

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 197/JP/2020

Seth Ramjidas Modi Vidhya Niketan Society, 152, Modi House, Gumanpura, Kota (Rajasthan)-324007	बनाम Vs.	CIT(Exemptions), Kailash Heights, Lal Kothi, Tonk Road, Jaipur-302015.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATN 1183 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya (Adv) &
Ms. Manisha Bindal (CA)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 08/09/2020
उद्घोषणा की तारीख / Date of Pronouncement : 11/09/2020

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT(Exemptions), Jaipur dated 27/01/2020 rescinding notification U/s 10(23C)(vi) of the Income Tax Act, 1961 (in short, the Act). Following grounds have been taken by the assessee:

- "1. The impugned order dated 27/01/2020 passed under to 15th proviso to S. 10(23C)(vi) of the Act, is bad in law and on facts of the case, being beyond the scope of the said provision and for various other reasons and hence, the impugned order kindly be quashed.*

2. *The Id. CIT(Exemptions), Jaipur erred in law as well as on the facts of the case in rescinding the approval already granted u/s 10(23C)(VI) vide notification CCIT/Udr/ITO(Tech)/2008-09/2071 dated 13/10/1981, by invoking the 15th proviso of Sec. 10(23C)(VI) of the Act. The rescinding the approval by the Id.CIT(Exemption), Kota is bad in law and on facts of the case and hence, the approval already granted, please be restored.*
- 3.1 *The Id. CIT(Exemption), Jaipur erred in law alleging & confirming that the assessee society has not applied its income in accordance with the provisions contained in clause (a) of the 3rd proviso and has also not invested or deposited its funds in accordance with the provisions contained in the clause (b) of the 3rd proviso of S. 10(23C)(vi), which finding is bad in law and contrary to facts and hence the rescinding the approval invoking 15th proviso to Section 10(23C)(vi) of the Act deserves to be quashed.*
- 3.2 *The Id. CIT(Exemptions), Jaipur further erred in law alleging & confirming that the funds of assessee society were invested in modes other than specified in Sec.11(5) of the Act, which is bad in law and on facts of the case and which finding is bad in law and contrary to facts and hence the rescinding the approval invoking 15th proviso to Section 10(23C)(VI) of the Act deserves to be quashed.*
4. *The Id. CIT(Exemptions), Jaipur erred in law as well as on the facts of the case in recording the findings adverse to the appellant assessee society which are contrary to the facts and material already on record and therefore, such finding kindly be negated/quashed.*
5. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic. Rival contentions have been heard and record perused. The facts in brief are that the assessee is a society and running an educational institution in the name of M/s Seth Ramji Das Modi Vidya Niketan society. The assessee is registered u/s 12AA of the Act w.e.f. 3rd July 1986 and thereafter the assessee was approved u/s 10(23C) by the CCIT, Udaipur for A.Y.2009-10 and onwards vide order dated 13-10-2008 vide notification CCIT/Udr/ITO(Tech.)/2008-09/2071. The Id. CIT(Exemptions) in his order dated 27/01/2020 has noted that during the assessment proceedings for A.Y. 2017-18, the AO observed that the Assessee Society is not existing solely for educational purposes. The society advanced huge amounts of funds from year to year to Dr. R.N. Modi Hospital which is a unit of Ram Niwas Modi Charitable Society ("RNMCS" for short). During the year no interest was charged on such advances, whereas the Assessee Society was paying huge interest amounting to Rs. 56,71,990/- on its market borrowings mostly from the trustees. The RNMCS was earlier a part of the Assessee Society, but was demerged from the Assessee Society on 02.10.2014 due to adverse view taken by the department in respect of allowability of exemption u/s 10(23C)(vi) since hospital cannot be run by a society approved u/s 10(23C)(vi). Even after demerger of RNMCS, the

Assessee Society has not amended its constitution in which one of the objects is to run medical college and hospitals, which is against the spirit of approval granted u/s 10(23C)(vi). Consequently, a show-cause notice dated 03.12.19 was issued by the Id. CIT(E) to the Assessee Society proposing to rescind the notification u/s 10(23C)(vi) of the Act.

3. The Assessee Society filed detailed reply is dated 26.12.2019 stating that society exists solely for educational purpose and not for the purposes of profit. There apart, the Assessee Society applied more than 85% of its income for the objects of the trust in accordance with the law and also similarly invested or deposited its own fund in accordance with the prescribed manner and up to the prescribed limit. The Assessee Society further submitted that the Assessee Society borrowed funds of Rs.4,83,53,000/- from various lenders and repaid Rs. 1,05,49,736/- thus, the net unsecured loan was Rs. 3,78,03,264/- during the year, out of which the Assessee Society only advanced Rs. 2,39,82,043/- to RNMCS. Therefore, it is only financial help for time being to RNMCS because of its weak financial position and thus, there was a reasonable cause and the peculiar circumstances behind these financial transactions. Hence, entering in to financial transactions by the Assessee Society cannot by itself be made a valid ground for rescinding of the notification. However, the Id. CIT(Exemptions) did not agree with the assessee's contention and

observe that the Assessee Society was demerged from RNMCS on 02.10.14 in order to comply with the provisions of S.10(23C)(vi), which require the Assessee Society to apply its income solely towards educational objects and not towards any other objects.

4. The Id. CIT(Exemptions) has further observed as under:

1. That the Assessee Society has continued to divert its funds towards non-educational activities by way of huge advances to RNMCS.
2. That the amount of advance to RNMCS reached a figure of Rs. 6,48,83,543/- as on 06.08.18, which is just before the issue of scrutiny notice u/s 143(2) dated 09.08.18, which seems to have prompted the Appellant Society to gradually reduce such advances made for non-educational purposes and were finally squared up by 15.05.19.
3. That the Appellant Society diverted the trust funds for non-educational purposes violating the 3rd proviso since the funds of the trust have not been wholly and exclusively applied towards the objects of the trust and have also not been invested or deposited in the modes specified in Section 11(5).
4. That no interest has been charged by the Appellant Society on the advances to RNMCS, except a small amount of interest of Rs. 38,98,180/- charged in financial year 2017-18.

5. That the borrowed funds as well as funds generated by the Appellant Society both constitute the funds of the Appellant Society and both are required to be applied exclusively for the purposes of education.
6. That the Appellant Society's own funds as well as its borrowings are all getting credited to common bank accounts and hence it is not possible to establish a one to one co-relation between the borrowed funds and the diverted funds. It is, therefore, clear that the Appellant Society has diverted its funds for non-educational purposes.
7. That the activities for which diversion of funds has taken place are not incidental or ancillary activities to education but are involving funding of hospital, which goes against the requirement of S.10(23C)(vi) viz., solely for educational purposes.

Finally, he withdrew the approval granted to the vide notification CCIT/Udr/ITO(Tech.)/2008-09/2071 dated 13.10.08 vide impugned order dt. 27.01.2020

5. Against this order of the Id. CIT(Exemptions), the assessee is in further appeal before the ITAT.
6. We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by the Id. CIT(Exemptions) in his

order as well as cited by the Id. AR and Id. DR during the course of hearing before us in the context of factual matrix of the case. From the record, we found that the main object and the purpose of the society was nothing but imparting education. The society exists solely for educational purposes and not for the purposes of profit and not towards any other object. The society was registered under Rajasthan Societies Registration Act 1948 (Rajasthan Act No. 28, 1958). Since its inception, the society has been promoting and establishing institution of excellence with main focus on building capabilities of the students with holistic development of their personality so that the students passing out of the portals of "Modi Group of Educational Institutions" shall contribute in building a strong nation.

7. We had also carefully gone through the audited annual statement of the account of the assessee and found that the major receipts are only from the fees from students and the expenditures are also aimed and meant for Education. There is absolutely no other source of income except the school fees / i.r.t imparting of education. Please refer a chart Pg. 8 of this written submission. After demerger the object was duly annexed excluding the part relating to hospital vide resolution dated 01.04.2016. The law requires an educational institution to exist solely for educational purposes and not for profit but that does not mean that

ancillary activities, which helps the institution attaining the main object, should also not be carried out. With a view to disentitle an Institution from the exemption u/s 10 (23 C) (vi), the revenue has to establish that firstly, the institution was not existing for solely for education and Secondly & cumulatively, the revenue must also establish that such institution was found engaged/ was existing for the purposes of profit. Unless these twin conditions are fulfilled and established, the revenue cannot deny/ withdraw exemption (where already granted). In the present case, however, the Id. CIT (E) has alleged that the Society did not exist solely for educational purposes but at the same time utterly failed to establish that the Assessee Society existed for the purposes of Profit (but not for education purposes). He even did not whisper on this aspect what to talk of establishing the fulfillment of this basic condition. The repeated allegation that the society borrowed interest bearing funds and diverted to other charitable society RNMCS, is grossly insufficient to establish that the Assessee Society existed for profit only and not for education. Further, it was not the case of the CIT (E) that the Assessee Society was engaged in some money lending activity or that the funding to RNMCS/other party was with a profit motive or that it was a separate venture of the Assessee Society. It was ignored that only because of some peculiar circumstances which compelled the assessee to support the

other charitable society (which was earlier a part of the Assessee Society only before the demerger) involved in charitable activities. To repeat, the Assessee Society continued imparting education exclusively and continued existing solely for education and not for any purpose other than this. No case is made out that similar financial transactions were entered with other third parties also with a profit motive, thus CIT(E) failed to establish that the Assessee Society existed for profit motive. There is otherwise no evidence to suggest anything contrary to this contention. Surprisingly, the Id. CIT (E) is completely silent on this factual contention made before him. There is no dispute on the fact that whatever surplus was earned was ploughed back for education purposes only and therefore the assessee has to be held existing solely for educational purposes not for profit as repeatedly held in various cases.

8. The Id. CIT(Exemptions) in his order, further alleged that the Assessee Society has not applied its income and has not invested its fund in accordance with the provisions sub-clause (a) and (b) of 3rd proviso of section 10(23C)(vi) r/w S. 11 (5) hence, it attracts 15th Proviso of S. 10(23C)(vi) of the I.T. Act, 1961. In this regard, we observe that 3rd proviso, clauses (a) and (b) along with 13th proviso to S. 10(23C)(vi) which confers a power of rescinding on the competent authority, very

specifically and categorically prescribed the requirement of the application of income of the concerned educational institution only (here Educational Society-Assessee) and not of others in as much as the words used are "*.....applied its income in accordance with the*" which clearly indicates that it has got to be essentially the income of the concerned institution alone and not of anyone else. Similar is the position when the condition has been put of making investment in the prescribed mode than also, the amount of investment has got to be its own fund i.e. fund of the concerned institution only and not of any fund of other institution or third party. Because here also the words used are "*...invested or deposited its funds in accordance with*".

9. Furthermore, the statute has very specifically denoted/identified which particular amount is required to be applied/ invested. It is not that any or every amount (or fund or loan or anything else) of any other trust, fund or institution or of a third party viz. a debtor, which is also required to be applied / invested. The contention of the Id. CIT that the borrowed funds are own funds having been deposited in the same bank account has lost its color and therefore it is difficult to establish one to one correlation between the own funds & outgoing and borrowed funds & outgoing, is something beyond understanding. Hence, otherwise there is no violation as alleged. Also it clearly shows that neither income nor funds

of the Assessee Society is being used for any purpose other than mentioned in objects of Assessee Society above the prescribed limits.

10. We had also carefully gone through the bank statements of different Accounts were submitted before the Id. CIT (E) to support the assessee's contention that normally unsecured loans were taken (mainly group/family members) and were onward transferred to RNMCS as and when they needed. Assessee's own fund were not utilized nor it is so alleged by the Id. CIT (E). On the contrary he himself admitted the fact the assessee's own fund were separate and there were borrowed funds however in his view, both the funds taken together found a kitty and therefore should be treated as Assessee Society's own fund. We do not find any merit in the observation of the Id. CIT(Exemptions) that the Assessee Society's own fund and borrowed fund both were deposited in the same bank account and were shown in the balance sheet and hence they should be treated as the Assessee Society's own fund for the purposes of applying 3rd proviso and 13th proviso of S. 10(23C)(vi) of the Act. In this regard we observe that the borrowing shall always remained borrowing and can never become the property of the borrower (here the Assessee Society). Had it been so, why should the Assessee Society have shown in the audited annual statement of accounts as the borrowed

funds taken under the head loans & advances. As per CIT (E) borrowed fund has become the Assessee Society's own money which is not at all legally possible and that is the reason admittedly RNMCS paid back the entire amount to the assessee by 15.05.2019.

11. As per our considered view, the legislature intended that they meant own Income and own fund only & of the Institution only and it is manifest from 3rd Proviso (b) & newly inserted Explanation thereto by Finance Act, 2020 w.e.f. 01.04.2020 to the effect that donation received towards the corpus, is not required to be invested in the specified securities, making it clear even though it is Institution's own fund yet such requirement was not pressed. Therefore, in absence of the specific requirement of law of applying/ investing third party's funds, institution's failure on that part cannot authorize the Id. CIT to withdraw the exemption.

12. We place reliance on the decision of the Hon'ble Supreme Court in the case of Aditanar Educational Institution vs. Addl. CIT (1997) 224 ITR 310 (SC), wherein it was held that overall view is to be taken and without being hyper technical in granting exemption under s. 10(22) of the Act, which include the objects of the society.

13. The Hon'ble Rajasthan High Court in the case of CCIT v/s Geetanjali University Trust (2013) 84 DTR 337 (Raj) wherein it was held that:

"Violation of the prescribed rules and regulations in the matter of admission of students does not deprive an educational institution of its character as an entity existing solely for the purpose of education and, therefore, approval for exemption under s. 10(23C)(vi) of the Act cannot be denied to the Appellant Society-trust which is running educational institutions on the mere ground that the method of admission of students followed by it has been held to be illegal by the court."

14. The Hon'ble Supreme Court in the case of Queen's Educational Society vs. CIT (2015) 372 ITR 699 (SC), held that Exemption under ss. 10(23C)(iiiad) and 10(23C)(vi)—Educational institution—Profit motive—Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it has ceased to exist solely for educational purposes and has become an institution for the purpose of making profit—In such case, the predominant object test must be applied—A distinction must be drawn between making of a surplus and the object of

carrying on the institution "for profit"—Merely because imparting of education results in making a profit, no inference arises that it has become an activity for profit—Ultimate test is whether on an overall view of the matter in the relevant assessment year the object is to make profit as opposed to educating persons—When a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit—13th proviso to s. 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down.

15. The Hon'ble Delhi High Court in the case of DIT (E) v/s All India Personality Enhancement & Cultural Centre for Scholars Society (2015) 379 ITR 464 (Delhi), it was opined that "An educational institution existing solely for educational purposes would not cease to be so only for the reason that some of its activities have yielded surpluses; fact that certain advances have been made to chairman and some of his family members who were involved in running the school cannot be construed as diluting the predominant object of the Assessee Society had realigned all its investment in the manner as specified under provisos to s. 10(23C) r/w s. 11(5) prior to 31st march, 2001 and had complied with

the provisos of s. 10(23c); thus, the assessee would qualify for exemption under s. 10(22)/10(23C)."

16. In DCIT vs. COSMOPOLITAN EDUCATION SOCIETY 244 ITR 0494 (Raj.), affirming the finding of the Id. ITAT, it was held that there is allegation of misutilisation of the funds of the Society or mismanagement or the activities of the Society, the action could be taken against the members of the society as per the provision of various Institutes governing the Society. However, even such misutilisation and mismanagement by the members could not be the basis of rejection of the claim of exemption to the assessee education Society. Further the SLP against the judgement stood dismissed vide 241 ITR 132 (St). This was again relied upon on the case Mahima Sikhsha Samiti in DBIT No. 262/2017 vide order dated 23.09.2017 by the Hon'ble Rajasthan High Court.

17. This case also directly applies because the nature of allegation in both the matters are more or less the same. Hence, merely because of some financial transactions in peculiar circumstances could not be the basis of denying exemption.

18. After perusing entire documents placed on record, we observe that the Assessee Society has applied its own income in accordance with the

law and also similarly invested or deposited its own fund in accordance with the prescribed manner and up to the prescribed limit. These contentions are supported and evident from the Audit Report and R & E Account that the assessee was in receipt of income of Rs. 14,53,01,969/- out of which, after defraying/ incurring expenditure of Rs. 13,22,57,344/- (the Id. Auditor however considered the expenditure after reducing interest also at Rs. 13,79,29,334/-, on the attainment of the objects of the Society, there remained surplus which is less than 15% of income. Thus, the application of the income was more than 85%.

A.Y 2017-18	AMOUNT	% OF INCOME APPLIED
RECEIPTS	Rs. 14,53,01,969/-	
EXPENDITURE	Rs. 13,22,57,344/-	91%

Similarly, a perusal of the Audit Report will make it clear that the investments (i.e. capital expenditure of Rs.1.78 Cr.) made by the Assessee-Society were out of its own funds/ surplus of the year but not out of the borrowed fund.

19. We further observe that there was a reasonable cause and there were peculiar circumstances behind the assessee entering into such financial transactions with RNMCS. It is necessary to understand the background. The Assessee Society was granted approval on 13.10.2008 u/s 10 (23C). The other entity RNMCS Society was merged with the

Assessee Society on 04.06.2008 and thereafter, was demerged from the Assessee Society on 02.10.2014 on the insistence of the department (due to adverse view taken that a hospital cannot be run by an educational society). Copies of Certificates of merger and demerger were submitted on 31.10.2019. Thus, both the Societies remained merged for a long period of 6 years and has been popularly known as R. N. Modi Vidya Niketan (i.e. assessee).

20. Moreover, after demerger, the financial position of RNMCS was weak and the fact that after demerger RNMCS has become a separate entity (detached from assessee Modi Vidya Niketan) was not so became known to the outer world/ third parties were still continued carrying the same impression that the Assessee Society who as also the RNMCS, were the part & parcel of one and the same organization (i.e Ram Niwas Modi Vidya Niketan). Therefore, they were used to give cheque in the name of the assessee, even though such payment pertained to/ was intended to be in the name of the RNMCS. There apart, there were various transactions like the payment of ECF & PF which though pertained to RNMCS but had to be made by the assessee because RNMCS was not having online banking facility; and payment of Rs. 1.95 Lacs was made to Sushil Kumar Modi HUF by the assessee but was on behalf of RNMCS and

so on and there are many more examples (some of them were given in the show cause notice itself).

21. We also observe that immediately on demerger, all the transactions between the original institution and the demerged institution, as also transactions with the third parties, cannot come to a standstill and the parties continued transacting in the same fashion, more particularly, when there was not a much time gap between the demerger (02.10.2014, FY 2015-16) and the time when the subjected transaction were carried out (i.e. in the FY 2015-16, 2016-17 only), that means within the same FY or after a gap of one/ two years only. There is nothing wrong if Assessee Society provided funds to some other institution (RNMCS) (more particularly a group concern) as a financial help for time being.

22. Now coming to the allegation of the Id. CIT(Exemptions) regarding non-charging of interest on the advances given. In this regard, we observe that such allegation is not relevant in the context of S. 10 (23C) (vi) in as much as there appears no such specific clause/ provision in 15th Proviso or anywhere in S. 10 (23C)(vi) empowering the CIT, or as may be the case u/s 12AA (3) r/w S. 13 (1)(c). Such a basis being otherwise contrary to the pre-dominant test theory propounded by the Supreme Court, is completely irrelevant and has to be ignored. No such

provision can be read if it is missing as per the doctrine of Casus Omissus. Secondly, there was no condition of charging interest on such loan between the parties and it was only as a financial help necessitated as a result of demerger. Thirdly, it is wrong to say the Society had claimed the interest of Rs. 56,71,990/- Lacs in as much as the society had already applied its income at 91.02% that is more than 85% as required by law. Therefore, the fact of interest bearing loan taken, the alleged diversion thereof and the allegation of non-charging of interest, are completely irrelevant.

23. With regard to allegation of Id. CIT(Exemptions) that the Assessee Society started reducing the advances (as per CIT (E) reached to Rs. 6.49 Cr. as on 06.08.2018) just before the issuance of notice u/s 143(2) dt 09.08.2018 prompted the Assessee Society to gradually reduce such advances, is nothing but a mere suspicion. Firstly, how a person could foresee that some notice would be issued in future so as to plan its affair and save itself. Secondly, the RNMCS itself started paying back the amounts so taken in a normal course from date 19.7.2018 in A.Y 2019-20 and admittedly by 15.05.2019 (A.Y 2020-21), the entire amount taken from the Assessee Society stood paid back and account of RNMCS in Assessee Society's books stood squared up. Even otherwise alternatively, if the Assessee Society started taking back the loans after 09.08.2018 /

the RNMCS started paying back the loans after the date of scrutiny notice, how it is going to make it any difference because the Id. CIT(E) passed the order on 27.01.2020 and a show notice was issued by him only on 03.12.2019 but much prior thereto by 15.05.2019, the accounts between the assessee and RNMCS stood squared up. The standard format of notice u/s 143(2) simply ask the Assessee Society to furnish documents, if Assessee Society wanted so to rely in support of the return of income filed but it does not contain any query at all therefore, the Assessee Society could not have imagined from the scrutiny notice itself that some query on this aspect was going to be asked so as to warn. Thus, such type of allegations is nothing more than a suspicion. But otherwise also even if assuming worst, it was not going to help Id. CIT(E) reaching the conclusion that the assessee violated the proviso 3rd proviso r/w 15th proviso to S. 10(23C)(vi).

24. In the context of various allegations levelled by the Id. CIT(Exemptions), we observe that there is no gain to the revenue for the simple reason that even assuming had the assessee charged interest of Rs. 56.72 Lacs (approx.) from RNMSCS, revenue was not going to get any tax there upon because the assessee had admittedly fulfilled the condition of applying its income more than 85% on one hand. Similarly, on the

other hand, RNMSCS also being a charitable society running a hospital enjoying exemption under S. 12A, (paying of interest or not paying) to the assessee was not going to make any difference because, either way entire income of RNMSCS was also exempt. Further, the group members having charged interest had already declared in their ROI and paid taxes thereon and thus, the group as a whole rather paid taxes. Notably, assessee is registered u/s 12AA & hence not been withdrawn so far.

25. It was contention of the Id. CIT-DR that the Id. AR has relied upon the case of DIT (Exemption)v. All India Personality Enhancement & Cultural Centre For Scholars Aipeccs Society 120151 62 taxmann.com 92 (Delhi) which is relating to grant of approval u/s 10(23C) of the Act and not rescinding the approval already granted by the competent authority. Further, in the said case all the investments made earlier in contravention of section 11(5) were aligned with provisions of section 11(5) of the Act by 30th March, 2000 and exemption u/s 10(23C) of the Act was allowed by the Hon'ble High Court. It would be appropriate to reproduce the relevant extracts as under:

"65. It is clear from the above that the restriction in accumulating surpluses generated by a university or an

educational institution and investing the funds in a manner provided under Section 11(5) of the Act were introduced for the first time w.e.f. 1st April, 1999 and such conditions were not applicable for claiming exemption under Section 10(22) of the Act.

66. *In view of the above, the exemption available under Section 10(22) and 10(23C) could not be denied to the Assessee on the ground that it had invested its funds contrary to Section 11(5) of the Act, as the said condition was introduced by the fifth proviso to Section 10(23C) only w.e.f. 1st April, 1999. More importantly, the Assessee who had made their investments which did not conform to Section 11(5) of the Act, were by virtue of the proviso to Section 10(23C) afforded time till 30th March, 2001 - a period of three years - to transfer their investments to permissible securities as specified under Section 11(5) of the Act."*

Thus, it could be seen from the above that these findings are in favour of revenue only. The Id. AR has relied on the case of CIT Surya Educational & Charitable Trust[2011] 1S taxmann.com 123 (Punjab & Haryana). and CIT vs Red Rose School 120071 163 TAXMAN 19 (ALL.). It may be mentioned that these cases are relating to grant of registration u/s 12AA of the Act and thus, are distinguishable on facts.

26. With regard to above contention of the Id. CIT-DR, we observe that in the case of All India Personality Enhancement & Cultural Centre [2015] 62 taxmann.com 92, the assessee has simply relied upon

the discussion made in paras 71 onward and ultimate finding recorded in pr. 75. Moreover, his reliance on pr. 65 & 66 thereof, is irrelevant because assessee's basic contention is that the amount required to be invested should be its own funds and not the borrowed one.

27. The Id. CIT-DR has also contended that the trust deed was not amended as it contains clause relating to hospital or if amended there is no evidence of filing thereof to the Registrar Societies and/or his approval and so on. He relied upon Desales Education Society vs. PCIT (E) [2018] 94 taxmann.com 206 (Vizag- Trib.) We found that even the Id CIT (E) himself did not rescind the notification on this ground. He raised a query and the assessee submitted a copy of a resolution letter dt. 01-04.2016 pr. 2 amending the object removing the clause i.r.t. hospital and he felt satisfied therefore he has not raised this issue in final order. The Assessee society has also informed the Registrar vide letter dated 28.04.2016 bearing the acknowledgement by the registrar office. Hence allegation is factually wrong. No approval for amendment is required and if so the Id. CIT-DR merely alleged but did not show the relevant provision.

28. From the record, we found that demerger took place in 2014 on the insistence of Department but even after a lapse of more than six

years the registration granted u/s 12A/ 12AA still continues applying that implying that the Revenue by their own conduct accepted the state of affair i.e. even without amendment of the trust deed, the assessee is imparting education. Moreover, the Id. CIT-DR did not allege that the clause relating to hospital was ever acted upon. Therefore, reliance on Desales (Supra) is not relevant.

29. We also observe that the Id. CIT-DR reliance on the case of Desales Education Society vs. PCIT (E) (Supra) and B.S. Abdur Rahman Institute of Science & Technology V. CCIT (Supra) are not relevant in the above admitted factual context and moreover they are also related to registration matter and not related to withdrawal / rescinding under 15th proviso to 10(23C)(vi). Hence not applicable.

30. We also observe that the Id. CIT-DR himself agreed that the RNMCS could have taken loan directly from the members as contained by the assessee also that there was no motive and it was only the after effects of the demerger.

31. In view of the above discussion, facts and circumstances of the case and the legal position, the order passed by the Id. CIT(exemptions) U/s 10(23C)(vi) of the Act is not sustainable.

32. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11th September, 2020.

Sd/-

(रमेश सी शर्मा)

(RAMESH C SHARMA)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/09/2020

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Seth Ramjidas Modi Vidhya Niketan Society, Kota.
2. प्रत्यर्थी / The Respondent- The CIT(Exemptions), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 197/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar