

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: VIRTUAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 115/Chd/2020

निर्धारण वर्ष / Assessment Year :

Himachal Pradesh Technical University Old SDM Office, Gandhi Chowk, Hamirpur H.P.	बनाम	CIT(E) Chandigarh
स्थायी लेखा सं./PAN NO: AAATH9345M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Amitoz Singh Kamboj, CA

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 02/01/2024

उद्घोषणा की तारीख/Date of Pronouncement : 28/03/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(E), Chandigarh dt. 27/11/2019.

2. In the present appeal, the assessee has taken the following revised grounds of appeal:

1. That the Id. CIT(E) have erred on facts and law in passing the order under section 10(23C)(vi) of the Income Tax Act, 1961 dated 27/11 /2019, rejecting the claim of the exemption, when the University is actively engaged in education activity from the year of its inception of 2015 and the entire activity is within the frame work of the bye laws of the University, hence the approach of the lower authority is not a judicious approach.

2(a). That the Id. CIT(E) have erred on facts and law by passing an order u/s 10(23C)(vi) rejecting the application by saying that the appellant is generating Surplus, parking its funds in FDR & not filling Income Tax Returns and thus is not been running solely for educational purposes but for the purpose of profit without appreciating the judgment of Hon'ble Apex Court in the case of Queen's Educational Society vs. CIT (2015) 372ITR 699 and New Noble Educational Society vs. CCIT (2022) 143 taxmann.com 276

2(b). That the Id. CIT(E) have erred on facts and law by passing an order u/s 10(23C)(vi) rejecting the application by saying that the appellant is generating Surplus and parking its funds in FDR without taking into consideration the capital expenditure incurred by appellant and furthermore ignoring the fact that said surplus has been ploughed back for education purposes.

3. That in any view of the matter the order passed under section 10(23C) (vi) of the Income Tax Act dated 27/11/2019 by rejecting the application of the appellant by saying that the Society was

providing educational activities on commercial basis, unverified subsidized fee structures and non-verification of utilisation of University Development Fund, is wholly misconceived and uncalled for and therefore the same is liable to be quashed.

4. That the Id. CIT(E) has erred in law by applying the ruling of Hon'ble ITAT, Chandigarh Bench in the case of IK Gujral Punjab Technical University vs. CIT(E) ITA No. 910/Chd/2017 dated 23/02/2018 whereas the facts of the said case differs from the appellant case.

5. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

3. Briefly the facts of the case are that the assessee society has been created by an Act called as HP Technical University Act 2014 passed by the State of Himachal Pradesh on 18/01/2015. The assessee society moved an application before the Ld. CIT(E) seeking grant of approval under section 10(23C)(vi) of the Act on 25/11/2018. In order to examine the application, the Ld CIT(E) called for certain information/ documentation on 23/09/2019 and 7/11/2019. In response, the assessee filed its submission on 04/10/2019 and thereafter on 11/11/2019 and considering the submissions so filed but not finding the same acceptable, the assessee's application seeking grant of approval under section 10(23C)(vi) was rejected by passing the impugned order on 27/11/2019.

4. Against the said order and the findings of the Ld. CIT(E), the assessee is in appeal before the us.

5. Before we advert to the submission of the Ld. AR, it would be relevant to refer to the findings of the Ld. CIT(E) which are contained in para 7 of the impugned order and the contents thereof read as under:

"7. Reply for above queries was received through e-mail on 11.11.2019 and the same was also received through post on 19.11.2019. The replies submitted by the applicant on 04.10.2019 and 11.11.2019 have duly been considered and following issues emerge:-

(i) The applicant has submitted that the university has been established through an Act enacted by the Legislative Assembly of Himachal Pradesh and land has been provided by the Government of Himachal Pradesh. On perusal of financial statements submitted by the applicant, it has been gathered that the university has been generating surplus year after year. The details of same are as under:-

F.Y.	Amount of Surplus
2015-16	16,49,73,077/-
2016-17	19,42,79,455/-
2017-18	21,18,45,078/-
2018-19	15,57,30,174/-

The university has not paid Income Tax and has not filed Income Tax Returns for any Assessment Year. In the absence of non-payment of taxes on admitted surplus and non-filing of ITR, the activities of the

university cannot be considered as genuine. The grant of exemption u/s 10(23C)(vi) in such case will be a carte blanche for the applicant who did not pay taxes, to flout the law with impunity. The applicant has been earning huge profit every year which squarely establish that the fact that the University has not been running solely for educational purposes but for the purpose of profit.

The surplus so generated has been parked in FDRs which has shown an increasing trend as follows:-

FDR as on	Amount
31.03.2016	42,95,47,832/-
31.03.2017	55,88,00,997/-
31.03.2018	62,15,19,825/-
31.03.2019	73,82,09,980/-

Parking of surplus so generated in FDRs makes it clear that the activities of the applicant are not solely for education. To that extent, the University fails in its quest on the ground that it exists for profits.

(iii) The other aspect which tends to give impression that the applicant is doing educational activities on commercial basis is that a total of 57 affiliated colleges are being run under the aegis of University. Perusal of objects also substantiates the above fact. On perusal of income and expenditure account is for F.Y. to 2015-16 to 2018-19, it has been gathered that the University has income mainly from following heads:-

Income Head	Income received in F.Y.			
	2015-16	2016-17	2017-18	2018-19
Affiliation Fees	99,50,000/-	91,25,000/-	95,25,000/-	85,75,000/-
Counseling Fees	57,00,000/-	48,95,00/-	46,00,000/-	39,50,000/-
Inspection Fees	47,25,000/-	39,75,000/-	41,55,000/-	39,00,000/-
Interest on FDR	2,03,74,739/-	3,76,31,420/-	6,47,82,961/-	5,09,52,879/-
University Development Fund	4,27,59,497/-	3,70,90,000/-	3,37,96,950/-	3,05,97,000/-

There is no evidence brought out on behalf of the applicant that these fees are not guided by commercial interest. The charges on account of granting affiliation and counselling have been received by the applicant. Affiliating colleges and charging fee for the same amounts to commercial activities. The income received in above heads reflects the commercial activities of the University.

(iv) The applicant was required to provide details of Income received under the head "University Development Fund". In response, it has supplied ledger account for the same. No documentary evidence, as to how the amount has been spent only for educational purpose, has been supplied by the applicant. In absence of the same, genuineness of the same could not be established.

(v) The applicant has submitted fee structure charged by the colleges affiliated to it. However, the fee structure charged by the University for Courses offered in its own campus has not been provided by it. In absence of the same it cannot be ascertained that whether subsidization of education has been put forth by university or not."

6. The Ld. CIT(E) also referred to the various authorities on the subject as well as decisions of the Coordinate Benches and has thereafter given his concluding findings which are contained in para 8 of the impugned order and the contents thereof read as under:

"8. In view of above discussion, the claims of the applicant for approval u/s 10(23C) can't be ascertained. Taking all the aforesaid into consideration it is difficult to verify the activities of the society and come to the conclusion that it exists solely for education. The applicant has been operating on a

profit making basis in the past and not paying taxes thereupon. It's another matter that no Income Tax Returns have been filed by the applicant. In the totality of circumstances, the application u/s 10(23C)(vi) for grant of approval is accordingly rejected."

7. Now coming to the contentions advanced by the Ld. AR. It was submitted that mere generation of surplus out of receipt and depositing the same in Fixed Deposit (FDRs) cannot form the basis for rejection of application under section 10(23C)(vi) of the Act where the surplus has to be utilized for the purpose and the objectives for which the University was set up.

8. It was submitted that mere accumulation of surplus from year to year cannot be said to be an activity of profit making. It was submitted that the University has been created by the Act passed by the State of Himachal Pradesh and that it has not done any other activity except educational activity. It was submitted that all the officers of the University including the Vice Chancellor are nominated by the Government of Himachal Pradesh. And regarding the powers of the University, the officers, authorities, Board of Governors, maintenance of books of account and audit and other provisions, the same are duly provided in the Act so passed by the State of Himachal Pradesh and on perusal thereof it is evidently clear that all the activities of the University are in the nature of educational activity.

9. It was further submitted that the Ld. CIT(E) while working out yearly surplus has failed to consider the capital expenditure incurred by the University during the period starting from F.Y. 2015-16 to F.Y. 2018-19 and in this regard, our reference was drawn to following table:

Financial Year		Total upto 31/3/2019	%age
Income as per I&E A/c	A	80,01,12,483.00	
Interest Income		19,37,97,771.00	
Balance Receipts		60,63,14,712.00	
Expenses		21,75,28,721.00	27.19%
Surplus	B	58,25,83,762.00	72.81%
Addition in F/Assets	C	23,65,27,286.00	29.56%
Net Surplus	D=(B-C)	34,60,56,476.00	43.25%
FDR			
Corpus	E	14,43,24,447.00	
Grant in aid from HP Govt		7,48,00,000.00	
Surplus shown in Order	B + E	72,69,08,209.00	

10. Referring to the above table, it was submitted that as is evident, the University has utilized Rs 23.65 crores of funds towards incurring the capital expenditure which has been totally ignored by the Ld. CIT(E). It was submitted that the University was established in the year 2015 and its been only four years since its establishment and in such a short duration of time, it is not feasible to set up the complete campus and at the same time as per the laid down plan towards creation of the full fledged campus, the actual amount has been incurred to the tune of Rs. 23.65 crores which has been totally ignored by the Ld. CIT(E).

11. Further, referring to the financial statements which has been audited up to 31/03/2022, it was submitted that from the following table, it may be observed that as against the total receipt in seven years i.e. from F.Y 2015-16 to 2021-22 net surplus available after claiming the whole of the expenditure both the Revenue and capital is only 11.07%:

Financial Year		Total Upto 31/3/2022	%age
Income as per I&E A/c	A	1,33,16,35,088.00	
Interest Income		30,01,05,942.00	
Balance Receipts		1,03,15,29,146.00	
Expenses		48,13,17,531.00	36.14%
Surplus	B	85,03,17,557.00	63.86%
Addition in F/Assets	C	70,28,86,914.00	52.78%
Net Surplus	D =(B-C)	14,74,30,643.00	11.07%
Corpus	E	24,22,96,847.00	
Grant in aid from HP Govt		29,82,00,000.00	
Surplus shown in Order	B + E		

12. It was submitted that the Ld. CIT(E) has completely ignored this important aspect of incurrance of the capital expenditure while working out the surplus being generated year after year. It was submitted that there were no query with respect to the status of construction of campus and projected total cost of construction to evaluate the amount of capital expenditure incurred and which is likely to be incurred in future.

13. It was submitted that the assessee had filed its application in November 2018 and thereafter the Ld. CIT(E) has issued the first questionnaire on 23/09/2019 and another questionnaire on 07/11/2019 and thereafter the impugned order was passed on 27/11/2019. It was submitted that it is only towards the fag end of the limitation

period, the questionnaire were issued, submissions were filed however there is clearly lack of appreciation of correct facts and circumstances of the case before arriving at the findings as given in the impugned order. It was submitted that the Ld. CIT(E) ignored the fact that to meet the objectives of education, the University has to create proper infrastructure to provide the best of educational environment to its students and where the State Government has provided Land free of cost, the construction of building was carried out of University's accumulated funds and Government grants.

14. It was submitted that whatever funds have been generated through collection of fees, are meant for meeting the objectives of education and only during the intervening period, such funds were parked in FDRs and later utilized for building the educational infrastructure and carrying out the day to day operational activities of the University.

15. It was submitted that the Ld. CIT(E) at page no. 2 of the impugned order has himself stated that the Hon'ble Supreme Court in case of Queen's Educational has allowed for generation of surplus which necessarily have to be redeployed into education. It was accordingly submitted that the assessee wishes to place reliance on the Hon'ble Supreme Court decision in case of Queen Educational Society (2015) 371 ITR 699 which in fact support the case of the assessee. Further reliance was placed on the decisions of Hon'ble Supreme Court in case of New Noble Educational Society Vs. CCIT(2022) 143 taxmann.com 276 and another decision in case of Visvescaraya Technological University (2016) 384 ITR 37.

16. Further, reference was drawn to the Hon'ble Jurisdictional Himachal Pradesh High Court decision in case of Maa Saraswati Educational Trust (2013) 353 ITR 312 wherein their Lordship have held that generating surplus and accumulation of income will not disqualify an institution for the benefits of Section 10(23C)(vi) of the Act. It was held that the surplus is to be understood in contradistinction to generation of income with the sole motive of profit if one has to properly understand the legislative intent of Section 10(23C)(vi) of the Act. It was further held that merely because an educational institution accumulates income, it does not go out of consideration of section 10(23C)(vi); it goes out only if application of income is for the purposes other than

education, since the institution is to be established and maintained solely with the object of imparting education.

17. Further reference was drawn to the Circular No. 14/2015 dt. 17/08/2015 issued by the CBDT where it has been clarified that mere generation of surplus by the educational institute from year to year cannot be a basis for rejection of application under section 10(23C)(vi) if it is used for education purpose unless the accumulation is contrary to the manner prescribed under the law.

18. Regarding non filing of the income tax return in the initial years of set up of the University, it was submitted that the land for University was allotted free of cost by Himachal Pradesh Government and therefore the assessee was falling within the provisions of Section 10(23C)(iiiab) as been wholly or substantially financed by the Government and as a result, it was of the belief that it was not require to file any tax return. It was accordingly submitted that the non filing of tax return for the earlier period cannot be basis for denial of rejection of approval under section 10(23C)(vi) of the Act.

19. Regarding charging of affiliation fees and inspection fees, it was submitted that the same is being charged by the University from all the affiliated colleges and the same is part of rendering its statutory function and to meet its administrative / operating expenses and the same cannot be held to be done for purpose of profit. It was submitted that the affiliation fee is charged annually from the affiliated colleges and inspection fee is charged at the time of inspection and not on regular basis and it is done when a new stream is added or there is a increase in intake of students by such colleges and in support, reliance was placed on the Coordinate Jaipur Benches decision in case of Rajasthan Nursing Council [2020] 119 taxmann.com 354 wherein it was held that merely because the assessee council was charging certain fees as part of rendering its statutory function and to meet its administrative and operative expenses, the same cannot be said to be done for the purpose of profit.

20. Regarding counselling fee, it was submitted that the same is charged from the students at the time of admission in order to guide them about the right stream to be taken by them and in support, reliance was placed on the decision of Hon'ble Delhi

High Court in case of Institute of Chartered Accountants of India Vs. DGIT 358 ITR 91 (2013).

21. Regarding University Development fund, it was submitted that these funds are transferred to the Corpus and the same cannot be utilized for any other purpose other than the development of the University and these funds are created for specific purposes. Regarding the observation of the Ld. CIT(E) that no proof regarding utilization of such funds has been submitted, it was submitted that no query in this regard was raised by the Ld. CIT(E) and had he asked for the information, the assessee would definitely have submitted the necessary information and our reference was drawn to the following table wherein the yearly receipt of the development fees and the utilization thereof has been submitted:

Sr. No.	Financial Year	UDF Gross Receipts during the Year	Utilisation on Development activities of the University		Remarks
			For Renovation of Existing old SDM Office for Temporary University Campus	Building Works of University Campus	
1	2011-12	1,09,47,000.00	28,50,000.00		Duly reflecting in the Receipt and Payment Account being part of the Audited Financials Statements
2	2012-13	2,27,21,000.00		10,54,510.00	
3	2013-14	5,11,21,944.00		1,39,260.00	
4	2014-15	4,24,57,000.00	3,00,000.00	1,00,000.00	
5	2015-16	4,27,59,497.00		1,50,00,000.00	
6	2016-17	3,70,90,000.00	3,04,400.00	5,10,25,793.00	
7	2017-18	3,38,65,950.00		11,42,01,000.00	
8	2018-19	3,06,09,000.00		6,02,76,000.00	
9	2019-20	3,58,82,000.00		5,12,62,157.00	
10	2020-21	2,61,26,250.00		7,58,19,500.00	
11	2021-22	3,59,64,150.00		4,89,45,672.00	
	Total	36,95,43,791.00	34,54,400.00	41,78,23,892.00	

22. Regarding the Ld. CIT(E) observation that the assessee has not provided comparison of fee structure between the fees charged at campus and the one charged by affiliated colleges, it was submitted that the assessee has duly submitted the fee structure of Govt. Colleges as well as private colleges affiliated with the University. It was submitted that the fee is fixed by the department of technical education, Government of Himachal Pradesh for all the courses run by the assessee University and in this regard our reference was drawn to the notification issued by the Government of Himachal Pradesh.

23. Regarding Chandigarh Bench decision in case of Punjab Technical University, it was submitted that the facts of that case differ from assessee's case for the following reasons:

a) As per Para 11 of PTU judgment, it has been observed that PTU was spending on an average only 60% of its receipt either by way of incurring operating expenses or by way of investing in Fixed Assets, whereas in assessee HPTU case if the same formula is applied i.e. expenditure / Income % age then in 2015-16, Rs. 4.32 crores expenditure was incurred against 16.03 crores receipt i.e. 27% utilization. Accordingly in 2016-17 this utilization is 52%, in 2017-18 it is 73%, in 2018-19 it is 68%, in 2019-20 it is 92%, in 2020-21 it is 213% and in 2021-22 it is 113%.

b) Auditors of PTU have pointed that the PTU University has delegated franchise in respect to distance education to private entities and the university has failed to provide the details of services offered by the aforesaid agencies whereas no such distance education to private entities franchise have been provided by HP Technical university neither the auditors of HP Technical university have pointed out any such observations.

c) That the functioning of PTU is marred by controversies and news of FIR against their Vice chancellor in corruption charges have raised, and thus such factors cannot be ignored, however in our assessee HPTU case no such controversies have ever raised neither pointed out by CIT.

d) PTU was established in 1997 and when its order is passed that is 2018, almost 21 years later the utilization of PTU is still only around 60% of the total income whereas in assessee case that is HPTU it is established in 2015 and in it is sixth and seventh year only i.e.. 2020-21 and 2021-22 utilization is 213% and 112% respectively of the receipts.

Thus, your honor the facts in both cases differ and relying on PTU judgment by the Id CIT(E) should not be taken as a base of covered matter."

24. In light of aforesaid submissions, it was submitted that there is no justifiable basis for denial of approval under section 10(23C)(vi) of the Act and accordingly the same be granted to the University.

25. In his submissions, the Ld. CIT DR relied heavily on the finding of the Ld. CIT(E) and our reference was drawn to the findings which are contained at para 7 of the impugned order. It was submitted that the Ld. CIT(E) has clearly brought on record that there is generation of surplus year on year by the University and in absence of non-payment of taxes on admitted surplus and non filing of ITR, the activities of the University cannot be considered as genuine. It was submitted that surplus generated has been parked in FDR's year after year which further proves that the activities of the assessee are not solely for education. It was further submitted that there are 57 affiliated colleges under the University which further pointed to the fact that the University was not established for education purposes but with commercial motive.

26. Further, reliance was placed on the various authorities and the decision of the Coordinate Benches and specific reference was drawn to the decision of Coordinate Chandigarh Benches decision in case of I.K. Gujral Punjab Technical University, Vs. CIT(E) in ITA No. 910/Chd/2017 and it was submitted that in that case as well, the

assessee was accumulating surplus funds year after year and the same was parked in FDR's and the Coordinate Bench has held that the assessee University was not running solely for educational purpose but for making profit.

27. Further reliance was placed on the decision of Hon'ble Supreme Court in case of New Noble Educational Society Vs. CCIT(2022) 143 taxmann.com 276 and it was submitted that the Ld. CIT(E) has rightly denied the exemption under section 10(23C)(vi) of the Act and accordingly appeal so filed by the assessee deserves to be dismissed.

28. We have heard the rival contention and perused the material available on the record. As per the Ld. CIT(E), the assessee has been generating surplus year after year right from F.Y 2015-16 to 2018-19 and basis that it was held that the assessee was not running solely for education purposes but for the purposes of profit. Further, referring to the fact that the surplus so generated has been deposited in fixed deposit receipts, it was held by the Ld. CIT(E) that the activities of the assessee society are not solely for education. Further, referring to the fact that there are total 57 affiliated colleges which are being run under the aegis of the University, the Ld. CIT(E) held that the said fact gives an impression that the assessee society is doing education activity on commercial basis. Further referring to the fee charged under various heads such as affiliation fee, counselling fee, inspection charges, etc, it was held that there is no evidence brought on record that these fees are not guided by the commercial interest. Further, regarding the utilization of University development fund, it was stated that no documentary evidence has been produced as to how the amount has been spent on education. Referring to the fee structure, it was held that the fee structure charged by University for course offered by it in its own campus has not been provided by the assessee society. In view of same, it was held by the Ld CIT(E) that the claim of the assessee society seeking approval under section 10(23C)(vi) cannot be ascertained and it is difficult to verify the activity of the society and come to conclusion that it exists solely for education purposes.

29. In its submission, the assessee society has submitted that it is only towards the fag end of the limitation period that the questionnaire were issued by the Ld. CIT(E) and though the assessee filed its submission and submitted necessary

information/documentation, however given the paucity of time, there is clearly lack of appreciation of correct facts and circumstances which has resulted in the rejection of its application by way of the impugned order. It was submitted that the assessee University was established in the year 2015 and its been only four years since its establishment when the application so moved before the Ld. CIT(E) and at the relevant point in time, the University campus had not fully came into existence. At the same time, as per the laid down approved plan, capital expenditure has been incurred towards creation of the full-fledged campus which has been totally ignored by the Ld. CIT(E). It was submitted that in fact, there were no query which has been raised by the Ld. CIT(E) with respect to the status of the construction of the campus, the capital expenditure incurred and the projected capital expenditure which is likely to be incurred in future. It was submitted that for the period starting from F.Y. 2015-16 to F.Y. 2018-19, the assessee has incurred capital expenditure to the tune of Rs. 26.65 crores which has been completely ignored by the Ld. CIT(E). It was further submitted that even if we look at the period up to F.Y. 2021-22, the assessee has since incurred capital expenditure to the tune of Rs. 70.28 crores and taking the same into consideration, the net surplus available is only to the tune of 11.07% which is quite reasonable by any reasonable standard. Further the contentions have been raised regarding the charging of the various fees as well as the utilization of the University development fund as well as perusal of the fee structure towards the fee charged by the campus and the one charged by affiliated colleges.

30. We therefore find that it is a common ground where the Revenue on the one hand is saying that in absence of the necessary information, it is difficult to verify the activity of the University and came to the conclusion that it exist solely for education purposes and similarly, the assessee, on the other hand, has also contended that there is clearly lack of appreciation of facts and circumstances of the case and infact the matter has been examined only towards the fag end of the limitation period and there were no queries with regard to the status of the capital expenditure incurred by the assessee society towards construction of the campus premises and surplus has been wrongly determined without considering the capital expenditure over the period of time actually incurred towards building the University Campus.

31. Further, we find that the Ministry of Finance, Department of Revenue, Central Board of Direct Tax issued a Circular bearing No. 14/2015 (F.No.197/38/2015-ITA-I) dated 17.08.2015, stating therein that representations have been received seeking clarification on certain issues relating to grant of approval and claim of exemption under Section 10(23C)(vi) of the Act of 1961, and vide the said circular, it was clarified that the mere generation of surplus from year to year cannot be a basis for rejection of application under Section 10(23C)(vi) of the Act of 1961. The relevant portion of the said Circular is reproduced hereunder:-

"3. Generation of surplus out of gross receipts

A doubt has been raised whether generation of surplus out of gross receipts would necessarily 'breach' the threshold condition that the educational institution should exist 'solely for educational purpose and not for the purpose of profit'. Perusal of prescribed provisions clearly reveal that mere generation of surplus cannot be a basis for rejection of application u/s 10(23C)(vi) on the ground that it amounts to an activity of the nature of profit making. In fact, the third proviso to the said clause clearly provides that accumulation of income is permissible subject to the manner prescribed therein provided such accumulation is to be applied "wholly and exclusively to the objects for which it is established". Hence, it is clarified that mere generation of surplus by education institution from year to year cannot be a basis for rejection of application u/s 10(23C)(vi) if it is used for education purposes unless the accumulation is contrary to the manner prescribed under law."

32. In the instant case, the assessee is claiming that it has established a university solely for educational purposes, and thus, seeking the exemption under Section 10(23C)(vi) of the Act of 1961, and the generation of surplus from year to year cannot be bar in seeking such exemption under the said provision of law. It is also noted that in view of the judgments rendered by the Hon'ble Supreme Court in case of Queen's Educational Society (*Supra*), Visvesvaraya technological University (*supra*) and New Noble Education Society (*Supra*) and of the Hon'ble Jurisdictional High Court in case of Maa Saraswathi educational trust (*Supra*), the case of the assessee needs to be duly considered by the Id CIT(E).

33. In light of the aforesaid observations and looking into the factual matrix of the present case, we are of the considered view that all relevant facts and material be brought on record and accordingly, the matter is remanded back to the Id CIT(E) with a direction to re-consider and decide the application in question preferred by the petitioner under Section 10(23C)(vi) of the Act of 1961, strictly in accordance with law, including due adherence to the aforesaid precedent law as well as the aforementioned CBDT circular. Such an exercise shall be undertaken and completed by the Id CIT(E) preferably within a period of three months from the date of receipt of

this order after providing reasonable opportunity to the assessee. The assessee is at liberty to raise the necessary contentions and file necessary information/documentation, as so advised and in view of the same, various contentions raised before us are left open.

34. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28/03/2024 .

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar