

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, “बी” चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, “B”, CHANDIGARH**

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य  
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &  
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1133/CHD/2019

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Chansal Education Society, Chanshal Park, P.O. Oachghat, Distt.Solan	बनाम	The ITO (Exemption), Distt. Solan
स्थायी लेखा सं./PAN NO: AAAAC5929M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**Hearing though video Conferencing**

निर्धारिती की ओर से/Assessee by : Shri Vishal Mohan, Advocate  
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl CIT

सुनवाई की तारीख/Date of Hearing : 25.11.2020  
उद्घोषणा की तारीख/Date of Pronouncement : 15.12 .2020

**आदेश/Order**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 20.6.2019 of the Commissioner of Income Tax (Appeals), Shimla [hereinafter referred to as ‘CIT(A)’]

2. The assessee in this appeal has taken following effective grounds of appeal:-

1. *That in the facts and circumstances of the case the Ld Commissioner of Income Tax (Appeals) is not justified in upholding the reopening of the case under section 147 r.w.s 148 of the Income Tax Act , 1961. The*

*reopening of the case is bad in law and as such is not sustainable in the eyes of law.*

2. *That in the facts circumstances of the case the Ld Commissioner of Income Tax (Appeals) is not justified in upholding the assessment of income of the appellant at Rs. 11,50,110/- and further upholding that the benefit of the exemption under section 10(23C)(iiiad) was not available to the assessee . That fact of the matter is that the income of the appellant is exempt under section 10(23C)(iiiad) and also qualifies for exemption under section 11 and 12 of the I.T. Act, 1961.*

3. *That in the facts and circumstances of the case the Ld Assessing Officer is not justified in not considering the case of the appellant under section 11 and 12 in the true spirit. The entire income of the appellant also qualifies for exemption under this section.*

3. **Ground No.1** : Vide ground No.1 the assessee has contested the reopening of the assessment u/s 147 read with section 148 of the Income Tax Act, 1961 (in short 'the Act'). The Ld. Counsel for the assessee in this respect has submitted that the reopening of the assessment has been done in this case on the ground that the Assessing Officer has noticed that since 85% of the income for the year under consideration was not applied by the assessee for charitable purpose, therefore, the assessee was not entitled to exemption u/s 11 of the Act. The Ld. Counsel for the assessee in this respect has submitted that the assessment was reopened after four years and that as per the provisions of section 147 of the Act, assessment after expiry of the four years cannot be reopened from the end of the relevant assessment year, unless any income

chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return or to disclose fully or truly all material facts necessary for assessment for that assessment year. The Ld. Counsel has submitted that the assessee had fully and truly disclosed all the material facts. That the copy of the audit report was attached with the return from which it could have been gathered by the Assessing Officer that the assessee had not applied 85% of his receipts for charitable purposes for the year under consideration. However, the Ld. counsel is fair enough to admit that in this case even form No.10B was not filed by the assessee but the Ld. counsel in this respect has submitted that even without form No.10B, the Assessing Officer, at the first instance, had admitted the return and assessed the income of the assessee u/s 143(3) of the Act, therefore, there was no failure on the part of the assessee to disclose fully and truly all material necessary facts for his assessment for that assessment year. The Ld. Counsel for the assessee has also relied upon certain case laws in this respect.

4. We have heard the rival contentions of the Ld. Authorized Representatives of both the parties and have gone through the record. We are not convinced with the arguments of the Ld. counsel of the assessee that the assessee has fully and truly disclosed all material facts necessary for his assessment. It is apparent from the

assessment order dated 13.2.2014 that the assessee did not disclose fully and truly the very material fact that the assessee had not applied 85% of the income / receipts of the year for charitable purposes which was a pre-condition for grant of exemption u/s 11 of the Act. Had the assessee disclosed this material fact to the Assessing Officer, the Assessing Officer would not have accepted the return of the income of the assessee.

In view of this, we do not find any merit in ground No.1 of the appeal and the same is, therefore, dismissed

5. **Ground No.2:** Vide ground No.2, it has been contended that even though during the re-assessment proceedings the assessee was not found eligible to claim deduction u/s 11 of the Act, however, the alternative claim u/s 10(23C)(iiiad) was also made before the Assessing Officer and the Assessing Officer was supposed to consider the same.

6. The Ld. counsel in this respect has submitted that even though in the original return of income, the claim was made u/s 11 of the Act, however, the assessee was eligible for exemption from taxation under the provisions of section 10(23C)(iiiad) also. That once the Assessing Officer during the re-assessment proceedings found that the assessee was not eligible to claim deduction u/s 11 of the Act because of the default on the part of the assessee in applying 85% of

the assessee's receipt for charitable purposes, then, the Assessing Officer should have considered the alternative claim of the assessee u/s 10(23C)(iiiad) of the Act.

7. After considering the rival submissions, we find force in the above contention of the assessee. If the assessee otherwise is eligible for deduction under the provisions of section 10(23C)(iiiad) of the Act, the said claim of the assessee, in our view, is required to be examined by the Assessing Officer. The issue is, therefore, restored to the file of the Assessing Officer with a direction to consider the alternative claim of the assessee of its eligibility to claim exemption from taxation under the provisions of section 10(23C)(iiiad) of the Act if the assessee otherwise qualify for the same irrespective of the fact whether or not the assessee had made a specific claim in the original return of income in this respect. This issue is accordingly restored to the file of the Assessing Officer.

8. **Ground No.3:** Vide ground No.3 the assessee has contested the denial of claim of exemption under the provisions of section 11 of the Act. Admittedly, the assessee did not apply 85% of the income / receipt on charitable purposes as required under the provisions of section 11 of the Act. Therefore, there is no merit in this ground of appeal, and the same is accordingly dismissed.

In view of our findings arriving while deciding ground No.2 of the appeal of the assessee, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced on 15.12.2020.

Sd/-  
(एन. के. सैनी / N.K. SAINI)  
उपाध्यक्ष /Vice President  
Dated : 15.12.2020  
“आर.के.”

Sd/-  
(संजय गर्ग / SANJAY GARG)  
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar