

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.530 of 2008**

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1. The Commissioner of Income Tax Central, Patna.
  2. Deputy Commissioner of Income Tax, Central Circle-4, Patna.  
... Assessing Officer/Appellant/s
- Versus
- M/s Takshila Education Society Branch Office Kashi Place, Patna, B-549,  
New Friends Colony, New Delhi.  
...Assessee/Respondent/s
- 
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with  
**Miscellaneous Appeal No. 532 of 2008**

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1. The Commissioner of Income Tax Central, Patna.
  2. Deputy Commissioner of Income Tax, Central Circle-4, Patna.  
... Assessing Officer ... Appellant/s
- Versus
- M/s Takshila Education Society Branch Office Kashi Place, Patna, B-549,  
New Friends Colony, New Delhi.  
... Assessee... Respondent/s
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**Appearance :**

(In Miscellaneous Appeal No. 530 of 2008)

- For the Appellant/s : Ms. Archana Sinha, Sr. Standing Counsel  
Mr. Sanjeev Kumar, Adv.
- For the Respondent/s : Mr. Ajay Kumar Rastogi, Adv.  
Mr. Smriti Singh, Adv.  
Mr. Parijat Saurav, Adv.

(In Miscellaneous Appeal No. 532 of 2008)

- For the Appellant/s : Ms. Archana Sinha, Sr. Standing Counsel  
Mr. Sanjeev Kumar, Adv.
- For the Respondent/s : Mr. Ajay Kumar Rastogi, Adv.  
Mr. Smriti Singh, Adv.  
Mr. Parijat Saurav, Adv.
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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

and

**HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

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**Date : 14-02-2019**

These appeals under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') are directed against the order dated 18.03.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (hereinafter referred to as 'the



Tribunal') in ITA No.572/Pat/06 and ITA No.571/Pat/06 filed by the appellant Department for the assessment years 2003-04 and 2002-03 respectively, whereby the appeals have been dismissed, thus confirming the order passed by the Commissioner of Income Tax (Appeals), Patna dated 27.10.2006.

We have heard Ms. Archana Sinha, learned counsel appearing for the Income Tax Department and Mr. Ajay Kumar Rastogi, learned counsel appearing for the respondent- assessee and we have perused the records.

Since the issues raised in these appeals are identical hence with the consent of the parties they have been taken up together with a view to their final disposal at the present stage itself.

The assessee is an educational society and apparently enjoying the exemption granted by the statutory authority under section 10(23C)(vi) as well as the exemption under section 11 of 'the Act' for which it is duly registered under section 12AA of 'the Act'.

In so far as the present appeals are concerned, it is the exemption granted to the society under section 11 of 'the Act' which is the subject matter of dispute and to cut short the matter it is because the Commissioner, Income Tax (Appeals) has accepted the position to differ with the opinion of the Assessing Authority



and which opinion of the Commissioner, Income Tax (Appeals) has been endorsed by 'the Tribunal' by the order impugned that feeling aggrieved Department is before us.

While Ms. Sinha, learned counsel appearing for the appellant-department has invited our attention to the substantial question of law framed at paragraph (v) to submit that the Income Tax Appellate Tribunal has erred in allowing exemption to the assessee under section 11 of 'the Act' even when the activities of the society is neither charitable nor the society is existing solely for the education purposes but for profit, Mr. Rastogi, learned counsel appearing for the assessee has invited our attention to the order of the Commissioner enclosed at Annexure R/5 to the counter affidavit filed in the present appeal to submit that a similar issue raised by the Assessing Authority i.e. Assistant Commissioner of Income Tax vide Annexure R/4 praying for withdrawal of the exemption under section 11 and consequent cancellation of registration under section 12AA of 'the Act' has not found favour with the Commissioner who after examining the matter threadbare vide order passed on 27.10.2010 has dropped the proceeding. He thus submits that even if any issue persuaded the appellant herein to raise such question of law through the appeals in question, it stands answered by the order of Commissioner, Income Tax himself enclosed at Annexure R/5, whereby the



recommendation made by the Assessing Authority i.e. Assistant Commissioner of Income Tax at Annexure R/4 for withdrawal of exemption has been rejected and the proceedings dropped.

We have heard learned counsel for the parties and we have perused the records.

The status of the educational society already stands discussed above and requires no further discussion, save and except, that it is running an Educational Institution in the name of 'Delhi Public School' at Patna and at Pune and is registered under section 12AA of 'the Act' as at present and was also granted exemption under section 10(23C)(vi) of 'the Act' for the assessment years 1999-2000, 2000-2001 and 2001-2002 under the orders of the Central Board of Direct Taxes dated 21.03.2002 which fact is not in dispute.

The present appeals relate to the Assessment Year 2003-2004 and Assessment Year 2002-03 respectively and thus we are not concerned with the exemption discussed above rather it is the exemption sought by the assessee under section 11 of the Act which is the subject matter of the present appeals and it is for this purpose that the substantial question of law raised by Ms. Sinha at paragraph (v) of the appeal is reproduced which runs under:

“(v) Whether on facts and in law the ITAT was justified in directing the Assessing Officer to allow the exemption to the assessee u/s 11 when the assessee society has been found indulging in



the activity which is primarily neither charitable nor existing solely for education purposes but for the profit.”

Substantially, it is argued by Ms. Sinha that the activity of the society is neither charitable nor it is running exclusively for educational purposes rather it is a business to gain profit that raising such very issue that the Assessing Authority made his recommendation through letter dated 26.07.2007 addressed to the Additional Commissioner of the Income Tax, Central Range 1, Patna, whereby he prayed for withdrawal of exemption granted to the assessee under section 10(23C)(vi) as well as the exemption granted under section 11 of ‘the Act’. The assessing Authority raised five grounds to make such recommendation for withdrawal of the exemption as well as for cancellation of the registration under section 12AA of ‘the Act’ which in turn allowed the benefit of section 11 to the assessee.

The records transpire that the matter was examined by the Commissioner, Income Tax and who did not find any merit in the recommendation for inviting a cancellation of registration of the respondent-assessee under section 12AA of ‘the Act’ for according to the Commissioner of Income Tax, the activities of the society was not found true to invite such cancellation. The proceeding was accordingly dropped vide order dated 27.10.2010 enclosed at Annexure R/5 to the counter affidavit, filed in the



appeals.

In our opinion, considering the fact that the Commissioner, Income Tax (Central) himself having examined the issues has chosen to drop the proceeding for cancellation of registration under section 12AA of 'the Act' which permits the assessee to enjoy the exemption under section 11 of 'the Act', he cannot be permitted to pursue the appeals before this Court which in our opinion actually should have been withdrawn even otherwise.

Having considered the matter on the contentions advanced, we do not find any question of law arising in these appeals much less a substantial question of law inviting our opinion.

These appeals are accordingly dismissed.

**(Jyoti Saran, J)**

**( Arvind Srivastava, J)**

Anjula/Skpathak

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.03.2019
Transmission Date	NA

