

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA NO.477/Chd/2023

M/s Rao Pahlad Singh Education Society 214, Village Khatod, Mohindergarh-123029, Haryana-India	बनाम	The CIT(E) Chandigarh
स्थायी लेखा सं. / PAN NO: AAATR8965M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Gautam Jain, Advocate and
Shri Lalit Mohan, C.A

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl. CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 19/09/2024

उदघोषणा की तारीख/Date of Pronouncement : 21/10/2024

आदेश/Order

PER AAKASH DEEP JAIN, VP:

This is an appeal filed by M/s Rao Pahlad Singh Education Society, Mohindergarh, Haryana against the order dt. 29/06/2023 passed by the Id. CIT(E), Chandigarh cancelling the approval granted under section 10(23C)(vi) and (via) of the Income Tax Act.

2. The assessee society received approval from the Chief Commissioner of Income Tax, Haryana, Panchkula, for A.Y. 2014-15 onwards under section 10(23C)(vi) and (via) of the Act, vide order(APB 57-59) dt. 14/07/2015. On 28/08/2021, an application was filed by the assessee in Form No. 10A in view of Clause (i) of the first proviso to Section 10(23C)(vi) of the Act before the Id. PCIT, for grant of approval. Alongwith the application, the assessee filed a copy

of the previous approval (APB pages 57-59), a copy of the Memorandum of Association and Bye Laws of the assessee society (APB pages 1-26 and 71A-71W) and a copy of the financial statements alongwith audit reports for three assessment years, i.e. A.Ys 2018-19, 2019-20 and 2020-21 (APB 184-198 and Pages 72-101). Vide order (APB pages 60-62) dt. 24/09/2021, approval under section 10(23C)(vi) of the Act was granted by the Id. PCIT or CIT.

3. On 08/01/2021, return of income (APB pages 72-101) was filed for F.Y. 2019-20, relevant to A.Y. 2020-21, declaring NIL income. Notice (APB pages 673-680) dt. 29/06/2021 was issued under section 143(2) of the Act.

4. The chief contention of the assessee is that the approval granted has wrongly been cancelled by invoking the provisions of the 15th Proviso to Clause 23C of Section 10 of the Act, though the same was not applicable.

5. The Ld. DR, on the other hand has placed strong reliance on the impugned order in this regard.

6. Heard. The relevant portion of the impugned order reads as follows:

6. The assessee society is running educational institutions in Haryana & Rajasthan, and is claiming exemptions u/s 10(23C)(vi) and 10(23C)(via). The said section provides for exemption of income in respect of "any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiad) and which may be approved by the Principal Commissioner or Commissioner. Further Explanation 2 to the 15th Proviso to Section 10(23C) provides for Specified Violations as follows:

Explanation 2.—For the purposes of this proviso, the following shall mean “specified violation”,—

(a) where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has been applied other than for the objects for which it is established; or

(D) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has income from profits and gains of business, which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

(c) any activity of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution,—

(A) is not genuine; or

(S) is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or

(d) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality; or

[(e) the application referred to in the first proviso of this clause is not complete or it contains false or incorrect information.

As can be seen that the above Explanation 2, inter alia, provides for specified violation where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has been applied other than for the objects for which it is established, In the instant case, income of the society has been transferred to some of its members, for acquiring shares of Companies in their own names. As per submission of the assessee this has been done to acquire two parcels of land in sector 50 & Sector 89, Gurugram which were earmarked for setting up of educational institutions and had the requisite approvals and permissions. It is seen from the actual transactions carried out by the assessee society that the said parcels of land are owned by the respective companies and have not been transferred in the name of assessee society and are neither reflected in the balance sheet of the assessee. A Company being a distinct legal entity has complete rights of ownership, enjoyment and disposal of its assets.

Further, the assessee society has taken these land site on lease and is paying lease rentals. It is rather ironic that the assessee society on the one hand has given money out of its income to its own member to acquire shares of another company, which owns these lands, and on top of it is also paying lease rentals for use of such land. Also the security deposits given to members are long term and interest free. Hence, the income of the assessee society has been applied for purposes other than the objects for which it has been established

and enjoys the exempted status u/s 10(23C)(vi) of the Act. Even in terms of the Judgement in the case of Kendriya Academy Vidhyalaya Shiksha Samiti ACIT reported in 182 TTJ 154 (Jaipur - Trib.) both the form and substance of transaction in the case of assessee society was seen and it is found that there was no regulatory restriction prohibiting the assessee society from acquiring the land in its own name, the land is in the name of the companies and is not reflected as an asset in the Balance Sheet of the assessee society and accordingly all rights over the land exists in the hands of the company and in the event of any transfer of land the appreciation from the same shall accrue to the companies and not to assessee society. Hence it is held that Specified Violation as given in clause (a) to Explanation 2 to the 15th Proviso to Section 10(23C) of the Act has taken place and accordingly the approval granted to the assessee u/s 10(23C)(vi) & (via) of the Act is hereby cancelled.

7. It is seen that the order dt. 24/09/2021 was granted to the assessee in view of Clause 1 of the first proviso to Section 10(23C)(vi) of the Act, whereunder is mentioned the requirement of making of an application in the prescribed form and manner to the Chief Commissioner or Commissioner for grant of such approval. As mentioned, alongwith such application, the assessee filed copies of the previous approval, the Memorandum of Association and Bye Laws of the assessee society and Financial statements, alongwith audit report, for three assessment years, i.e. A.Y-s 2018-19 to 2020-21.

8. The previous approval was granted under the second proviso to Section 10(23C)(vi) of the Act. While granting that approval, which was provision, the competent authority undisputedly examined the financial statements, which categorically stated that there were security deposits in the names of the members of the assessee society and the company which owned the land of the school. In the face of such facts, which undisputedly have not undergone any change, it has been held in 'St. Peters Education Society Vs. PCIT reported in

225 DTR (Chd Trib) 185’, that once at the time of grant of initial approval, on due examination of the facts, which had not undergone any change from those that existed at the time of grant of initial approval, the withdrawal of approval was not warranted.

9. Apropos the applicability or otherwise of Explanation 2(a) of the 15th Proviso to Section 10(23C) of the Act, as brought in by the Finance Act, 2022, with effect from 01/04/2022, admittedly, the impugned order has been passed by invoking Explanation 2 of the 15th proviso to Section 10(23C)(vi) of the Act. The relevant provisions first.

10. The unamended 15th proviso (which was amended by Finance Act 2007, w.e.f 01/06/2007 by the Finance Act, 2019, with effect from 1/09/2019) reads as follows:

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

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

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

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

*(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution-
(A) are not genuine; or*

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

(iii) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

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

11. The amended 15th proviso, which substituted the afore quoted earlier 15th proviso, was brought in by the Finance Act, 2022, w.e.f 01/04/2022. It reads as follows:

Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) is approved or provisionally approved under the said clause and subsequently—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of [section 143](#) for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner, shall,—

(i) call for such documents or information from the fund or institution or trust or any university or other educational institution or any hospital or other medical institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;

(ii) pass an order in writing cancelling the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, after affording a reasonable opportunity of being heard, for such previous year and

all subsequent previous years, if he is satisfied that one or more specified violation has taken place;

(iii) pass an order in writing refusing to cancel the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such fund or institution or trust or any university or other educational institution or any hospital or other medical institution.

Explanation 1.—For the purposes of this proviso, "specified date" shall mean the day on which the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) expires.

Explanation 2.—For the purposes of this proviso, the following shall mean "specified violation",—

(a) where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has been applied other than for the objects for which it is established; or

(b) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has income from profits and gains of business, which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

(c) any activity of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution,—

(A) is not genuine; or

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

(d) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has ⁵⁰[attained finality;

Explanation 3.—For the purposes of clause (b) of this proviso, where the Assessing Officer has intimated the Central Government or the prescribed authority under the first proviso of sub-section (3) of [section 143](#) about the contravention of the provisions of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of this clause by any fund or institution or trust or university or other educational institution or any hospital or other medical institution in respect of an assessment year, and the approval granted to such fund or institution or trust or university or other educational institution or any hospital or other medical institution has not been withdrawn, or the notification issued in its case has not been rescinded, on or before the 31st

day of March, 2022, such intimation shall be deemed to be a reference received by the Principal Commissioner or Commissioner as on the 1st day of April, 2022, and the provisions of clause (b) of the second proviso to sub-section (3) of [section 143](#) shall apply accordingly for such assessment year.]

12. As per the unamended 15th proviso, where any educational society existing solely for education purposes and not for purpose of profit, as mentioned in Section 10(23C)(vi), has been approved by the prescribed authority and subsequently, the prescribed authority is satisfied that such educational society has not, inter alia, either applied its income in accordance the provisions of Clause (a) of the third proviso, or invested or deposited its funds in accordance with the provisions contained in Clause(b) of the third proviso, or the activities thereof are either not genuine, or are not being carried out in accordance with all or any of the conditions subject to which it was approved, the prescribed authority may withdraw the approval after affording reasonable opportunity of showing cause against the proposed withdrawal.

13. The amended 15th proviso, on the other hand, provides that where such society has been provisionally approved, and subsequently, reference has been received from the AO under the second proviso to Section 143(3), for any previous year, the Pr. CIT or CIT shall call for documents or information from the society, or make inquiry to satisfy themselves about any specified violation, as explained in Explanation 2, and shall pass an order cancelling the approval granted, if they are satisfied of one or more such specified violation. As per Explanation 2, 'specified violation' means application of income other than for

the object for which the society is established, or receipt of income from profit and gains of business, which income is not incidental to the attainment of the object, or separate bank account in respect of business incidental to the attainment of objects, are not maintained, or any activity of the society is either not genuine, or is not being carried out in accordance with all or any of the conditions of its grant of approval, or the society has not complied with the requirements of any other law for the time being in force, as provided in the Explanation. It is the first specified violation, i.e. the alleged application and income other than for the objects of the society, which has been made applicable by the Id. CIT(E).

14. In this regard, first of all, the amended 15th proviso has been, in the enacting provision, i.e. the Finance Act, 2022, specifically expressly made applicable prospectively, by such statutory mandate itself, i.e. w.e.f 01/04/2022. This being so, there is no scope for making the 15th proviso retrospectively applicable, as has wrongly been done by the Ld. CIT(E) by virtue of the impugned order, which is dated 29/06/2023.

15. Considering the above, obviously, the amended 15th Proviso is not applicable to the present case.

16. Beside, even dealing with the findings recorded by the Id. CIT(A) on merits, it is seen that otherwise also, the Id. CIT(E) has gone wrong in observing

that there was a specified violation as explained by Explanation 2(a) to the 15th proviso. It was on this basis that the approval was cancelled. This conclusion has been based on the observation that income of the society has been transferred to some of its members for acquiring shares of the company which owned the land of the school, in their own names, in order to acquire two parcels of land in Gurugram, by the respective companies and not transferred in the name of the society; that these parcels of land have been taken on lease by the society and it is the society which is paying the lease rental; that security deposits given to members are long term deposits and are interest free; and that therefore, the society's income has been applied for purpose other than its object.

17. Firstly, as rightly contended, Explanation 2 to the 15th Proviso pertains to application of funds. It is in the context of receipt of funds. The Id. CIT(E), on the other hand, in para 5.2 of the impugned order, deals with funds with specific direction and states that the society has received contribution, during the year, amounting to Rs. 44,03,80,329/-, comprising of contribution towards School and Hostel Development Fund, Bus Maintenance Fund and Pupil Fund. The Id. CIT(E) has observed that though the assessee contended to have received such funds with specified direction, such receipt was in the nature of anonymous donations, as the assessee could not either prove the identity of the donors, or furnish the resolution of the society, authorizing the same, nor did the receipt

furnished contain any address or dates, or the mode of payment, and that even the PANs mentioned were wrong.

18. Clause(a) of Explanation 2 to the 15th proviso having been the only provision invoked for cancelling the approval granted, such findings, obviously, have been wrongly made the basis thereof, whereas the said provision, as discussed, clearly deals with only wrong application of income.

19. Apropos interest free security deposits, which is the other issue taken up by the Id. CIT(E), in para 5.1 of the impugned order, the assessee has the following various security deposits, against land and building used for the purpose of society, i.e. education:

Sr. No.	Security Deposits against Land & Building used for Education purpose of Society (Copy of ledgers placed at pages of Paper Book)	Amount as on 31.3.2019 (in Rs.) (page 194 of Paper Book)	Amount as on 31.3.2020 (in Rs.) (page 94 of Paper Book)	Amount paid during the year under consideration
i)	Sanskar Land & Building (P) Ltd. (909-911)	28,51,49,790	35,70,89,610	7,19,39,820
ii)	Om Parkash Yadav (901 – 902)	13,00,000	13,00,000	--
iii)	Manish Rao (907-908)	6,16,99,000	6,16,99,000	--
iv)	Bimla Devi and Narender Rao (903-905)	7,21,62,000	7,21,62,000	--
	Total		49,22,50,610	7,19,39,820

20. The society maintains that the said sum of Rs. 49,22,50,610/- has been paid for acquisition of two school sites and buildings in Gurugram, Haryana by purchasing the shares of the following entities, in the name of members of the society:

Sr. No.	Particulars	Amount (in Rs.)	Shares purchased from	Gross Receipts of schools (included in receipts of appellant society since acquisition) (in cr.)	Evidence (pages of Paper Book)
i)	Sanskar Land & Building (P) Ltd (at Sector-89, Gurugram)	37,72,89,610	Orris Education P. Ltd.	45.35 (12.42 in assessment year 2020-21)	i) Share purchase agreement (32-43)
ii)	Dhaulagiri Projects Ltd (at Sector-50, Gurugram)	11,49,61,000	Pioneer Urban Land and Infrastructure Ltd.	26.65 (6.67 in assessment year 2020-21)	i) Memorandum of Understanding (27-31)
Total		49,22,50,610		72	

So far as regards the payment for acquisition of Sanskar Land & Building(P) Ltd., Sector 89, Gurugram, the following is the detail\ of acquisition of shares of the said company:

Name of Member of Society/ Company	Amount (in Rs.)	Remarks
Manish Rao	1,01,00,000	Given for payment to Orris Education (P) Ltd. for purchase of shares.
Narender Rao	1,01,00,000	Given for payment to Orris Education (P) Ltd. for purchase of shares.
Sanskar Land & Building P. Ltd.	35,70,89,610	Rs. 20,00,00,000/- was given by the assessee society to Orris Education (P) Ltd. for acquisition of shares Rs. 11,80,000/- was paid by the assessee society to HDFC Bank Ltd. as Loan Processing Fees of Loan taken for Sanskar Land & Building (P) Ltd Rs. 15,58,69,610/- as EMI of Loan from HDFC Bank taken for Sanskar Land & Building (P) Ltd Rs. 40,000/- was given to discharge its liabilities

The detail of amounts given to and utilized by the members of the society qua Sanskar Lad & Building (P) Ltd is as under:

Sr. No.	Name of Member	Given by the Society		Utilized by the Member for Objectives of Society		
		Date	Amount	Date	Amount	Purpose
i)	Manish Rao	19.01.2018	1,01,00,000	19.01.2018	1,01,00,000	Paid to Orris Education P. Ltd.

ii)	Narender Rao	19.01.2018	1,01,00,000	19.01.2018	1,01,00,000	for acquisition of shares.
iii)	Sanskar Land & Building (P) Ltd (Paid directly by assessee society).	08.01.2018	5,00,00,000	-	5,00,00,000	The assessee society has paid directly to Orris Education P. Ltd. for acquisition of shares
		10.01.2018	<u>15,00,00,000</u> 20,00,00,000		<u>15,00,00,000</u> 20,00,00,000	
		24.01.2018	11,80,000/-	-	11,80,000/-	Loan Processing Fees paid to the HDFC Bank
		25.01.2018	40,000/-	-	40,000/-	Amount given to Sanskar Land & Building P. Ltd. to discharge its liabilities
		Monthly payment from February 2018 (on 7 th of Each month)	15,58,69,610/-	-	15,58,69,610/-	EMI of Loan from HDFC Bank directly paid by the assessee society
	Total Paid to Company		35,70,89,610		Total Amount Utilized by company	35,70,89,610

21. The society maintains that it has run the school named RPS International School, Sector-89, Gurugram at this site since the academic session 2018-19; that the fees received, amounting to Rs. 45.35 cores, in this school are being collected by the society and applied for the purpose of education; that this has not been called in question either in the assessment proceedings, or by the Id. CIT(E). The details of the fess collected have been tabulated as follows:

Sr. No.	Session	Amount of Fees Collected (in crores)
i)	2018-19	5.62
ii)	2019-20	12.42 (year under consideration; wherein purported reference has been made)
iii)	2020-21	7.85
iv)	2021-22	19.46

	Total	45.35
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22. Concerning of share of Dhaulagiri Projects Ltd., the submission of the society is that it has acquired land measuring over 155 acres situated at South City-II, Sector-50, Gurugram, for a total consideration of Rs. 11,49,61,000/- through the members of the society, as under:

Sr. No.	Name of Member of Society	Amount (in Rs.)	Remarks
i)	Om Parkash Yadav	13,00,000	Given for purchase of shares from Pioneer Urban Land & Infrastructure Ltd.
ii)	Manish Rao	5,15,99,000	Rs. 4,48,49,000/- was given for purchase of shares from Pioneer Urban Land & Infrastructure Ltd. Rs. 67,50,000/- was given for payment to Dhaulagiri Projects Ltd. for discharge of its liabilities.
iii)	Narender Rao	6,20,62,000	Rs. 5,53,12,000/- was given for purchase of shares from Pioneer Urban Land & Infrastructure Ltd. Rs. 67,50,000/- was given for payment to Dhaulagiri - Projects Ltd. for discharge of its liabilities.

23. As against the above two acquisitions, the amounts given to and utilized by the members of the society are as per the following details:

Sr. No.	Name of Member of Society	Given by the Society		Utilized by the Member for Objectives of Society		
		Date	Amount	Date	Amount	Purpose
i)	Om Parkash Yadav	06.06.2017	13,00,000	22.06.2017	13,00,000	Paid to Pioneer Urban Land & Infrastructure (P) Ltd for acquisition of shares
ii)	Manish Rao	25.10.2016	75,00,000	29.10.2016	75,00,000	
		07.11.2016	12,00,000/-	10.11.2016	2,50,00,000	
		07.11.2016	8,00,000/-			
		07.11.2016	20,00,000/-			
		07.11.2016	1,80,00,000/-			
		07.11.2016	15,00,000/-			
		08.11.2016	10,00,000/-			
08.11.2016	5,00,000/-					
		02.12.2016	1,25,00,000/-	14.12.2016	1,25,00,000	
		15.03.2017	76,25,000/-	30.03.2017	67,50,000	Paid to Dhulagiri Projects Ltd for repayment of
		05.06.2017	3,00,000/-			
		Less:				

		<i>Rapid</i> 22.02.2018	<u>(13,26,000/-)</u> 65,99,000/-			<i>liabilities</i> <i>outstanding</i>
		Total paid to Member	5,15,99,000	Total utilized by Member	5,17,50,000	
iii)	Narender Rao	25.10.2016	75,00,000	29.10.2016	75,00,000	<i>Paid to Pioneer Urban Land & Infrastructure (P) Ltd for acquisition of shares</i>
		07.11.2016	56,00,000/-	10.11.2016	3,50,00,000	
		07.11.2016	45,00,000/-			
		07.11.2016	40,00,000/-			
		07.11.2016	73,99,942/-			
		08.11.2016	<u>1,00,00,000/-</u> 3,49,99,942/-			
		02.12.2016	1,25,00,000/-	14.12.2016	1,25,00,000	<i>Paid to Dhulagiri Projects Ltd for repayment of liabilities outstanding</i>
		15.03.2017	76,25,000/-	30.03.2017	67,50,000	
		05.06.2017	3,00,000/-			
		Less: <i>Rapid</i> 22.02.2018 16.03.2018	(7,93,942/-) <u>69,000/-</u> 70,62,058/-			
				15.06.2017	2,60,000	<i>Paid by Mrs. Bimla Devi, Mrs. Pravim Rao, Mrs. Prem Lata & Mr. Kunal Rao respectively to Pioneer Urban Land & Infrastructure (P) Ltd. for acquisitions of shares</i>
				15.06.2017	39,000	
				15.06.2017	39,000	
				15.06.2017	<u>26,000</u> 3,64,000	
		Total paid to Member	6,20,62,000	Total utilized by Member	6,21,14,000	

24. There is a school called RPS International School, Sector 50, Gurugram, started by the society at the said site from academic session 2018-19, from which session, fees received by school have been collected by the society and applied for the purpose of education. The total amount of Rs. 26.65 crores was

collected as fees of academic sessions 2018-19 to 2020-21, and the following are the details thereof,:

Sr. No.	Session	Amount of Fees Collected (in crores)
i)	2018-19	2.02
ii)	2019-20	6.67 (year under consideration; wherein purported reference has been made)
iii)	2020-21	6.45
iv)	2021-22	11.51
	Total	26.65

25. It, thus, seen that the land for the two sites was acquired by the society for setting up of educational society having requisite permission / approval. In regard therewith, it cannot be said that the funds were applied for objects which were not the objects of the society. Admittedly, education is the object for which the society was established and it is education for which the funds have been applied. Too, it is not disputed that the acquisition of the site was during the A.Ys 2018-19 and 2017-18. Equal monthly installment amounting to Rs. 7,19,39,820/- were paid by the society for RPS International School, Gurugram during the year and no further amount was paid for such purposes.

Then, it does not stand disputed that the society, instead of adopting the conveyance deed method, so as to save a hefty sum of approximately Rs. 5 crores, representing 7% registration fees of the total consideration paid for the acquisition of the land, totaling to Rs. 71.50 crores, acquired the share of these companies. This methodology is well within the four corners of the law. It cannot be held otherwise.

26. Further, the fees of the two schools have been included in the receipt of the society, both in the assessment order for A.Y. 2020-21, and by the Id. CIT(E) also. This being so, funds invested by the society for the acquisition of the schools have wrongly been doubted to arrive at an erroneous conclusion against the society. It is important to note that undisputedly, the cost of acquisition hitherto paid, of the two schools, is far less than the receipt from the two schools, for less than the grossed up receipt from these two schools, turning it into a catch 22 situation, which the Revenue cannot be permitted to maintain. Undisputedly, the schools are being acquired for the objects of the society by way of acquiring the shares in the name of the members of the society. The benefit for such transaction in-dubitably enures for the benefit of the society only and not for the members in personam. This being so, the Id. CIT(E) has erred in drawing inference adverse to the assessee by observing that there is no clause in its bye laws that immovable property can be purchased by the members of the society in their own names on behalf of the society.

27. Then, the society obviously needs to save money, in order that it can be utilized for the objects of the society. This cannot be, and has not been, called into question. Still, the Id. CIT(E) goes on to observe that it was not acceptable that despite having revenue of over 100 crores, the property was not acquired in its own name by the society, so as to save Rs. 500/- cores and that the actual intention was only of diverting its money to its members, so as to enable them

to acquire shares of another company in their own names. Again, it remains established on record that the properties were acquired for the objects of the society and they were used for running schools. Therefore, it cannot be said that saving money was not towards utilization thereof for the object of the society i.e. education and, thus, not in the interest of the society.

28. In this regard, evidently, the Id. CIT(E) has gone wrong in observing that “shareholders of company would enjoy the appreciation in land value in their individual capacity and no benefit would accrue to the appellant society.” As discussed, there is no material on record to attract such a finding. The Id. CIT(E) herself has not brought even any allegation against the society, much less any conclusion to that effect, that the properties under discussion were being exploited for personal benefit by the members of the society. On the contrary, as discussed hereinabove in detail, the properties have been utilized by the society for the very object of its establishment, i.e. education and to no other end whatsoever. The observation of the Id. CIT(E), therefore, is but a result of mere conjectures and surmises, which is not permissible in law.

29. On this aspect, in ‘CIT(E) Vs. Ambala Public Education Society’ 100 taxmann.com 131(P&H), correctly relied on on behalf of the society, it has been held, in similar facts, that where the factum of the society running the School as per its aims and objects was not in dispute, where the wife of the secretary was teaching in the school, for which, she was being paid salary, on the basis of

requisite qualification having been acquired, where the aims & objects and the genuineness of the activity of the society had not been doubted and rather, it had been the finding of the AO for the relevant assessment year, that the income earned by the society had been utilized for educational purposes, there was no ground to reject the application filed under section 12A of the Act, simply due to the fact that the Secretary of the society was getting lease rent for the land given to the society, or that the secretary's wife was being paid salary for teaching in the school.

In 'Kendriya Academy Vidhyalaya Shiksha Samiti Vs. ACIT', 182 TTJ 154 (Jaipur Trib) it has been held that where properties were held in the individual names of the members of the society, it is the reason for this situation, which needs to be examined, i.e. whether there are any regulatory reasons for registering the property in the name of the society, or whether the properties have been held in a fiduciary capacity for the benefit of the society, or in a personal capacity, and whether there are any benefits available to the individual members, in terms of utilization, exploitation, disposition, etc. It was held that merely by stating that the properties have been registered in the name of independent member and it is he who has derived, or will derive the benefit thereof, would not be sufficient to deny the exemption. It was held that it also requires verification as to whether the claim of the assessee that it is the beneficial owner of the said property and the right to dispose them also lies with the society, is correct. It was held that it is the substance of the transaction,

rather than the form, that should be examined in the specific pattern relating to each of the transactions of investment in immovable property, in order to determine the true capacity of the property holder and the nature of the direct / indirect or proximate or remote benefit accruing, or to accrue to the individual members, if any.

In 'CIT Vs. Sunbeam English School' 361 ITR 325 (P&H), the jurisdictional Hon'ble Punjab and Haryana High Court dismissed the appeal of the Department, upholding the findings of the Tribunal that the Civil Court had examined the entire matter and had found that the property was purchased from the funds of the society and it was also recorded in the name of the society, and on the basis of such examination the Civil Court found that the purchaser of the property was the society and that Smt Bharti Madhok, Director of the society had wrongly been mentioned as purchaser thereof, which mistake was corrected by the Civil Court. The Tribunal had also observed that property stood mortgaged with the bank on due permission from the Court, granted on scrutiny of the bonafides and the genuineness of the transaction, by the Court. It was also taken note of that the banks ordinarily did not create a charge over the property without due diligence having been carried out by enquiring into the title over the property, the funds and source of the purchase of the property held by the mortgagor. The Hon'ble High Court observed that the Tribunal was also justified in holding that the assessee society had not violated any of the conditions of the provisions of Sections 11 and 10(23C)(vi) of the Act, and that

it had, further correctly, been held that the funds of the society were not utilized for any purpose other than the object of the society.

30. Apropos 'New Nobel Educational Society Vs. CCIT', 448 ITR 594 (SC), on which, vehement reliance has been sought to be placed on behalf of the Department, the same aids the case of the assessee, rather than that of the Department. Therein, their Lordships have held that an Educational institution must, for the propose of Section 10(23C) of the Act, exist solely for educational activity and not for profit. Undisputedly, the fact that the society before us exists only for the object of educational activity is not in question at the hands of the Id. CIT(E). It is not engaging in any activity of profit which is unrelated to education. It is providing its premises or infrastructure to other entities, trusts, societies, etc., for the purpose of conducting workshops, seminars or even educational courses, in which, outsiders are permitted to enroll. Had it been otherwise, obviously, in keeping with 'New Noble Educational Society' the income derived from such activity could not have been characterized as either part of educational or incidental to imparting education. The object of the society has nowhere been held to be profit-oriented, so as to disentitle it from the approval granted under section 10(23C). It is not under challenge that it is in the course of providing education only that surplus is generated. Then, it is nowhere in question that while considering an application for approval under section 10(23C), the Commissioner, beside examining the object of the

institution, can call for audited accounts or other such documents for recording satisfaction about the genuineness of the object sought to be achieved.

31. In view of the above discussion we hold that the Ld. CIT(E) has erred in cancelling the approval correctly granted to the society under section 10(23C)(vi), by invoking the 15th proviso to Section 10(23C) of the Act.

32. The parties were not called upon to address arguments on any other issue.

33. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 21/10/2024

Sd/-

कृणवन्त सहाय
(KRINWANT SAHAY)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

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

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