

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 309, 310, 311 & 312/PAT/2023
Assessment Years: 2018-2019 to 2021-2022**

***G.D. Mother Educational Society,.....Appellant
Akharaghat Road,
Muzaffarpur-842001, Bihar
[PAN:AAAAG3023A]***

-Vs.-

***Principal Commissioner of Income Tax (Central),
Patna,.....Respondent
Aayakar Bhawan, Near Nehru Stadium,
Sikandarpur, Muzaffarpur-842001, Bihar***

Appearances by:

*Shri S.K. Tulsiyan, Advocate and Puja Somani, C.A.,
appeared on behalf of the assessee*

*Shri Ashok Kumar, CIT (D.R.), appeared on behalf of the
Revenue*

Date of concluding the hearing: October 25, 2024

Date of pronouncing the order: November 20, 2024

O R D E R

Per Rajesh Kumar, Accountant Member:-

The present four appeals bearing ITA Nos. 309, 310, 311 & 312/PAT/2023 are directed at the instance of assessee against the orders of Id. Principal Commissioner of Income Tax (Central),

Patna, all dated 25th August, 2023 passed for Assessment Years 2018-19 to 2021-22.

2. The issue in the first ground of appeals is against the order passed by the ld. PCIT (Central), Patna dated 25.08.2023 withdrawing the approval granted to the assessee-Society under section 10(23C)(vi) of the Income Tax Act (hereinafter referred to as the Act) for A.Ys. 2018-19 to 2021-22, which is wrong, arbitrary and not in consonance with the Act.

3. The facts in brief are that survey under section 133A was conducted on the assessee-Society on 17.09.2020. Besides, a search and seizure operation under section 132 of the Act and also survey operation under section 133A of the Act was conducted in the business premises of the founder of the assessee-Society, Shri NKP Shah (since deceased) on the same date. During the course of survey operation, certain papers/documents/tally data were found from the residential premises of the assessee, G.D. Mother International School, Genius classes, office of Pankaj Commercial Corporation and Hardware store in the name and style of M/s. Rai Bahadur Tunki Shah. Reassessment Proceedings were initiated for AYs 2015-16 to 2020-21 vide notice issued under section 148 of the Act dated 30.06.2021. The assessment orders were passed on 31.03.2022 under section 147/143(3) of the Act. For all the above assessment years, assessee appealed against before the ld. 1st Appellate Authority. In the meantime, the judgment of the Hon'ble Supreme Court in the case of Union of India -vs.- Ashish Agrawal

was pronounced on 4th May, 2022, wherein it was held that the reassessment notice issued under the Old Law (unamended provisions of the Income Tax Act, 1961) shall be deemed to be the show-cause notice issued under clause (b) of Section 148A of the new law (Amended provisions of Income Tax Act, 1961 by Finance Act, 2021) thereby directing the ld. Assessing Officer to provide the information and material relied upon by the revenue to the assessee along with notice under section 148A of the Act. Accordingly, ld. Assessing Officer declared the assessment orders framed on 31.03.2022 as invalid and issued a notice under section 148A(b) of the Act to the assessee on 25.05.2022 for assessment years 2018-19, 2019-20 and 2020-21. Orders under section 148A(d) of the Act were accordingly passed and notices under section 148 of the Act were issued to the assessee on 21.07.2022, 22.07.2022 and 26.07.2022 for the above said three assessment years.

4. Thereafter a reference was forwarded by the ld. Assessing Officer through JCIT to the ld. PCIT(Central), Patna vide letter dated 22.12.2022 in terms of the second proviso to sub-section 143(3) of the Act. Accordingly, notices were issued to the assessee on 17.02.2023 by the ld. PCIT for the subject assessment years for withdrawal of approval granted under section 10(23C)(vi) of the Act. The assessee was asked to show as to why the approval granted under section 10(23C)(vi) should not be withdrawn in view of the lapses found during the course of survey conducted on 17.09.2020 on the assessee as well as during search and seizure

operation under section 132 of the Act and survey under section 133A on the founder of the society, wherein the assessee-Society Founder Chairman Shri Nand Kumar Prasad Shah was found to have been indulging in syphoning off the money of the society. The assessee replied in detail to the said show-cause notices vide letter dated 03.03.2023 with annexures explaining as to why the approval under section 10(23C) of the Act should not be withdrawn. It was submitted before the ld. PCIT, Patna that the seized materials/ documents which were stated to have not been found in the books of account were in fact duly recorded in the books of account. The assessee also filed the death certificate dated 23.01.2023 of Shri NKP Shah before the ld. Assessing Officer. The ld. PCIT, Patna, after taking the submissions of the assessee into account came to the conclusion that the assessee has not accounted for certain receipts in the books of account, which have been admitted by the ld. Counsel for the assessee in the reassessment proceedings completed on 31.03.2022 and, therefore, the same was not in dispute. The ld. PCIT further noted that the Founder-Chairman of the assessee-Society withdrew/diverted the funds of the assessee-society for his personal expenses /purposes as well as for payment to Genius Classes (providing coaching). On the other hand, the assessee claimed that the excess cash received by Shri Nand Kumar Prasad Shah from one employee of the assessee-Society namely Mr. Gaurav, is a normal practice and the money was used to be returned as and when required by the society for meeting its expenditure. It was also submitted that the entries in the day book

at pages 96 to 119 showing credits in the name of NKP Shah which belied the allegation of siphoning of funds and as a matter of fact, the money was used for meeting the expenses of the society and not for personal purposes as alleged. The said reply of the assessee was not accepted by the ld. PCIT and finally he held that the assessee-society was not eligible for recognition/approval under section 10(23C)(vi) of the Act for assessment years 2017-18 to 2020-21 and the Notification issued earlier dated 04.07.2013 was withdrawn.

5. The ld. A.R. vehemently submitted before the bench that withdrawal of approval under section 10(23C) of the Act for A.Ys. 2018-19 to 2021-22 was invalid and was not in consonance with the provisions of the Act. The ld. A.R. submitted that the second proviso to section 143(3) of the Act was inserted in the Statute Book w.e.f. 01.04.2022 and was accordingly applicable to A.Y. 2022-23 onwards. However, ld. PCIT, Patna, consequent to a reference made by the ld. Assessing Officer under 2nd proviso to section 143(3) of the Act, passed the impugned orders withdrawing the approval granted to the society under section 10(23C)(vi) of the Act for A.Ys. 2018-19 to 2021-22. The ld. A.R. submitted that the very initiation of present proceedings was not as per the provisions of the Act and consequently the impugned orders passed by the ld. PCIT withdrawing the approval granted to the assessee under section 10(23C)(vi) of the Act were without jurisdiction and liable to be quashed. The ld. A.R. submitted that the second proviso to section 143(3) of the Act was effective from 1.4.2022 vesting

jurisdiction with the ld. Assessing Officer to make reference for alleged violation to withdraw the approval granted under section 10(23C)(vi) of the Act whereas the impugned assessment years in respect of which the reference was made to the PCIT falls prior to that. The ld. A.R. in defense of his argument relied on the decision of the Coordinate Bench in the case of Lakhmi Chand Charitable Society -vs.- PCIT [2024] 166 taxmann.com 324 (Delhi-Trib.). The ld. A.R. also stated that the ld. Assessing Officer had himself invalidated the notices issued under section 148 of the Act dated 30.06.2021 for assessment years 2018-19, 2019-20 and 2020-21 by issuing fresh notices under section 148A(b) of the Act dated 25.05.2022 post the judgment of the Hon'ble Apex Court in the case of Union of India -vs. - Ashish Agarwal and accordingly, the consequent orders dated 31.03.2022 were also invalidated by him. The ld. A.R. also submitted that the returns of income were also filed in compliance to the notices issued under section 148 on 30.06.2021. The ld. A.R. further argued that the assessee did not challenge the validity of these notices and complied with the statutory notices issued by the ld. Assessing Officer to the assessee by filing replies from time to time, which culminated in passing of assessment orders under section 147 read with section 143(3) dated 31.03.2022. The ld. A.R. submitted that the appeals preferred before the ld. CIT(Appeals) against the assessment orders passed by the ld. Assessing Officer were, in fact, dismissed vide order dated 28.12.2023 holding that the assessment orders under section 143(3)/147 of the Act dated 31.03.2022 were *non-est* on the ground that fresh orders under section 143(3)/147 have been

passed on 16.11.2023 following new provisions of section 148A of the Act in view of the directions of the Hon'ble Supreme Court in the case of Union of India -vs.- Ashish Agarwal. The ld. A.R. further submitted that thus ld. Assessing Officer himself admitted the notices issued under section 148 of the Act dated 30.06.2021 as invalid for all the assessment years, i.e. 2018-19, 2019-20 and 2020-21 by issuing fresh notice under section 148A(b) of the Act dated 25.05.2022 by virtue of the judgment of the Hon'ble Apex Court in the case of Union of India -vs.- Ashish Agarwal (supra).

6. The ld. A.R. submitted that in the meantime, the most recent judgment of the Hon'ble Apex Court in the case of Rajeev Bansal and Others was pronounced on 03.10.2024 reported in [2024] 167 taxmann.com 70 (SC), wherein it was held that "the time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1st April, 2021 and 30th June, 2021 till the supply of relevant information and material by the Assessing Officers to the assessee in terms of the directions issued by this Court in Ashish Agarwal (supra) and the period of two weeks was to be allowed to the assessee to respond to the show cause notices. It was further submitted that the ld. Assessing Officer was required to issue the reassessment notice under section 148 under the new regime within the time limit surviving under the Income Tax Act read with TOLA and all notices issued beyond the surviving period were time barred and liable to be set aside.

7. It was stated that admittedly notices under section 148 of the Act dated 30.06.2021 for assessment years 2018-19, 2019-20 and 2020-21 under the old regime were issued to the assessee by virtue of TOLA. Post judgment of the Hon'ble Apex Court in the case of Ashish Agarwal, notices under section 148A(b) of the Act were issued to the assessee on 25.05.2022, which were replied by the assessee on 07.06.2022. The ld. A.R. stated that after the decision of the Hon'ble Apex Court in the case of Rajeev Bansal & Others (supra), the time starts for the ld. Assessing Officer after receiving the response of the assessee and notice under section 148 of the Act under the new regime needs to be issued within the surviving time limit. In the present case, the surviving time was only one day and, therefore, as per third proviso under section 149 of the Act, as in vogue at the relevant point of time to file response to notice issued under section 148A(b) of the Act shall be excluded. The assessee was given fourteen days' time to file the reply which expires on 08.06.2022. The ld. A.R. submitted that the reply was duly filed by the assessee on 07.06.2022 being thirteen days from the notices dated 25.05.2022. After 08.06.2022, the surviving time available with the ld. Assessing Officer to issue notice under section 148 of the Act was one day which expires on 09.06.2022. Now as per fourth proviso to section 149(1) of the Act as was applicable at the relevant point of time, time to issue 148 notice would be extended by seven days and thus the responded time to issue notice under section 148 would be 15th June, 2022 (from 08.06.2022 plus seven days). However, notices were issued to the assessee under section 148 of the Act on 21.07.2022, 22.07.2022

and 26.07.2022 respectively for A.Y. 2018-19, 2019-20 and 2020-21 which clearly implied that the notices under section 148 were time barred.

8. The ld. A.R. submitted the notices issued under section 148 of the Act for A.Ys. 2018-19, 2019-20 and 2020-21 on 21.07.2022, 22.07.2022 and 26.07.2022 respectively were clearly barred by limitation and hence, the entire proceedings initiated on these time barred notices were without jurisdiction and were liable to be quashed *in limine*. Therefore the ld. A.R. argued that no valid proceedings were pending before the ld. Assessing Officer to make reference to the ld. PCIT which was sine quo non for making reference under second proviso to section 143(3) of the Act for assessment years 2018-19, 2019-20 and 2020-21. Finally, to sum up the arguments, the ld. A.R. prayed that the impugned orders passed by the ld. PCIT withdrawing the approval granted to the assessee under section 10(23C)(vi) of the Act were without jurisdiction and liable to be quashed for the following reasons:-

(i) 2nd proviso to section 143(3) of the Act was not applicable for the subject assessment years being A.Ys. 2018-19 to 2021-22 and therefore the reference was itself invalid and not as per the provisions of the Act.

(ii) Reference was made under 2nd proviso to section 143(3) of the Act, during the course of invalid proceedings for A.Ys. 2018-19, 2019-20 and 2020-21,

which were barred by limitation meaning thereby that no valid pending proceedings as on the date reference when it was made to PCIT.

(iii) Reference was made in terms of 2nd proviso of section 143(3) to the ld. PCIT (Central), Patna to whom the ld. Assessing Officer was subordinate is not permissible, rather it was the dl. Commissioner (exemptions), Patna having territorial jurisdiction specified in Column 4 of the Notification Nos. 52/2014 and 53/2014 both dated 22nd October, 2014, who is the appropriate authority to approve or withdraw the approval.

Ld. A.R. finally submitted that the impugned orders passed by the ld. PCIT withdrawing the approval granted to the assessee under section 10(23C)(vi) of the Act may kindly be quashed.

9. The ld. D.R., on the other hand, relied heavily on the orders of authorities below by submitting that the approval granted under section 10(23C)(vi) was rightly withdrawn by the ld. PCIT, Patna after a reference was made by the AO to ld. PCIT under 2nd proviso to section 143(3) of the Act. The ld. D.R. further submitted that during the course of survey proceedings on the assessee society on 17.09.2020 and search & seizure under section 132(1) and survey proceedings under section 133A in the business premises of the founder of the assessee society, seized documents were found to

have been not fully disclosed in the books of account, which have been comprehensively discussed by the ld. PCIT, Patna in the orders passed under section 10(23C)(vi) of the Act. It was also observed by the ld. PCIT while passing the orders qua withdrawal of approval that money of the Trust was being syphoned off by the Founder Chairman of the assessee-Trust Shri Nand Kumar Prasad Shah (deceased), who used to utilize the money for personal purposes. The ld. D.R. referred to the subject proviso further as referred by the ld. A.R. for making reference to the competent authority, which was clarifications in nature and is retrospectively applicable. Therefore, the contention of the ld. A.R. that second proviso to section 143(3) was effective from 1st April, 2022 is based upon unfounded belief and may kindly be dismissed. The ld. D.R. finally prayed that the appeals of the assessee may kindly be dismissed on the legal issue raised by the assessee.

10. We have heard the rival contentions and perused the material available on record carefully including the decisions cited before us during the course of hearing. The undisputed facts as called out of the records are that the above the assessments of the assessee were reopened under section 147 of the Act after survey action under section 133A of the Act on the assessee on 17.09.2020 and also simultaneous action under section 133A as well as under section 132(1) of the Act on the founder of the assessee-Society Shri Nand Kumar Prasad Shah (deceased) on 17.09.2020, when it was found that certain receipts were not

accounted for by the assessee-Society in its books of account. The assessments were framed by the ld. Assessing Officer under section 143(3) read with section 147 vide orders dated 31.03.2022 for A.Ys. 2015-16 to 2020-21. The said assessment orders were challenged before the ld. CIT(Appeals), but due to the decision of the Hon'ble Apex Court in the case of Union of India -vs.- Ashish Agarwal dated 4th May, 2022, the ld. Assessing Officer declared the assessment orders framed on 31.03.2022 as invalid and issued fresh notices under section 148A(b) of the Act to the assessee on 25.05.2022 for assessment years 2018-19, 2019-20 and 2020-21. Thereafter orders under section 148A(d) of the Act were passed and notices under section 148 were issued to the assessee on 21.07.2022, 22.07.2022 and 26.07.2022. During the said proceedings, the ld. Assessing Officer made a reference to the ld. PCIT (Central), Patna vide letters dated 22.12.2022 in terms of second proviso to section 143(3) of the Act and accordingly ld. PCIT, Patna issued notices to the assessee on 17.02.2023 giving show cause to the assessee trust for withdrawal of approval granted under section 10(23C)(vi) of the Act calling upon the assessee as to why the approval granted should not be withdrawn. The assessee submitted that the ld. PCIT after taking into account the reply of the assessee to show cause notice passed the orders withdrawing the approval granted u/s 10(23C)(vi) of the Act. For the sake of ready reference and convenience, the chronological events are extracted below:-

ITA Nos. 309, 310, 311 & 312/PAT/2023
Assessment Years: 2018-2019 to 2021-2022
G.D. Mother Educational Society

Event	AY 2018-19	AY 2019-20	AY 2020-21
First Notice u/s 148 of the Act under old regime	30-06-2021	30-06-2021	30-06-2021
As per the order of the SC in Rajeev Bansal, the learned AO had 1 surviving day time to issue notice u/s 148 of the Act under new regime (day between 30-06-2021 and 30-06-2021)	1 day	1 day	1 day
Notice u/s 148A(b) of the Act issued	25-05-2022	25-05-2022	25-05-2022
Time given to assessee to reply was 14 days which expires on (Third proviso to section 149(1), now 5 th)	08-06-2022	08-06-2022	08-06-2022
Surviving Time of 1 day (30-06-2021- 30-06- 2021) expires on	09-06-2022	09-06-2022	09-06-2022
Since time available with the learned AO was only 1 day, the same will be extended to 7 days by virtue of 4 th proviso to section 149(1) of the Act (now 6 th proviso).	15-06-2022 (08-06-2022 + 7 days)	15-06-2022 (08-06-2022 + 7 days)	15-06-2022 (08-06-2022 + 7 days)
Notice u/s 148 of the Act under new regime issued on	21-07-2022	22-07-2022	26-07-2022
PAGE	201	227	249

11. In the meantime the Hon'ble Apex Court delivered the judgment in the case of Rajeev Bansal and Others dated 03.10.2024 (supra), wherein it was held that "the time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1st April, 2021 and 30th June, 2021 till the supply of relevant information and material by the Assessing Officers to the assessee in terms of the directions issued by this Court in Ashish Agarwal (supra) and the period of two weeks was to be allowed to the assessee to respond to the show cause notices". Thereafter in terms of the said decision, the ld. Assessing Officer was required to issue the reassessment

notice under section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. In this context, the assessee's contentions is worth merit that the notices issued under section 148 of the Act under the new regime dated 21.07.2022 for A.Y. 2018-19, on 22.07.2022 for A.Y. 2019-20 and dated 26.07.2022 for A.Y. 2020-21 were clearly barred by limitation. In other words, on the date of reference, there was no valid proceeding pending before the ld. Assessing Officer, whereas for making any reference to the ld. PCIT by the ld. Assessing Officer during a pending proceeding is sine quo non, which were not there in the instant cases as these notices were clearly time barred by limitation. Therefore, on this count, we are inclined to quash the orders passed by the ld. PCIT withdrawing the approval under section 10(23C)(vi) of the Act.

12. So far as the second contention of the assessee is concerned, that the second proviso to section 143(3) of the Act was brought on the Statute Book w.e.f. 1st April, 2022 and is accordingly applicable for A.Y. 2022-23 onwards, we observe that the AO is vested with the power to make reference during the course of pending proceedings before him but in the instant case a reference was made by the ld. Assessing Officer under 2nd proviso to section 143(3) of the Act , which was not applicable to the assessments under consideration and thus the reference is also invalid and, therefore, the consequent orders passed by the ld. PCIT under section 10(23C)(vi) of the Act withdrawing the approval for all these assessment years are invalid and accordingly quashed. The ld.

Case of the assessee finds support from the decision of the Coordinate Bench in the case of Lakhmi Chand Charitable Society -vs.- PCIT reported in (2024) 166 taxmann.com 324 (Delhi-Trib.), wherein similar issue has been decided by the Coordinate Bench.

13. So far as the third contention of the assessee is concerned, that reference was made in terms of 2nd proviso to section 143(3) to ld. PCIT (Central), Patna to whom the ld. Assessing Officer was subordinate we are of the opinion that it is not permissible under the Act and is invalid. Rather it was the ld. Commissioner (Exemption) having territorial jurisdiction as specified in Column 4 of the Notifications Nos. 52/2014 and 53/2014 both dated 22nd October, 2014, who was the appropriate authority to approve or withdraw the approval. Even on this account, the ld. PCIT's jurisdiction is invalid and not sustainable in the eyes of law.

14. Considering the aforesaid facts and discussions and the ratio laid down in the various decisions as cited above, we are inclined to quash the orders passed by the ld. PCIT, Patna under section 10(23C)(vi) of the Act.

15. In the result, all the four appeals of the assessee are allowed.

Order pronounced in the open Court on 20/11/2024.

Sd/-

Sd/-

(Rajpal Yadav)
Vice-President

(Rajesh Kumar)
Accountant Member

Kolkata, the 20th day of November, 2024

*Copies to :(1) G.D. Mother Educational Society,
Akharaghat Road,
Muzaffarpur-842001, Bihar*

*(2) Principal Commissioner of Income Tax
(Central), Patna,
Aayakar Bhawan, Near Nehru Stadium,
Sikandarpur, Muzaffarpur-842001, Bihar*

(3) CIT - , Kolkata;

(4) The Departmental Representative;

(5) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.