

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.538 and 615/Nag./2024**  
(Assessment Year : N.A.)

G.H.R. Educational Foundation  
T-8, Shradha House, 345 Kingsway  
Nagpur 440 001 PAN – AALCG0443P

..... Appellant

v/s

Commissioner of Income Tax  
Exemption, Pune

..... Respondent

Assessee by : Shri Mukesh Agrawal  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 04/02/2025

Date of Order – 10/02/2025

**ORDER**

**PER V. DURGA RAO, J.M.**

The captioned appeal by the assessee in ITA no.538/Nag./2024, is emanating from the impugned order dated 30/08/2024, passed by the learned Commissioner of Income Tax (Exemption), Pune, [*"learned CIT(E)"*] rejecting the approval under section 10(23C)(vi) of the Income Tax Act, 1961 (*"the Act"*)t.

2. In its appeal, the assessee has raised following grounds:–

*"1. On the facts and circumstances of the case and in law, the learned CIT Exemption, Pune has grossly erred in rejecting assessee's application for approval u/s 10(23C)(vi) of I T Act. The order passed by CIT Appeals is illegal, invalid and against the principles of natural justice.*

*2. On the facts and circumstances of the case and in law, the learned CIT Exemption, Pune ought to have granted approval under section 10(23C) (vi) of*

*IT Act to the Appellant as the Appellant has duly complied with all the conditions as prescribed under law for grant of approval under section 10(23C)(vi) of the Act.*

*3. On the facts and circumstances of the case and in law, the learned CIT Exemption, Pune has grossly erred in holding that the objects of the appellant are not solely and/or incidental to educational activities.*

*4. The Appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of Appeal."*

3. Facts in Brief:- The assessee was incorporated on 18/02/2024 under section 8 of the Companies Act with the main object "*To convert existing Society "G.H.R. Education Foundation" having registration no.MAH/830/04 dated 21/12/2004 (PAN: AAATG7303E) as going concern under Section 366 to 374 of Part-1, Chapter-XXI of the Companies Act, 2013 r/w with the Companies [Authorised to be Register] Rules, 2014 as amended from time to time, on its incorporation under the Companies Act, 2013 to "G.H.R. Education Foundation", a Section 8 Company, limited by guarantee and not having share capital under the Companies Act, 2013. The predecessor society was an approved educational institution under section 10(23C)(vi) of the Act having registration under section 80G of the Act. Details of previous approval under section 10(23C)(vi) of the Act are as under:-*

<i>Sr. no.</i>	<i>Particulars</i>	<i>Section</i>	<i>Approval No.</i>	<i>Approval Date</i>
<i>1.</i>	<i>Prior to 01/04/2021</i>	<i>10(23C)(vi)</i>	<i>PN/DGIT(Inv.)/GH REF Soc/10(23C)/2009- 10/28/04/2009</i>	<i>28/04/2009</i>
<i>2.</i>	<i>After 01/04/2021</i>	<i>10(23C)(vi)</i>	<i>AATG7303EC20214</i>	<i>28/05/2021</i>

The assessee runs following Schools and Colleges:-

Sr. no.	Particulars	Location	Year of Establishment	Granted or Non-Granted
1.	G.H. Rasoni Institute of Engineering & Business Management	Jalgaon	2007	Non Granted
2.	Sadabai Rasoni Womens College	Nagpur	2004	Non Granted
3.	G.H. Rasoni Junior College	Jalgaon	2015	Non Granted
4.	G.H. Rasoni Public School	Jalgaon	2022	Non Granted

Since the status of assessee changed from society to Section 8 Company, it had filed an application in Form no.56D, on 11/04/2008, seeking grant of fresh approval under section 10(23C)(vi) of the Income tax Act, 1961 ("the Act").

4. Before the learned CIT(E), the assessee furnished various details and documents in support of its claim. However, the learned CIT(E) considering the same, rejected the application of the assessee by following certain judicial pronouncements and held that the assessee is not found eligible for approval under section 10(23C)(vi) of the Act by observing as under:-

*"3. The information / details were called for under the provisions of sub-clause (a) of clause (ii) of second proviso to section 10(23C) of the Income Tax Act, 1961. These are the basic details required to ascertain the validity of the application and the overall nature of the activities of the assessee and are directly relevant to the present proceedings. The assessee was requested to submit its compliance by 17/05/2024. The assessee was specifically informed that in the event of failure to comply by the due date, the application shall be liable to be rejected and the registration / approval shall also be liable to be cancelled. The assessee was also given an opportunity of being heard vide the said notice. The notice was duly served on the assessee through e-portal and email. However, the assessee did not respond to the said notice. Hence, another notice was issued on 30/07/2024 as under METAX DEPAR*

*"(1) Copy of MOU/ Agreement entered into between GHR Edu Foundation (Co) and GHR Edu Foundation Society (Trust), copies of resolution and minutes of proceedings of the trust and the company regarding transfer and taking over of activities has not been furnished.*

*(ii) Year-wise details of donations with full name, address, PAN of donors, date and mode of donation, amount, receipt no. issued. has not been furnished.*

*(iii) Present application has been filed u/s 10(23C) (iv) (B) for grant of registration u/s 10(23C) (vi) of the Act. Provisions of said section applies to an institution existing solely*

for educational purposes. However, as noticed from the MOA of the institution, the objects provide for many activities other than education, for e.g. running rehabilitation centre, clinics etc. as well. Therefore, the assessee is not eligible for registration under said section."

3.1 The assessee was requested to submit the compliance by 06/08/2024. The notice was duly served on the assessee through e-portal and e-mail. In compliance to the notice, the assessee submitted its reply on 05/08/2024 wherein the assessee contended that G.H.R. Education Foundation is incorporated on 18.02.2024 under section 8 of the Companies Act with the main object "To convert existing society "G.H.R. Education Foundation" having registration no MAH/830/04 dated 21.12.2004 (PAN AAATG7303E) as going concern under Section 366 to 374 of Part-1-Chapter XXI of the companies Act 2013 read with the Companies [Authorised to be Register] Rules, 2014 as amended from time to time, on its incorporation under the Companies Act, 2013 to "G.H.R Education Foundation" A Section 8 Company, limited by guarantee and not having share capital under the Companies Act, 2013" as going concern under section 366 to 374 of Part-1- Chapter XXI of the Companies Act, 2013 read with the companies [Authorized to be Register] Rules, 2014 as amended from time to time, on its incorporation under the Companies Act, 2013 to "G. H. R. Education Foundation". The assessee also stated that former trust ie. G. H. R. Educations Foundation Society Nagpur (AAATG7303E) was approved educational institution u/s 10(23C)(vi) of the I. T Act and it was also having registration u/s 80G of the IT Act. In respect of the objects e.g. running rehabilitation centre, clinics etc. as pointed out in the above show cause, the assessee submitted that the rehabilitation centre is in the context with students who leave education midway and need counselling for re-starting their education. The assessee further stated that 'clinic' has been used in the context with Medical Education wherein there is requirement of Medical College along with Hospitals, medical centres, clinic, etc. As such the assessee asserted that it has sole objects of imparting education only. The submission of the assessee has been carefully perused, however, the same is not acceptable for following reasons.

4. On verification of the details/documents submitted by the assessee as well as available on the Income Tax Data base, it is learned that the assessee which was earlier registered as a trust/Society with name and title 'GHR Educations Foundation Society Nagpur having PAN AAATG7303E. The objects of the trust were as under:

- 1) To spread good education among the masses of Rural and Urban area.
- 2) To start institutions and organization like Pre-Primaries, Primaries, Secondary Schools, College, Hostels, Guidance Centers, Physical Training insinuations, Teachers Training organization, Rehabilitation centers, Libraries, Institutions of Social Science, Engineering Colleges, Medical Colleges, Hospitals Ayurvedic College, Homeopathic College, Dental College, Nursing College, Law College, Institution of Management etc.
- 3) To create self-discipline value of manual labour, feeling of equality and morality amongst the students.
- 4) In general to provides an ideal education without any religion bias with the principles of equality, Liberty, Justice and respect for all.

- 5) *To undertake and facilitate research in all branches of knowledge and establish institutions of this purpose.*
- 6) *To work for promotion and over all educational development of Hindi Speaking community according to Government Strategy*
- 7) *To promote education among economically backward classes and providing free medical services and providing free services to poor people.*
- 8) *To aid, help and donate to a registered Public trust having exclusive objects of promoting and advancement of secular education, Medical education and research thereon.*
- 9) *To do all such necessary things which are incidental or conducive to the attainment of the aforesaid objects.*
- 10) *To grant stipends scholarship, studentship and other allowances, concessions and gratuities to deserving scholars, students and other candidates.*
- 11) *To collect, raise and receive subscriptions, decagons and gifts in cash or in kind.*
- 12) *To organize, hold and arrange cultural functions, recitations, debates, symposiums and other cultural and literary programs, and citations for the benefit of the public and to invite scholars, technicians, poets, artists and other learned persons to participate therein and to organize and hold classes and conduct examinations and award diplomas, certificates or other distinctions or titles.*
- 13) *To borrow, raise money or moneys on such terms as may be thought fit by the Governing Body for attainment of objects of society.*
- 14) *To invest the money of the society in such manner as the Governing Body may think fit and proper and also as may be permissible under the law.*
- 15) *To enter into any arrangement or contract with any Government, authority or person whomsoever and to obtain from any Government authority or person such rights, concessions and privileges as the society may think desirable and to carry out, exercise and comply with any such arrangement, contract, privilege, right or concessions.*
- 16) *To hire and employ, professors, teachers, instructors, doctors legal advisors, clerks, servants, workmen and others and to pay them salaries, fees, wages, gratuities, honorarium as may be necessary.*
- 17) *For realization of the above objectives, the Society will interalia work towards renewing of school/ college acquaintances, along with their wives and cultivate feelings of brotherhood, sprit of self help and corporate spirit among the Alumni members' and keep the Alumni in touch with their Alma Mater.*
- 18) *To do and cause to be done all such legal transactions as are in accord with the spirit and principles of the objects of the Society or which are conducive to the attainment and pursuit of the aims and objects of the Society.*
- 19) *To work in collaboration with other institutions, organization, societies, trusts or companies to impart promote and improve the standard and education in the institutions established by the present- society."*

4.1 Further, the trust got itself converted into a section 8 company under the name and title of 'GHR Education Foundation' having PAN AALCG0443P on 18.02.2024 with following objects:

- "2. To spread good education among the masses of Rural and Urban area.
3. To establish, promote, run, consent and accreditation of Schools, Colleges, Institutions and Universities for imparting higher education in all disciplines of education in India including collaborations with foreign universities where considered necessary.
4. To start institutions and organization like Pre-Primaries, Primaries, Secondary, School, Colleges, Hostels, Institutions, Universities, Guidance Centres, Physical Training Institutions, Teachers Training organization, Rehabilitation Centres, Libraries, Institution of Social Science, Engineering Colleges, Medical Colleges, Hospitals, medical centres, medical institutions, clinics, Ayurvedic College, Homeopathic College, Dental College, Nursing College, Law College, Institute of Management etc, etc, Vocational courses like Industrial training Institutes Centers And Vocational Certificate Courses, ITI, Technical High School (Bi-Focal Courses as well as degree courses in Vocational Education).
5. To create self-discipline value of manual labour, feeling of equality and morality amongst the students. In general to provides an ideal education without any religion bias with the principles of equality Fraternity, Liberty, Justice and respect for all.
6. To undertake and facilities research in all branches of knowledge and establish institutions of this purpose and to organize institutions of social and educational nature to advance the cause of national development.
7. To work in collaboration with other institutions, organizations, societies, trusts or companies to impart, promote and improve the standard of education in the institutions established by the company.
8. To work for promotion and over all educational development of minority and Hindi speaking community according to government strategy.
9. To promote education among economically backward classes and providing free medical services to poor people.
10. To aid, help and donate to a registered public trust having exclusive objects of promoting and advancement of secular education, Medical education and research thereon.
11. To promote and disseminate knowledge, create awareness and provide a common forum of interaction amongst academicians, professionals and government agencies, establish effective co-ordination, to organise training courses and special programmes to impart training, education in all disciplines like academic, cultural, musical, artistic, literacy, crafts, Scientific, engineering and technical, medicinal, vocational, management and commercial subjects or which may be conducive to knowledge of or skill in any profession, trade or otherwise, to undertake, promote, do and conduct research in various areas of education, study global developments and evaluate new instruments or services and disseminate their applications in India, to participate in training programmes abroad and evaluate their practices for betterment of education in India, to provide, offer fellowship, scholarships, prizes, certificates, diplomas, awards or honour otherwise on completion of the training programmes or

specific courses, passing examinations or for contributions in various areas of education."

5. On perusal of the objects of both the entities, it is observed that 'G H R Education Foundation' has amended many of the objects (highlighted above for reference) which were not the part of the objects of the trust 'G HR Educations Foundation Society Nagpur'. It may be noted that there are many objects viz. running rehabilitation centres, medical centres, clinics, providing free medical services to poor people, etc which are neither solely for educational or incidental while achieving the sole object of education.

5.1 The law does allow the assessee to interpret the words as per its own convenience when their plain and ordinary meaning are clear and unambiguous. The assessee in its deed/MoA has consciously inserted these words which in fact was not available (excluding word of rehabilitation centres) in the deed of 'GHR Educations Foundation Society Nagpur These words have also not been used as conjunction with previous objects as claim by the assessee. The assessee has applied for registration u/ 10(23C)(vi) of the Act which says

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

(23C) any income received by any person on behalf of-

(vi) 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 (iiid) and which may be approved by the 72[Principal Commissioner or Commissioner]; or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the 73[Principal Commissioner or Commissioner]:"

5.2 The above statute clearly states that educational institution/university has to be solely exist for educational purposes, whereas the objects viz running rehabilitation centres, medical centres, clinics, providing free medical services to poor people, etc. are medical activities which will fall under the section 10(23C) (via) of the Act. Thus, it may be construed that the objects of the assessee are not "solely" for educational activities and relating to that. In this connection, reliance upon the decision of the Hon'ble Supreme Court in the case of M/S NEW NOBLE EDUCATIONAL SOCIETY vs The CCIT 1 &Othr. Vide CIVIL APPEAL NO. 3795 OF 2014 dtd. 19.10.2022 is placed here wherein the three judges' bench of the Hon'ble Court held that the institution should solely exist for the medical or education as the case may be and if there are other objects as per the constitution document then the institution will not be eligible for approval under the relevant provisions. Relevant paras of the decision of the Hon'ble Supreme Court are reproduced hereunder:

"51. It is, therefore, clear that term 'solely' is not the same as 'predominant/mainly The term 'solely' means to the exclusion of all others. None of the previous decisions especially American Hotel (supra) or Queens Education Society (supra) - explored the true meaning of the expression 'solely'. Instead, what is clear from the previous discussion is that the applicable test enunciated in Surat Art (supra) i.e., P. RAMANATHA AIYAR, ADVANCED LAW LEXICON, (6th Edn.), Pg. 5249-5250 (2019).

*Solely, Cambridge Dictionary (4th Edn.) (2013).*

*the 'predominant object' test was applied unquestioningly in cases relating to charitable institutions claiming to impart education. The obvious error in the opinion of this court which led the previous decisions in American Hotel (supra) and in Queens Education Society (supra) was that Surat Art (supra) was decided in the context of a society that did not claim to impart education. It claimed charitable status as an institution set up to advance objects of general public utility. The Surat Art (supra) decision picked the first among the several objects (some of them being clearly trading or commercial objects) as the 'predominant' object which had to be considered while judging the association's claim for exemption. The approach and reasoning applicable to charitable organizations set up for advancement of objects of general public utility are entirely different from charities set up or established for the object of imparting education. In the case of the latter, the basis of exemption is Section 10(23C) (iiiab), (iiiad) and (vi). In all these provisions, the positive condition 'solely for educational purposes and the negative injunction 'and not for purposes of profit loom large as compulsive mandates, necessary for exemption. The expression 'solely is therefore important. Thus, in the opinion of this court, a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education. Having regard to the plain and unambiguous terms of the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation.*

*52. The view of this court is fortified by the previous judgements in Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors. where a constitution bench held that taxing statutes are to be construed in terms of their plain language:*

*"21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in Commissioner of Customs (Import), Mumbai v. Dilip (2018) 9 SCC 1. ETAX DEPAR Kumar and Company & Ors. the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature".*

*The Court, while noting the nuances between 'strict' and 'literal' interpretation, held as follows:*

*"29....We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used, there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute"*

*If the language is unambiguous and capable of one meaning, that alone should be applied and not any other, based under surmise that the Parliament or the legislature intended it to be so. In other words, it is only in cases of ambiguity that the court can use other aids to discern the true meaning. Where the statute is clear and the words plain, the legislation has to be given effect in its own terms.*

53. In *A.V. Femandez v State of Kerala*<sup>23</sup>, a constitution bench discussed how tax laws should ordinarily be construed:

*"29. It is no doubt, true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter".*

54. It is only when the application of literal interpretation gives rise to an absurdity, should the interpretation be expansive. This was reiterated in *Mangalore A. V. Fernandez v State of Kerala*, 1957 SCR 837.

*Chemicals and Fertilisers Ltd. v Deputy of Commercial Taxes & Ors.*<sup>24</sup>:

*"24. ... The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation".*

55. This court has, in many judgments, stressed that the object of a proviso is to except from the main provision something enacted in the substantive clause. It cannot however, by itself be read as a substantive provision. *IshverlalThakorelalAlmaula v. Motibhai Nagjibhai*<sup>25</sup> considered the function and effect of a proviso:

*"8. The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso."*

56. In *Indore Development Authority v. Manoharlal*<sup>26</sup> it was held that:

*"192. A proviso has to be construed as a part of the clause to which it is appended. A proviso is added to a principal provision to which it is attached. It does not enlarge the enactment. In case the provision is repugnant to the enacting part, the proviso cannot prevail. Though in absolute terms of a later Act. Its placement has been considered, and purpose has been considered in the following decisions. It was observed in *State of Rajasthan v. Leela Jain* [*State of Rajasthan v. Leela Jain*, (1965) 1 SCR 276: AIR 1965 SC 1296]: (AIR p. 1300, para 14) "14.... So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part. *Mangalore Chemicals and Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes & Ors*, (1992) Supp (1) SCC 21.*

*IshverlalThakorelalAlmaula v. MotibhaiNagjibhai*, 1966 (1) SCR 367.

*Indore Development Authority v. Manoharlal*, (2020) 8 SCC 129

57. The scope of a proviso was dealt with in great detail in *S. Sundaram Pillai v. V.R. Pattabiraman*.<sup>27</sup> This court observed that normally a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be tom apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. After quoting previous decisions and authoritative texts, this court summarized the correct legal position, as follows:

"43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself: and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

58. The seventh proviso to Section 10 (23C) (vi) alludes to business and profits ('being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business). The interpretation of Section 10 (23C) therefore, is that the trust or educational institution must solely exist for the object it professes (in this case, education, or educational activity only), and not for profit. The seventh proviso however carves an exception to this rule, and permits the trust or institution to record (or earn) profits, provided the 'business' which has to be read as the education or *S. Sundaram Pillai v. V.R. Pattabiraman*, 1985 (1) SCC 591.

educational activity - and nothing other than that - is incidental to the attainment of its objectives (i.e., the objectives of, or relating to, education).

59. In this court's judgment in *Delhi Cloth & General Mills Co. Ltd. v Workmen & Ors.* 28 the question involved was the jurisdiction of an industrial tribunal. Under the Industrial Disputes Act, 1947, as to whether it can decide disputes referred to it, and matters incidental thereto, this court explained the meaning of 'incidental' in the following manner:

"21. [T]he word 'incidental' means according to Webster's New World Dictionary:

"happening or likely to happen as a result of or in connection with something more important; being an incident casual, hence, secondary or minor, but usually associated:"

"Something incidental to a dispute" must therefore mean something happening as a result of or, in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. The above decision has been followed in other cases. 'Incidental' therefore, means, in the context of the present case, something connected with the activity of education.

*60. In the light of the above discussion, this court is of the opinion that the interpretation adopted by the judgments in American Hotel (supra) as well as Queens Education Society (supra) as to the meaning of the expression 'solely' are erroneous. The trust or educational institution, which seeks approval or exemption, should solely be concerned with education, or education related activities. If, incidentally, while carrying on those objectives, the trust earns profits, it has to maintain separate books of account. It is only in those circumstances that 'business' income can be permitted-provided, as stated earlier, that the activity is education, or relating to education. The judgment in American Hotel (supra) as well as Queens Education Society (supra) do not state the correct law, and are accordingly overruled.*

*....."*

*6. As such, the Hon'ble court has held the principle of sole objects of education and/ or incidental objects relating to activity of education, to get registered u/s 10(23C) (vi) of the Act. The Hon'ble Apex Court has also held that the judgement will be prospective so that the educational institutions have time to amend its objects accordingly to continue benefits of section 10(23C) (vi) of the Act. Relevant part of the judgement is reproduced hereunder for sake of reference:*

*"This court is further of the opinion that since the present judgment has departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the present judgment operates hereafter. As a result, it is hereby directed that the law declared in the present judgment shall operate prospectively. The appeals are hereby dismissed, without order on costs.*

*7. In view of the above, it is found that objects of 'GHR Educations Foundation' incorporated as section 8 Company on 18.02.2024 are not solely educational and/or incidental to educational activities and therefore, following the above decision of the Hon'ble Supreme Court, the assessee is not found eligible for approval u/s 10(23C)(vi) of the Act. The application filed by the assessee is hereby rejected."*

The assessee being aggrieved by the impugned order so passed by the learned CIT(E) is in further appeal before the Tribunal.

5. The learned Counsel for the assessee argued that the assessee is carrying on activity of providing education since 2009 and it is an approved educational institution under section 10(23C)(vi) of the Act since then. The educational activities were carried on under the status of Society which has been converted into Section 8 Company, not for the purpose of profit, on

18/02/2024. Because of change in status of the assessee, it has applied for fresh approval u/s 10(23C)(vi) but there is no change in nature of activity of providing education which were earlier carried on by the society since the year 2009. The learned Counsel for the assessee submitted that the learned CIT(E) has rejected assessee's application for approval u/s 10(23C)(vi) for the reason that the objects clause of the section 8 company contains few words like "*Rehabilitation Centre, medical centre, medical institutions, Clinics, providing free medical services to poor people*" which were not there in the object clause of the predecessor society and these objects are medical activities which does not fall under section 10(23C)(vi) of the Act. The learned Counsel for the assessee argued that these objects are related to providing of medical education where medical centre and clinics are pre-requisites of medical education hence the learned CIT(E) is not correct in holding that the objects are not solely for educational purpose. The learned Counsel for the assessee argued that these activities are akin to running medical colleges as there cannot be a medical college run without there being clinics wherein the patients are treated. He emphasised the fact that every medical college also has a hospital attached to it which is a prerequisite for running an effective medical education institution. The learned Counsel for the assessee further argued that these words must be read in conjunction with previous words of the main object clause. They cannot be read in isolation. The specific words in the main object are to start institutions like pre-primary, Primaries, Secondary Schools, Colleges, Universities etc which are followed by the general words like rehabilitation centre, clinics, etc. The specific words are solely related to education and as such the general words would take colour

from the specific words which are related to education only. He further argued that all the objects of the assessee exist solely for the purpose of imparting education and none of the objects can be read in a manner so as to infer that the said object firstly is an independent object and that secondly it is not in any way connected with the main object of imparting education. The learned Counsel for the assessee further submitted that the assessee is presently engaged only in providing education related to the field of engineering apart from also running certain junior colleges and the Assessee does not at present run operate any medical colleges. The learned Counsel for the assessee further submitted that the objects with respect to running of medical colleges were included at the time of incorporation to enable the assessee to seek approval to run medical colleges in future. It was further the submission of the learned Counsel for the assessee that merely being permitted to do certain acts does not ipso facto be a ground for rejection of the approval sought more particularly when the said activities have never been undertaken by the assessee. The learned Counsel for the assessee submitted that after passing of rejection order by learned CIT(E), the assessee has modified its object clause and removed all the words like "*Rehabilitation Centre, medical centre, medical institutions, Clinics, providing free medical services to poor people*" which were objected by the learned CIT(E) and as such even if it is held that the said objects cannot be treated to be in the nature of education then the ground of rejection by the learned CIT(E) having already been addressed by the Assessee by suitably modifying the object clause, there at present exist no disability even considering the order of the learned CIT(E) and accordingly prayed that the registration as claimed under section 10(23C)

be allowed to the assessee. The learned Counsel for the assessee placed before us the copy of the revised objects clearly highlighting that the words which were objected to by the learned CIT(E) have been suitably deleted by the assessee.

6. The learned Departmental Representative strongly supported the order of CIT(E) and argued that the assessee is not eligible for approval under section 10(23C)(vi) as it is not existing solely for the purpose of education.

7. We have heard the rival arguments, perused the material available on record and gone through the order of the authority below. It is undisputed fact that the assessee was a Society having registration no.MAH/830/04 dated 21/12/2004 (PAN: AAATG7303E). The said society was an approved educational institution under section 10(23C)(vi) of the Act vide order dated 28/04/2009 which was renewed by order dated 28/05/2021 from assessment Year 2022-23 to 2026-27. The said society is converted into Section 8 Company on 18/02/2024 as going concern under section 366 to 374 of Part 1- Chapter XXI of the Companies Act, 2013. The learned CIT(E) has compared object clauses of both the entities i.e., Society (prior to conversion) and Section 8 Company (after conversion) and noticed that certain objects like Rehabilitation Centre, Medical Centre, Medical Institutions, Clinics, providing free medical services to poor people have been added in the present object clauses which were not there in the previous object clauses of the Society. He held that these objects are related to medical facilities and not related to education hence assessee is not eligible for approval under section 10(23C)(vi). We further find that upon conversion of Society into Section 8

Company there is no change in activities of the assessee. There is no finding in the impugned order passed by learned CIT(E) that the assessee is carrying on any activity other than education and more importantly the conversion has been made on the basis of going concern implying that the entire activities of the erstwhile society has been taken over by the assessee company and the assessee company is carrying on exactly the same operations as were being performed by the erstwhile society. The main objection of the learned CIT(E) that the words used "*Rehabilitation Centre, Medical Centre, Medical Institutions, Clinics, providing free medical services to poor people*" and nowhere has the learned CIT(E) either brought on record as to whether these activities are actually being performed by the Assessee or that the Assessee is undertaking any activity other than imparting of education. The learned CIT(E), in our opinion, has lost sight of the fact that the Assessee is solely engaged in the activity of providing education and is running educational institutes as mentioned hereinabove which is in the field of Engineering apart from also running certain Junior Colleges. The learned CIT(E) has further misinterpreted the said activities mentioned in the object clause as not being related to imparting education losing sight of the fact that in case of imparting medical education it is imperative that the institute also operates medical centres apart from running medical colleges wherein the students undergoing medical education get practical exposure which is essential in providing quality medical education. We find those in the argument of the Ld. Counsel that all medical institutions imparting education also parallelly operate a medical college wherein patients are treated and the medical students are given practical training in the field of education and as such running such

medical centres are part and parcel of imparting medical education and as such cannot be read in isolation as has wrongly been interpreted by the learned CIT(E). We further find force in the argument of the learned Counsel for the assessee that mere mention of the fact that certain activities are authorised to be undertaken by the Assessee does not in any manner can prove to be a hindrance without the said activities having actually been undertaken by the assessee. The assessee cannot be punished or faulted for any activity which has not yet been undertaken solely on the ground that he might, on some future uncertain date, undertake those activities which in the opinion of the learned CIT(E) might not be held to be wholly attributable to the purpose of imparting education. Even for the sake of argument if it is held that such activities would not amount to the purpose of imparting education, then it would be open for the Department in future upon the assessee undertaking the said activities to re-evaluate the registration is granted and take suitable action including cancellation of registration if they so deem fit. However, rejecting the application for registration, for the acts which have not yet been undertaken by the assessee would amount to and be equivalent to punishing someone for a crime which he is not yet committed and which in the opinion of the officer in charge he might commit in future. Such presupposition while evaluating application for registration under section 10(23C), in our opinion, is not proper and cannot be sustained. Under any case, the assessee has already modified its objects by removing the "objectionable" objects referred to and relied upon by the learned CIT(E) and as such there remains no cause for rejection of the registration applied for by the assessee under section 10(23)(vi) as apart from the inclusion of certain

objects in the object of the assessee, which as per the submission of the learned Counsel for the assessee as well as on perusal of the revised object clause submitted before us, there is no other ground raised by the learned CIT(E) for rejection of the application for grant of approval under section 10(23)(vi). On a conspectus of the above facts, firstly wherein the assessee has not undertaken any of the objects which formed the basis for rejection of the approval under section 10(23C), coupled with the fact that the said objects are akin to imparting medical education and further the objects of the Assessee having been suitably modified by removing the words which were held to be objectionable by the learned CIT(E), in our opinion, there remains no reason for the approval under section 10(23)(vi) to be withheld and consequently, relying on the findings given hereinabove, we remit the matter back to the file of learned CIT(E) solely for the reason to verify the revised objects of the Assessee to ensure that the words earlier held objectionable by the learned CIT(E) have been deleted and after taking the revised objects on record grant the approval under section 10(23C)(vi) as claimed by the assessee.

8. In the result, assessee's appeal being ITA no.538/Nag./2024, stands allowed for statistical purposes.

**ITA no.615//Nag./2024**

9. Insofar the grounds raised by the assessee in this appeal is concerned, they are as under:-

*"1. On the facts and circumstances of the case and in law, the learned CIT Exemption, Pune has grossly erred in rejecting assessee's application for*

*approval u/s 80G of IT Act. The order passed by CIT Appeals is illegal, invalid and against the principles of natural justice.*

*2. On the facts and circumstances of the case and in law, the learned CIT Exemption, Pune ought to have granted approval under section 80G of IT Act to the Appellant as the Appellant has duly complied with all the conditions as prescribed under law for grant of approval under section 80G of the Act.*

*3. The Appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of Appeal.”*

10. In this case, the registration under section 80G is the core issue. In view of our findings stated supra vide Para-16, the impugned order passed by the learned CIT(E) is also set aside and the learned CIT(E) is directed to adjudicate the issue in accordance with law after considering the facts of the case of the assessee for approval under section 10(23C)(vi) of the Act. Thus, all the grounds raised in this appeal are allowed for statistical purposes.

11. In the result, assessee's appeal being ITA no.615/Nag./2024, is also allowed for statistical purposes.

12. To sum up, both the appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 10/02/2025

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 10/02/2025**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur