

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2031/Del/2021
(ASSESSMENT YEAR 2012-13)**

**ITA No.2032/Del/2021
(ASSESSMENT YEAR 2013-14)**

S.D. Education Society C/o Girish Aneja, CA 796, Sector-13, Urban Estate, Karnal Haryana-132 001 PAN-AABAS 5001P	Vs.	ITO, Exemption Aayakar Bhawan BC Bazar, 2 nd floor, room No. 208, Ambala Cantt Ambala (Haryana) 133001
(Appellant)		(Respondent)

Appellant by	Sh. Girish Aneja, CA
Respondent by	Ms. Sapna Bhatia, CIT-DR
Date of Hearing	06/11/2023
Date of Pronouncement	22/12/2023

ORDER

PER YOGESH KUMAR U.S., JM:

Both the appeals by the Assessee are against the order of Learned Commissioner of Income Tax (Appeals), Karnal ["Ld. CIT", for short], dated 28/02/2020 for Assessment Years 2012-13 & 2013-14 respectively.

2. The common grounds taken in both appeals except variance of figures are as under:

“1. That on the facts and circumstances of the case, the Ld. CIT Appeals has erred in law and on facts in not appreciating the order dated 31/07/2013 of the Hon'ble ITAT, NEW DELHI Bench "G" in ITA No. 5276/DEL/2012 for the AY 2009-10 in the case of the Assessee which could judiciously be applied to this year too.

2. That on the facts and circumstances of the case, the order of the A.O in assessing income of the assessee @ Rs 1,25,42,875/- is bad in law and the Ld. CIT(Appels) has further erred in confirming the same.

3. The A.O has erred in law and on facts by mechanically following the action of the Ld. CCIT Panchkula in denying the benefit of Circular No: 7/2010 to the assessee, ignoring the binding and benevolent nature of the CBDT Circulars and the Ld. CIT(Appels) has further erred in not appreciating the contention of the assessee.

4. That the Appellant craves to add, amend or delete any ground(s) of appeal before or during the hearing of the appeal.”

3. In both the Appeals the assessee has challenged the order of the ld. CIT(A), Karnal, dated 28/02.2020 for the Assessment Year 2012-13 and 2013-14 respectively. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) failed to consider the order dated 31/07/2013 of the Co-ordinate Bench of the Tribunal in ITA No. 5276/Del/2012 for Assessment Year 2009-10 and committed an error in confirming the addition of Rs. 1,43,90,207/- (Assessment Year 2013-14) and Rs. 1,25,42,875/- (Assessment Year 2012-13) and also failed to give benefit of Circular No. 7/2010

to the assessee ignoring the binding and benevolent nature of CBDT Circular.

4. The Ld. Departmental Representative by relying on the orders of the Lower Authorities supported the same and sought for dismissal of the Appeal filed by the assessee.

5. We have heard both the parties and perused the material available on record. During the course of assessment proceedings for A.Y 2012-13, it was observed by the A.O. that the assessee-society has filed its returned income at Nil by claiming exemption u/s 10(23C)(vi) of the IT Act, 1961, the assessee was asked to produce the exemption certificate u/s 10(23C)(vi) granted by the CCIT, PKL. In response, the Assessee filed reply as under:-

"The assessee claims exemption u/s 10(23C)(vi) of the Act in view of the exemption order dated 26/03/2008 of the Chief Commissioner of Income Tax Panchkula read with CBDT Circular No. 7/2010 dated 27.10.2010. In this regard, it is submitted that the assessee applied for Exemption u/s 10(23C)(vi) of the Act with effect from AY 2006-07 onwards and in response thereof exemption was granted u/s 10(23C)(vi) for the assessment years 2007-08 to 2008-09 vide order dated 26/03/2008 of CCIT, Panchkula. It was

however refused for AY 2006-07 on technical grounds that the application was late. The assessee moved the High court in CWP No. 1469 and the Hon'ble court vide order dated 10/08/2009 held the assessee's application to be in time and the Ld. CCIT was directed to consider the case afresh for AY 2006-07. Thereafter, fresh proceedings were initiated for ASSESSMENT YEAR 2006-07. At the same time, relying on the judgment of Uttarakhand High Court rendered in the case of A/s Queens Educational Society, review proceedings were also initiated for AY's 2007-08 and 2008-09. Vide a single order dated 12/01/2010 the Ld. CCIT rejected the Exemption for AY 2006- 07 and withdrew the Exemption already granted for AY's 2007-08 and 2008-09. The assessee again moved the High Court in CWP No.7544 and the Hon'ble Court vide order dated 20/05/2010 quashed the CIT order dated 12/01/2010 and directed the Ld CCIT to pass fresh orders only in accordance with the law as laid down in the PINEGROVE judgment. The Hon'ble H.C. in this lead case of 'PINEGROVE INTERNATIONAL TRUST' held that the exemption could be denied only within the 13th proviso and that investment in fixed assets is an application of Income for the purposes of section 10(23C)(vi) while holding that the judgment of Uttarakhand H.C rendered in relation to section 10(23C)(iad) could not be applied which had also failed to appreciate certain important observations of the apex court. The P&H High court while quashing the orders further directed the authorities to pass any order only in accordance with the principles of law as culled out in the PINEGROVE's judgment. Fresh proceedings were initiated by the CCIT. During the pendency of the fresh proceedings, the CBDT vide Circular No: 7/2010 dated 27/10/2010 clarified that all orders of exemption granted on or after 01/12/2006 would be one time approvals which would be valid until withdrawn. As

the assessee was granted Exemption for AY's 2007-08 & 2008-09 vide order dated 26/03/2008, an application was moved before the CCIT on 25/11/2010 requesting modification of the earlier exemption order dated 26/03/2008 in consonance with the Circular No: 7/2010 dated 27/10/2010 and to treat the application for renewal for AY 2009-10 onwards as withdrawn in view of the clarificatory Circular No 7/2010. Ignoring the binding purpose of the Board's Circulars, the Ld. CCIT vide order dated 22/02/2011 refused Exemption for the AY 2009-10 onwards against which the High Court has been moved in CWP No. 10104/2011 which stands admitted. The Ld. CCIT vide another order dated 14/02/2011 conveyed that the proceedings for AY 2007-08 and 2008-09 are to be kept in abeyance till the decision of certain SLP's filed by the department in the Supreme Court. The SLP's have been filed by the department against the orders of the P&H High Court in the PINEGROVE case and similar cases. It has been filed against the assessee's case also (CWP No. 7544/2010). However, no stay has been granted by the Supreme Court to the Department. It is thus seen that the order of Ld. CCIT withdrawing exemption for A.Y.'s 2007-08 & 2008-09 stands quashed. The exemption order dated 26.3.2008 thus stands restored. Further proceedings have been kept in abeyance. Vide circular No. 7/2010 dated 27/10/2010 the CBDT clarified that all approvals issued on or after 01//12/2006 under sub clause (vi) or (via) of section 10(23C) would be one time approval which would be valid till withdrawn. The Act permits withdrawal of an exemption granted earlier only if the conditions of the 13 proviso to section 10(23C) have not been applied to the Exemption order dated 26.3.2008 till date. In view of the binding nature of the CBDT Circulars, specifically circular No. 7/2007 in the present context and also in view of the fact that

the Exemption order dated 26.3.2008 stands restored and has not been withdrawn till date under the 13th proviso to section 10(23C) or under any other enabling provision of the Act, it is most humbly submitted that the Exemption u/s 10(23C)(vi) of the Act is available to the assessee for the A.Y. 2012-13 as well."

6. It was specific case of the Assessee before the A.O. that, the assessee has been granted exemption for A.Y. 2012-13 vide worthy CCIT, PKL;s order dated 26.3.2008 r.w. sec. CBDT Circular No. 7/2010. *The contention of the Assessee has been considered by the A.O. and the same has been rejected for following reasons:-*

1. This argument has been presented in the same form before the Ld. CCIT, Haryana Region, during the proceedings that led to Ld. CCIT's order dated 07.02.2011. The Ld. CIT has already dealt with this issue in para 8 & 9 of his order dated 07.02.2011.

2. After taking into account all facts of the case and the existing law, the Id. CCIT,PKL has explicitly denied his approval to the society for the A.Y. under consideration vide his order dated 14.2.2011. As per section 10(23C)(vi) of the IT Act approval by the prescribed authority (which is the Chief Commissioner) is a necessary condition to be met for exemption. Hence, income of the society is not exempt u/s 10(23C)(vi) of the I.T. Act as no order granting approval u/s 10(23C)(vi) exists as on date for the assessment year 2012-13."

7. The ld. A.O. computed the income by considering the excess of income over expenditure shown at Rs. 1,25,42,875/- for the Assessment Year 2012-13 and in similar way computed income of Rs. 1,43,90,207/- as income of the assessee for Assessment Year 2013-14.

8. The Ld. CIT(A) vide order impugned while confirming the said addition made by the A.O. held as under:-

“I have examined the facts of the case and the submissions made by the appellant. In these cases, addition was made on account of excess of income over expenditure and assessed at the Maximum Marginal Rate treating the assessee as an A.O.P.

It has been clearly stated that the appellant society's income is not exempt, as no order granting exemption exists as on date. In view of this fact, it is a foregone conclusion that income accruing to the appellant is to be taxed. Therefore, the appeals are dismissed.”

9. The Ld. Counsel has brought to our notice on the order passed in Assessee's own case for AY 2009-10 in ITA No. 5276/Del/2012 dated 31st July, 2013 wherein the Co-ordinate Bench of the Tribunal has remanded the matter to the file of the A.O. with a direction to decide the same after the outcome of the application for

exemption is decided. The observation of the Co-ordinate Bench of the Tribunal is as under:-

“4. Having gone through the order dated 30.4.2013 of the Tribunal in the case of Dayal Singh College vs. ACIT (Supra), we find that under similar facts and circumstances an identical issue has been set aside and restored to the file of the AO with direction to decide the same after outcome of the fate of assessee’s application for exemption sought u/s 10(23C)(Vi) of the Act. The facts in brief are that the assessee is a registered trust / society. Earlier it was eligible for exemption u/s 10(22) of the Act. Thereafter consequent to introduction of section 10(23C) of the Act also the exemption was granted u/s 10(23C) (vi) of the Act. In the case of S.D. Education Society the Ld. CCIT Panchkula granted exemption u/s 10(23C) (vi) of the Act per order dated 26.3.2008. An application to give effect of the CBDT circular No. 7/2010 dated 27.10.2010 to the exemption order dated 26.3.2008 was moved on 25.11.2010 before the CCIT Panchkula seeking a formal rectification order modifying the period of validity to asstt. year 2007-08 onwards. The same was refused by the Ld. CCIT, Panchkula against which the appellant moved Hon’ble P & H High Court vide writ petition. The Hon’ble High Court was pleased to quash the order of the Ld. CCIT whereby he had refused and directed the Ld. CCIT to pass fresh order in accordance with the law as laid down by the Hon’ble P & H High Court in the case of Pinegrove International Trust. The Ld. CCIT however in the fresh proceedings also without appreciating the CBDT circular and the pine grove judgment refused the application for exemption against which assesee is before the Hon’ble P & H High Court which has been admitted. Meanwhile the department has moved to the

Hon'ble Supreme Court against the Pinegrove International Trust judgment and other connected cases including the assessee's writ petition by way of SLP. Department SLP is still pending and no stay of any kind therein has been granted by Hon'ble Supreme Court. In view of these facts it has been prayed by the appeals that as on today the assessee's writ petitions before Hon'ble P & H High Court and department SLP before the Hon'ble Supreme Court remains pending. The outcome of these proceedings will decide the fundamental question about grant of exemption. Since the present assessment has been framed on the basis that Ld. CCIT has refused the assessee's application for extension of exemption ends of just will meet after the assessment in question is set aside back to the file of the AO to decide the same after the issue about assessee's application for the exemption is decided. Similar are the facts and prayer in the case of SBS Balwant Singh Technical & scientific Educational Society. We thus respectfully following the decision of the Tribunal under similar facts and circumstances on an identical issue in the case of Dayal Singh College Trust Society vs. ACIT (supra) set aside and restore the matter back to the file of the AO with direction to decide the same after the outcome of fate of application for exemption is decided."

10. By respectfully following the order of the Co-ordinate Bench in Assessee's own case in ITA No. 5276/ & 5274/Del/2012 for AY 2009-10, we remand the issues involved in the present Appeals for A.Y 2012-13 and 2013-14 to the file of the A.O. with a direction to decide the same after the outcome of the fate of the application for

exemption is decided. All the contention of both the parties are kept open.

11. In the result, Appeals filed by the Assessee in ITA No. 2031/Del/2021 and 2023/Del/2021 are partly allowed for statistical purpose.

Order Pronounced in the Open Court on 22nd December, 2023.

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

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 22/12/2023

Pk/R.N, Sr. ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI