.

2. RPSS shall intimate in writing to BSCT, at least one academic year prior to the effective date of termination as declared above, its desire to renew the Agreement. Thereafter, in case BSCT agrees to the renewal, it may be renewed on such fresh terms and conditions as may be mutually agreed upon.

3. *The termination of the agreement shall be guided by the manner in which the education of existing enrollments is to be completed so that the commitments to such students can be fulfilled. RPSS hereby agrees to extend full co- operation to BSCT to ensure the fulfillment of commitments to the students so as not to affect or harm the reputation of BSCT and/or Vivek High School.*

MANAGEMENT FEE TO BSCT

1. *In consideration of rendering the managerial, technical, educational, and co- curricular services in running the school under the brand name of "Vivek High School", RPSS shall pay management fee to BSCT at the rate of 12% of Net School Fees as defined herein above.*

2. *Any indirect tax including service tax, cess, fee or surcharges or any government levy of any type applicable currently or in future on the above management fee will be payable by RPSS. The law of the land is to be followed in all cases. However, the incidence of Income Tax (if any) on the above management fee shall be borne by BSCT.*

PREMISES

1. *The School is situated on the lard measuring 1.67 acres allotted to RPSS at Sector 70, Mohali, Punjab by Punjab Urban Development Authority (PUDA).*

2. *RPSS shall be responsible to provide the School building and such other infra-structural facilities as may be advised by BSCT from time to time to run a school, BSCT would normally estimate and present to RPSS the required infra-structural facilities before the start of each academic session and such requirements shall be jointly agreed upon by both the parties.*

3. *RPSS shall make available the above referred to School building exclusively to BSCT for running the school throughout the period of this agreement. No activity other than teaching the students of School under the supervision and control of BSCT shall be carried on in the School building. However, any change in this clause if required can be discussed and if mutually acceptable shall be implemented.*

OPERATION OF BANK ACCOUNTS

- 1. The Gross School Fees as defined herein above shall be collected by BSCT on annual and/or quarterly basis from students. Gross School Fees received by BSCT shall be deposited in a separate bank account in the School's name. Such monies shall not be mixed with the BSCT's or RPSS's own funds.*
- 2. The above bank account shall be operated jointly by the authorized representatives of BSCT and authorized representatives of RPSS.*
- 3. Caution Money and Building Fund included in the Gross School Fee shall be transferred to a separate bank account of RPSS on quarterly basis within one month from the beginning of the relevant quarter. The amount of Caution Money and Building Fund shall be transferred without making any deduction therefrom. RPSS shall decide upon the utilization of this amount. Any interest earned on this amount shall be the right of RPSS.*
- 4. Management Fee as specified herein above shall be transferred to a separate bank account of BSCT on quarterly basis within one month from the beginning of the quarter. The amount of management fee shall be transferred without making any deduction therefrom.*
- 5. The balance in the bank account referred to in clause 1 shall be transferred to RPSS on quarterly basis within one month from the end of the relevant quarter*
- 6. Operating Expenses as defined herein above shall be met out of a separate bank account maintained for such a purpose. Such a bank account shall be maintained on imprest basis. The amount of imprest shall be Rupees Five Lacs (Rs. 5 Lacs), which may be changed in the future with the consent of both the parties. The amount of operating expenses incurred from such a bank account shall be reimbursed from the bank account maintained for depositing Gross Fees referred to in clause 1, on fortnightly basis within one week from the end of every fortnight.*
- 7. The imprest account referred to in clause 5 shall be operated by duly authorized representatives of BSCT only.*

8. *In the event of withdrawal of any student from the School, the Caution Money or any other refundable deposit becoming refundable to such a student shall be paid by BSCT on behalf of RPSS from the imprest account referred to in clause 5 herein above and the deficiency if any shall be met by RPSS by way depositing the amount of such deficiency in said account.*

LIABILITY AND MUTUAL INDEMNITY

1. *Nothing contained herein shall be construed to make the parties hereto partners or joint ventures or to render either party hereto, liable except as herein expressly provided.*

2. *RPSS shall at all times will and sufficiently indemnify BSCT and keep BSCT indemnified against all abilities, (including income tax, service tax, sales tax and other tax liabilities) debts, or obligations, of RPSS and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever, which may be taken or made against BSCT in respect thereof.*

3. *HSCT shall at all times will and sufficiently, indemnify RPSS and keep RPSS indemnified against all liabilities (including Income Tax, service tax, sales Tax and other tax liabilities). debts or obligations of BSCT and against all actions, suits, proceedings, claims, demands, costs and expenses, whatsoever, which may be taken or made against RPSS in respect thereof.*

DEFAULTS AND REMEDIES

Failure on the part of RPSS to comply with any of the conditions or covenants mentioned hereinabove shall entitle BSCT to rescind the Agreement. In addition, RPSS shall compensate BSCT for all losses or damages, sustained by it due to such rescinding of the agreement.

ROPRIETORY INFORMATION

1. *RPSS undertakes all times, during the term of the agreement and after the expiry of the same to hold in strictest confidence, and not to use, except for the benefit of BSCT, or to disclose to any person, firm or*

corporation without written authorization of BSCT any Proprietary Information as defined herein above of BSCT that RPSS obtains.

2. RPSS further agrees not to make copies of such Proprietary Information, or attempt to derive the composition or underlying information, structure or ideas of any of BSCT's or Vivek High School's Proprietary Information except as authorized by BSCT.

3. RPSS shall not in any way part with the Proprietary Information or allow any unauthorized use thereof.

4. RPSS shall not file any trade mark, copyright and/or patent application or claim anywhere, in the Country, referring to the brand name "Vivek High School, the insignia/emblem of "Vivek High School, the teaching methodology, training methodology, other system or method or manual of BSCT or Vivek High School used in the course of management, operation or training or other confidential information disclosed to RPSS by BSCT."

20. On going through the various clauses of the "School Management and Operation Agreement", we find that the agreement is totally commercial in nature.

21. Provisions of Section 2(15) reads as under:

"Section 2.....

(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce

or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;”

22. The assessee can be considered for the activities for charitable purpose in relation to the “education” with regard to their own activities, the other activities fall under “any other object of general public utility”. The assessee trust having requisite experience and technical expertise to one school has been approached by “Riveridale Preparatory School Society” (RPSS) to provide “in consideration of fees”, managerial, technical, educational and co-curricular services (clause 5/6 page-3). Further the RPSS made it clear to the assessee that it is completely convinced about the “business potential” of the “school venture” and is willing to take associated “business risk” (clause 9 page - 4). Based on the business potential of RPSS on the representation and assumption, the assessee has agreed to provide its managerial, technical, educational, co-curricular services in running of the school named “Vivek High School” (clause 10 page - 4). Further, the assessee also precluded from entering into another agreement to provide its managerial, technical, educational, co-curricular services in running of the school in the name of “Vivek High School”

(clause 11 page - 4). Thus, we find that the management agreement is a commercial activity as per the provisions of Section 2(15) in relation to advancement of any other object of general public utility. The provision to Section 2(15) clearly expounds that any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. We have also considered whether the activity of the assessee falls in the nature of activity undertaken in course of actual carrying out of the objects of the trust and if it is incidental to the objects of the trust. Providing managerial, technical, consultancy to another entity in the facts of the instant case cannot be considered as incidental to the activities of the trust. The managerial and technical activities undertaken by way of "School management and operation agreement" is neither an integral part of the objects of the assessee nor incidental to the objects of the assessee nor it is incumbent upon the assessee to undertake such activity. It is a conscious decision taken by the assessee to engage himself into management consultancy for a predetermined fee. Reliance is being placed on the judgment of Hon'ble Supreme Court in the case of M/s New Noble Educational Society Vs. CCIT in Civil Appeal No. 3795 of 2014 wherein what constitutes "incidental" to educational activity and what constitutes "solely" with regard to education purpose and charitable activity have been enunciated. The relevant para of the judgment of the Hon'ble Apex Court is as under:

"In view of the above discussion, it is held that charitable institutions and societies, which may be regulated by other state

laws, have to comply with them- just as in the case of laws regulating education (at all levels). Compliance with or registration under those laws, are also a relevant consideration which can legitimately weigh with the Commissioner or other concerned authority, while deciding applications for approval under Section 10(23C).

71. This reasoning equally applies especially in Section 11(4A) which speaks of profits incidental which specifies that exemption in relation to income or trust of an institution which are profits or means of business cannot be exempted 'unless the business is incidental, trust or as the case may be institution and separate books of accounts are maintained by such trusts or institution in respect of such business'. Thus, the underlying objective of seventh proviso to Section 10(23C) and of Section 11(4A) are identical. These have to be read in the light of the main provision which spells out the conditions for exemption under Section 10(23C) - the same conditions would apply equally to the other sub-clauses of Section 10(23C) that deal with education, medical institution, hospitals etc.

72. What then is 'incidental' business activity in relation to education? Imparting education through schools, colleges and other such institutions would be per se charity. Apart from that there could be activities incidental to providing education. One example is of text books. This court in a previous ruling in Assam State Text Book Production & Publication Corpn. Ltd. v. Commissioner of Income Tax has held that dealing in text books is part of a larger educational activity. The Court was concerned with State established institutions that published and sold text books. It was held that if an institution facilitated learning of its pupils by sourcing and providing text books, such activity would be 'incidental' to education. Similarly, if a school or other educational institution ran its own buses and provided bus facilities to transport children, that too

would be an activity incidental to education. There can be similar instances such as providing summer camps for pupils' special educational courses, such as relating to computers etc., which may benefit its pupils in their pursuit of learning.

73. However, where institutions provide their premises or infrastructure to other entities, trusts, societies etc., for the purposes of conducting workshops, seminars or even educational courses (which the concerned trust is not actually imparting) and outsiders are permitted to enroll in such seminars, workshops, courses etc., then the income derived from such activity cannot be characterised as part of education or 'incidental' to the imparting education. Such income can properly fall under the other heads of income.

74. In *R.R.M Educational Society's* appeal before this court, the charitable status of the appellant within Section 10(23C) was denied inter alia on the ground that the institution was not merely imparting education but also was running hostels. It is clarified that providing hostel facilities to pupils would be an activity incidental to 29 Assam State Text Book Production & Publication Corpn. Ltd. v. Commissioner of Income Tax, (2009) 17 SCC 391 imparting education. It is unclear from the record whether R.R.M Educational Society was providing hostel facility only to its students or to others as well. If the institution provided hostel and allied facilities (such as catering etc.) only to its students, that activity would clearly be 'incidental' to the objective of imparting education.

75. The last ground urged was with respect to the refusal by the Commissioner to register certain institutions who had amended their objectives. This court is of the opinion that the impugned judgment cannot be faulted with in rejecting the challenge by the appellant societies and trusts, because the requirement of trust or societies applying for registration or approval under the provisos to Section

10(23)(C) spell out a specific time (before 30 September). As the High Court has observed, there is no provision to extend such a deadline. In the circumstances for the concerned year, the reasoning of the High Court in refusing to interfere with the concerned authorities decisions to approve or reject the registration of the institution, is hereby affirmed.

76. The conclusions of this court are summarized as follows:

a. It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.

b. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C) of the IT Act. At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.

c. The seventh proviso to Section 10(23C), as well as Section 11(4A) refer to profits which may be 'incidentally' generated or earned by the charitable institution. In the present case, the same is applicable only to those institutions which impart education or are engaged in activities connected to education.

d. The reference to 'business' and 'profits' in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of business which is 'incidental' to educational activity – as explained in the earlier part of the judgment i.e., relating to education such as

sale of text books, providing school bus facilities, hostel facilities, etc.

e. The reasoning and conclusions in American Hotel (supra) and Queen's Education Society (supra) so far as they pertain to the interpretation of expression 'solely' are hereby disapproved. The judgments are accordingly overruled to that extent.

f. While considering applications for approval under Section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The observations made in American Hotel (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment. Whilst that reasoning undoubtedly applies to newly set up charities, trusts etc. the proviso under Section 10(23C) is not confined to newly set up trusts – it also applies to existing ones. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.

g. It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc. This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from 01.04.2021.

77. In a knowledge based, information driven society, true wealth is education – and access to it. Every social order accommodates, and even cherishes, charitable endeavour, since it is impelled by the desire to give back, what one has taken or benefitted from society. Our Constitution reflects a value which equates education with charity. That it is to be treated as neither business, trade, nor commerce, has been declared by one of the most authoritative pronouncements of this court in T.M.A Pai Foundation (supra). The interpretation of education being the 'sole' object of every trust or organization which seeks to propagate it, through this decision, accords with the constitutional understanding and, what is more, maintains its pristine and unsullied nature.

78. In the light of the foregoing discussion, the assessee's appeals fail. It is however clarified that their claim for approval or registration would have to be considered in the light of subsequent events, if any, disclosed in fresh applications made in that regard. This court is further of the opinion that since the present judgment has departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the present judgment operates hereafter. As a result, it is hereby directed that the law declared in the present judgment shall operate prospectively. The appeals are hereby dismissed, without order on costs."

23. It is also a fact on record that the assessee has not maintained separate books of accounts as envisaged u/s 11(4A). Hence, keeping in view the provisions of Section 2(15), Section 11(4A), the facts of the case that the receipt of consultancy fee which is in the nature of commercial receipt and

keeping in view the order in the case of Acharya Jiyalal Vasant Sangeet Niketan Vs. ITO(E) (supra), judgments of Hon'ble jurisdictional High Court in the case of DIT Vs. National Association of Software & Services Companies (supra), Hon'ble High Court of Karnataka in the case of CIT Vs. Krupanidhi Educational Trust (supra), Hon'ble Apex Court in the case DIT Vs. Delhi Public School (supra), M/s New Noble Educational Society Vs. CCIT (supra), we decline to interfere with the order of the Id. CIT(A).

24. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 17/07/2023.

Sd/-

(Saktijit Dey)
Vice President

Dated: 17/07/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR