IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.	Appellant	Respondent
318/Hyd/2020	Aurora Educational Society, Hyderabad [PAN: AAATA8751C]	The Pr.Commissioner of Income Tax (Central), Hyderabad
319/Hyd/2020	Church Educational Society, Hyderabad [PAN: AAALC0017F]	
320/Hyd/2020	Karshak Vidya Parishad, Hyderabad [PAN: AAATK5390S]	
321/Hyd/2020	Tarakarama Educational Society, Hyderabad [PAN: AAAAT6566H]	

For Assessee : Shri P.Murali Mohana Rao, AR
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 17-02-2021
Date of Pronouncement : 20-04-2021

O R D E R

PER S.S.GODARA, J.M. :

These four assessees' appeals arise against the Pr.CIT(Central), Hyderabad's separate orders; all dated 26-12-2019 withdrawing their respective approvals in proceedings u/s.10(23C)(vi) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard all assesses as well as the department through Mr.Murali Mohana Rao and learned CIT-DR. Case files perused.

2. It transpires at the outset that all these assesses' appeals suffer from identical 121 days delay in filing stated to be attributable to various miscellaneous reasons of communication gap and other similar factors on account of the circumstances beyond their control. All these condonation averments have gone un-rebutted from the Revenue's side. As per the hon'ble apex court's landmark decision in Collector, Land Acquisition Vs. Mst.Katiji & Ors [167 ITR 471] (SC) and University of Delhi Vs. Union of India, Civil Appeal Nos.9488 & 9489/2019, dt.17-12-2019 holding that such a technical aspect must made way for the cause of substantial justice, the impugned identical delay stands condoned. All these cases are now taken up for hearing on merits.

3. Both the learned representatives inform us at the outset that all these assesses' appeals challenge correctness of the Pr.CIT's order withdrawing their respective Section 10(23C)(vi) approvals. And that we ought to take up ITA No.320/Hyd/2020 in the case of Karshak Vidya Parishad as the 'lead' case for the sake of convenience and brevity. We thus treat the above case as the 'lead' one raising the following substantive grounds:

"1.The order of the Pr.CIT (Central), withdrawing the exemption granted u/s.10(23C)(vi), is arbitrary, erroneous, without proper reasons and bad in law.

2.The LearnedPr.CIT (Central) erred in issuing common show cause notice for both 12A and 10(23C)(vi) which is bad in law.

3.On the facts and in the circumstances of the case, the Ld.Pr.CIT has erred in cancelling the approval made u/s.10(23C) of the Act., with effect from 2009 (date of original sanction of approval), while the show casue notices mentioned only some points for one year.

4.The Pr.CIT show cause notice for reasons and years are not matching with withdrawing order passed u/s. 10(23C)(vi).

5.The Ld.Pr.CIT ought to have appreciate that fact that to withdraw exemption u/s.10(23C) separate show casue notice to be issued for each year separately but with one notice mentioning some points cannot be correct.

6. The Ld.Pr.CIT without examining the information from the assessee and even before completing the Assessment withdrawing exemption u/s.10(23C) in invalid.

7.On the facts and in the circumstances of the case the Ld.Pr.CIT has mentioned one year in show casue notice given and without analyzing the replies given, Pr.CIT has erred in passing order u/s.10(23C)(vi) cancelling for all the years in six days is not correct.

8. The Ld.Pr.CIT has grossly erred in withdrawing the approval u/s.10(23C) of the Act, without judiciously appreciating the submissions and explanations made.

9.On the facts and in the circumstances of the case, the revocation order passed by the Pr.CIT, withdrawing the approval already granted u/s.10(23C) in the year 2009 by the then CCIT is erroneous.

10.On the facts and in the circumstances of the case, the Ld.Pr.CIT has grossly erred in withdrawing the approval u/s.10(23C) of the Act, already accorded by then CCIT in 2009 itself, especially with retrospect effect, without following the legal precedence and without fairly appreciating the submissions and explanations made by the appellant-society in response to the notices issued.

11.On the facts and in the circumstances of the case, the Ld.Pr.CIT has grossly erred in withdrawing the approval u/s.10(23C) of the Act, without fairly appreciating the factual matrix that the Society is a genuine charitable organization running educational institutions, reputed colleges and that it has been registered and continues to be registered u/s.12AA of the IT Act as on date.

12.On the facts and in the circumstances of the case, Income tax amendment came w.e.f.15-11-2014 to give power to Pr.CIT to approve or reject exemption u/s.10(23C) but Pr.CIT has erred in rescinding the

order of approval already granted in 2009 by the CCIT, without proper authority and finding any defects from the year 2009 onwards.

13.Without prejudicial to the above grounds on withdrawal of approval, we strongly object for withdrawing the approval u/s.10(23C) (vi) of the Act, retrospectively with effect from the date of its sanction in 2009, which is against the legal precedence on the issue.

14.On the facts and in the circumstances of the case Ld.Pr.CIT was under misconceoption while holding that the appellant has done real eatate business, when, in fact, the appellant has just sold out its agricultural lands, desperately, only to discharge its pressing bank liability, which was taken for the purpose of the trust and in the interest of continuing the charitable activity in running education institutes without any hinderance.

15. Ld.Pr.CIT has erred in cancelling the approval u/s.10(23C) of Act, drawing inference that the books of account are not proper, without preperly and judiciously appreciating that the society has maintained books of account, got them audited u/s. the Act, Audit Report was submitted and merely submission of explanation to AO with regards to income and expenditure statement cannot be a reason for withdrwing the already granted benefit u/s.10(23C) of the Act.

16.The assessee may add, alter or modify any other points to the grounds of appeal at any time before or at the time of the hearing".

4. Coupled with this, assessee/appellant has filed its petition on 16-10-2020 seeking to raise additional grounds. Learned CIT-DR has vehemently opposed assessee's additional grounds petition at this alleged belated stage. His case is that the assessee has tried to make out altogether a new case challenging the Pr.CIT's jurisdiction which does not deserve to be admitted. He has also taken pains to file a brief note objecting assessee's admission of additional grounds as under:

"The following synopsis of arguments made during hearing before the Hon'ble ITAT on 17/02/2021 is filed as directed by the Hon'ble ITAT on the date of hearing.

1. In all the above cases, Search & Seizure Operation conducted by the Department revealed that there is adequate evidence of the assessee's doing real estate business which is beyond the scope of charitable activity.

2. In this regard, a detailed proposal was submitted by the ACIT, Central Circle-2(4), Hyderabad to the "Pr.Commissioner of Income Tax(Central), Hyderabad for cancellation of registration u/s 10(23C) granted to the assessee (The details are filed at pages 1-81 of Paper-Book filed by the Department on 4.2.2021). As there is clear-cut violation of the provisions of Sec.10(23C) of the Income Tax Act by the assessee warranting revocation of exemption u/s 10(23C) of the Income Tax Act, the Pr.CIT(Central), Hyderabad has issued Show-Cause notice to the assessee. It is submitted that even before the Hon'ble ITAT, the assessee could not rebut the clinching evidence in the form of incriminating material seized during the course of Search& Seizure proceedings u/s 132 conducted by the Department. Therefore, this is a clear case for revocation of approval granted is u/s 10(23C) of the Income Tax

3. With regard to the issue of jurisdiction of the PCIT for revocation of the approval granted u/s10(23C) of the Income Tax Act, it is submitted that as per directions of the Hon'ble ITAT, a clarification was obtained from the Pr.Commissioner of Income Tax(Central) and the letter dated 6.11.2020 of the PCIT(Central). The clarification is available at pages 144-147 of the Paper Book filed by the undersigned. It is also submitted that as per Notification No.SO 3215(E)[No.60/2019](F.No.370142/ 14/20 18-TPL] (dated 5.9.2019, issued with regard to amendment of Rules 2C and 2CA of the Income Tax Rules, the PCIT has jurisdiction for revocation of approval granted ix] s 10(23C) of the Income Tax Act. It is humbly submitted that the assessee has not raised the issue of jurisdiction before the PCIT and the same is raised for the first time before the Hon'ble ITAT and the assessee was not prevented by any sufficient cause in not raising the said ground before the PCIT.

4. In light of the above , the appeals may kindly be dismissed and the order of the PCIT may kindly be sustained".

5. We have given our thoughtful consideration to the rival pleadings regarding assessee's petition dt.16-10-2020 seeking to admit its above stated additional grounds. There could be hardly any dispute that the very question of Pr.CIT(Central)'s jurisdiction herein to withdraw Section 10(23C)(vi) approval

goes to root of the matter. That being the case, we quote hon'ble apex court's landmark decision in National Thermal Power Co. Ltd., Vs., CIT [229 ITR 383] (SC) and All Cargo Global Logistics Ltd., Vs. DCIT (2012) [137 ITD 217](SB) (Mumbai) that - *this purely legal in nature tribunal can very well entertain such an additional ground so as to determine the correct tax liability of an assessee; provided, all the relevant facts are already on record.* We go by the very analogy and admit the assessee's additional grounds herein above.

6. We next notice that the Pr.CIT(Central)'s order under challenge withdrawing the assessee's approval contains the following detailed discussion:

"1. Back Ground:

M/s. Karshak Vidya Parishad was granted approval u/s.10(23C)(vi) of the I.T Act, 1961 by the CCIT, Hyderabad-1, vide proceedings in F.No.CC/ Tech.-1/22B(62)1 2007-08, dated 27.03.2008.

1.2 Search & seizure operations were conducted on 23.03.2018 in the case of the above institution as being part of Aurora group of cases, during which various documents and incriminating material were found and seized. The incriminating material found during the search revealed that the society was carrying activities which are not in accordance with the objects of the society as approved by the Chief Commissioner. It was also revealed that the activities of the society are not entirely genuine.

1.3 On analysis of bank accounts it was observed that there were unexplained cash credits in the bank accounts of the society. Another finding of the search is that the society did not maintain regular books of accounts because of which the returns of income filed by the assessee and the receipts and payment accounts remain unsubstantiated. Besides these, the society has violated the provisions of section 269SS, 269T as well as the TDS provisions. The. main members of the society Sri Ramesh Babu.N, Sri Raja Babu.N, were found to be in possession of unaccounted cash which was seized. Considering all these aspects the group cases were centralized with ACIT, CC-2(4) to conduct coordinated investigation.

CIT(E) amongst others PCITs passed order u/s.127 assigning the cases including Aurora Educational Society to ACIT, CC2(4), Hyderabad.

1.4 Approval u/s.10(23C)(vi) was granted by the then Chief Commissioner of Income Tax, Hyderabad-1 vide order F.No.CC/Tech.1/22B(62)/2007-08, dated 27.03.2008 subject to the following conditions.

i) The assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;

ii) The assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture) for any period during the previous years relevant to the assessment years mentioned above otherwise than in anyone or more of the forms or modes specified in subsection (5) of section 11;

iii) This order will not apply in relation to any income being profits and gains of business unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;

iv) The assessee will regularly file its return of income before the income tax authority in accordance with the provisions of income tax act, 1961;

v) That in the event of dissolution, its surplus and the assets will be given to a charitable organizations with similar objectives and no part of the same will go to any of the members of M/s. Karshak Vidya Parishad, Hyderabad500013.

vi) Approval granted by this order is subject to the fulfilment of the conditions contained in the provisions to section 23c and its subject to cancellation in terms of proviso 13 to section 10(23C)

1.5 From the above approval and conditions therein, it is seen that the approval was granted subject to the terms of the then proviso 13 to section 10(23C). The subject proviso is extracted hereunder:

"Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or is approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (VI) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or \he prescribed authority is satisfied that-

(1) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not-

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution-

(A) are not genuine; or .

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or

(iii) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called; holding that such non-compliance has occurred, has either not been disputed or has attained finality,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:"

2. Proposal for withdrawal of approval:

2.1 During the assessment proceeding in consequential the search, it was observed by the assessing officer that the society acted in violation of the conditions laid down for approval u/s.10(23C). The Assessing Office vide letter dated 06.12.2019 sent the proposal for withdrawal of approval u/s.10(23C). The Assessing Officer in her detailed proposal cited various violations as detailed below:

i) No proper books of accounts were found during the search which would authenticate that the receipts of the institution were applied to its stated / approved objectives.

ii) The society was required to maintain regular books of accounts, reflecting the actual operations of the society. These books of

accounts are to be audited and form 10B is required to be filed, along with return of income, certifying the correctness. of books of account. But it is found that the society's books of accounts are not regularly maintained and the financial statements submitted are manipulated and unsubstantiated.

iii) As per the receipts and payments accounts submitted during the assessment proceedings, heavy amounts were shown as payments towards various expenses for which there is no corresponding proof submitted, despite opportunity given. In the absence of relevant proof the receipts and payment accounts submitted are not amenable to any scrutiny and hence, the genuineness of the payments remain unsubstantiated.

iv) The society sold certain lands the receipts of which were not fully reflected in the receipts and payments accounts filed along with the return. However, subsequently, the receipts are included and the payments were correspondingly increased to balance the receipts. The difference between the original payments as per returns and the revised payments as per the receipts and payments accounts submitted during the assessment proceedings remain unsubstantiated due to lack of evidence of such payments. Therefore] the genuineness of application of the funds towards the approved objects of the society remains unsubstantiated.

In view of these violations AO strongly recommended for withdrawal of approval u/s.10(23C).

3. <u>Show Cause for withdrawal:</u>

3.1 Vide letter in F.No. Pr.CIT(C)/10(23C)/20-19-20 dated 10.12.2019 a detailed show cause was sent to the assessee asking it to explain why the society's registration u/s.12A should not be cancelled and also why the approval u/s.10(23C) should not be withdrawn. The reasons specified in the show cause are as under:

"The societies are required to maintain regular books of accounts, reflecting the actual operations of the societies. These books of accounts are to be audited and Form 10B is required to be filed, along with return of income, certifying the correctness of books of accounts. But it is found that the society's books of accounts are not regularly maintained and the financial statements submitted to the income tax department are manipulated and fudged. Even after giving several opportunities to produce books of accounts, assessee has failed to produce the same.

In addition to the above, as per the income and expenditure statement and the Computation of Income, the above educational society has shown huge expenditures towards salaries, outstanding expenses payable, outstanding salaries payable, huge fixed asset

additions. However, no details about the Teaching/ Non-teaching staff employed, how much salary was paid to whom, whether the salary was paid through bank/ cash, no proof of additions made to fixed assets, no bills and vouchers and ledger account copies pertaining to the said expenditure have been furnished even after several questionnaires and show-cause notices.

Hence, without sufficient evidence and non-submission of books of accounts from the assessee-societies, it cannot be established beyond doubt that the quantum and nature of expenditure incurred by them is correct."

3.2 Subsequently another show cause was issued on 20/12/2019 as there is a change of incumbent. The issues raised therein are as under.

i) No proper books of accounts were found during the search which would authenticate that the receipts of the institution were applied to its stated / approved objectives.

ii) The society was required to maintain regular books of accounts, reflecting the actual operations of the society. These books of accounts are to be audited and form 10B is required to be filed, along with return of income, certifying the correctness of books of account. But it is found that the society's books of accounts are not regularly maintained and the financial statements submitted are manipulated and unsubstantiated.

iii) As per the receipts and payments accounts submitted during the assessment proceedings, heavy amounts were shown as payments towards various expenses. for which there is no correspondinq proof submitted, despite opportunity given. In the absence of relevant proof the receipts and payment accounts submitted are not amenable to any scrutiny and hence, the genuineness of the payments remain unsubstantiated.

iv) The society sold certain lands the receipts of which were not fully reflected in the receipts and: payments accounts filed along with the return. However, subsequently, the receipts are included and the payments were correspondingly increased to balance the receipts. The difference between the original payments as per returns and the revised payments as per the receipts and payments accounts submitted during the assessment proceedings remain unsubstantiated due to lack of evidence of such payments. Therefore, the genuineness of application of the funds towards the approved objects of the society remains unsubstantiated."

In response to the above show cause notices, the society furnished reply vide letter dated 24.12.2019.

4. Response of the assessee:

4.1 The gist of the submissions made by the assessee vide letter dated 24-12-2019 against the withdrawal of approval u/s.10(23C) are as under:

4.2 Due to introduction of fee reimbursement scheme, the institution started facing financial crisis because of non-receipt of reimbursement fee from the Government, because of this financial crisis the bank loans have become bad and banks tried to auction the lands belonging to the society. Under these circumstances, the society was left with no other option than to distress sell of the properties. The society utilized all the sale proceeds for clearing of the loans of banks.

4.3 It was submitted that it is not correct to say that no proper books of account were maintained by the assessee. All the books are regularly maintained and audited. The audited financial statements are filed along with the return of income. It is also stated that the search party didn't draw any adverse inference against the activities of the assessee. It is further submitted that the assessee has not been 'provided sufficient opportunity to produce necessary information.

4.4 It is submitted that the CIT should have been satisfied that the institution has not applied its income in accordance with the provisions of section 10(23C) and mere suspicion cannot form basis for withdrawal of approval. As a society is in deep financial trouble the lands had to be sold and all the sale proceeds were utilized for the purpose of stated objectives of the society. Therefore, it is submitted that the foundation requisite for the withdrawal of approval u/s.10(23C) is not fulfilled in assessee's case and, hence, it is requested to drop the proceedings.

5.ISSUES FOR CONSIDERATION:

I have carefully considered the facts and circumstances of the case and have gone through the submission made on behalf of the society. I have also considered the material found and seized during the search operation and also statement recorded during search and post search investigation.

5.1 NON MAINTENANCE OF BOOKS / FURNISHING WRONG FINANCIAL STATEMENTS TO THE DEPARTMENT

5.1.1 On examination of entire facts, it is seen that the society which is required to maintain regular books of accounts which would reflect the actual day to day to day operations of the society, did not do so. These books of accounts are also required to be audited and Form 10B needs to be filed along with the return certifying the correctness

of the books of accounts. During the 'search it came to the notice of the department that the society was not maintaining any regular books of accounts and the financial statements submitted to income tax department along with the return are manipulated. These facts were confronted to the assessee during the course of search and post search investigations, but the assessee only could give evasive replied without any substantive documentary evidence.

5.1.2 All that the assessee had to say with regard to non-maintenance of books is that the books have been regularly maintained and audited. The audited financial statements were filed along with the return of income. However, it is not substantiated by the assessee as to why revised receipts and payments had to be filed if the original receipts and payments / financial statements reflected the correct and entire activities of the assessee. The statement that the search party did not draw any inference against the society is not correct as the assessee did not reply to the questions raised by the search party properly. Further, adverse inferences if any would be drawn and finalized by the Assessing Officer at the time of finalizing the assessment order. It is also not correct that the assessee was not provided sufficient opportunity it is a fact on record that the assessee did not respond to various notices and show cause letters given during the assessment proceedings. However, the assessee failed to furnish the complete details to the department and have been changing its version time and again.

5.1.3 The assessee did not at any stage say that financial statement submitted along with the return of income reflect the true affairs of the society. Therefore, it is an admitted fact tha the assessee society furnished its income tax returns based on the financial statements which do not have any sanctity. Just because audit report in 10B was furnished it does not mean that the activities of the4 society are true and correct. The fact that the audited accounts of the assessee do not reflect the assessee's society's real affairs and complete transactions of the society have been deliberately hidden from the department.

This is a clear violation of conditions of section 10(23C). The charitable nature and education purpose of an institution is reflected through its books of accounts. If the books of accounts are not properly maintained and there are financial transactions outside the books of accounts then the statement that the society's activities are being carried out as per the objects remains only on paper. Non-maintenance of books in itself reliects the intention of the society members I trustees to hide the actual transactions from the eyes of the approving authority. There is a catena of decision the non_maintenance of proper books of accounts and carrying out of the operations I financial transactions outside the books of accounts

casts the shadow on the objectives of the society and hence the genuineness of the society.

5.1.4 The search revealed the fact that the assessees' books were never regularly maintained and there have always been transactions out of the books of accounts. Evidence for transactions outside books of accounts were found during the search. Had the search & seizure operation has not taken place these receipts would never have been brought to the notice of the income tax department. The society's approval is granted subject to the conditions specified therein. The assessee by not reflecting the transactions in the books of accounts has conveniently avoided to show as to how the receipts were used. It becomes next to impossible to examine whether the amounts received were utilized towards advancement of the objects of the society when both the receipt as well as the expenditure is kept out of the books of accounts. Section 10(23C) lays heavy emphasis on the application of income and / or its accumulation for future application when the income itself is not reflected in the books it becomes impossible to the taxman to examine whether such income is applied for the furtherance of the society's activities. Once the receipt itself is not shown the assessee even need not explain whether the surplus is invested as per the provisions of section 10(23C). Therefore, non_maintenance of books of account and non-inclusion of entire receipts in the books is the well thought of ploy by the assessee to avoid compliance with provisions of section 10(23C).

6. conclusion:

6.1 On perusal of various materials found and seized, results of post search investigations and statements recorded from various persons during the search; it is observed that the assessee society has been continuously, time and again violating the conditions laid down for approval of the society u/s.10(23C). It is observed that no proper books of accounts were maintained for any of assessment years, in the absence of which the receipts and payments could not be authenticated. Therefore it is not possible for the tax authorities to examine whether the receipts of tile institutions were applied to its stated /approved objectives. It is also seen that revised receipts and payments statements were filed during post search proceedings, which clearly shows that neither the receipt payment account filed along with return nor the audit report under Form 10B reflect the correct position of affairs of the society. The assessee society entered into various land transactions both of outright sale as well as development. Large amounts of cash have changed hands in these transactions in flagrant violation of provisions of income tax Act and also Stamp Duty Act. The assessee till date was not able to reconcile how the entire receipts of sale of land were utilized. Further, it is observed from the material seized that thee is diversion of funds of

the society for the personal benefit of the members/trustees. The real estate transactions were also structured in such a way to divest the society land at less than market price with obvious intentions. Above all till date the assessee society is not able to submit its correct receipts and payment account along with relevant proof to show that the society's funds have been utilized for the furtherance of objective of the society in accordance with the approval granted by the prescribed authority.

6.2. A perusal of provisions of sec 10(23C) clearly show that the approval to the society is granted subject to the conditions laid down in the then proviso 13. The relevant provisions of Section 10(23C) reads as under:-

Government or the prescribed authority is satisfied that-

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not-

(A) applied its income in accordance with the provisions contained in clause (a) of the third prouiso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso ; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution-

(A) are not genuine ;or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and foruiard a copy of the order rescinding the notification or withdrawing the. approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:

6.3 Thus, the Prescribed Authority is allowed to withdraw the exemption granted u/s 10(23C), if the prescribed authority is satisfied that educational institution has not applied its income exclusively and wholly for educational purposes, or invested or deposited funds in violation of clause (b) of third proviso, or the activities of the educational institutions are not genuine or are not

being carried out in accordance with all or any of the conditions subject to which it was approved, the prescribed authority may withdraw the approval, after giving a reasonable opportunity of being heard. A copy of the order will be served on the educational institution and to the Assessing Officer.

6.4 The Hon'ble Apex Court in the case of Ms.Mohini Jain v. State of Karnataka & Ors. (1992) 3 SCC 666, held that capitation fee was nothing but price of selling education and such "teaching shops" were contrary to the Constitutional scheme and abhoreent to our Indian culture. Hon'ble Supreme Court's decisions in case of TMA Pai Foundation Vs. State of Karnataka (2002) (8 SCC 481), Islamic Academy of Education Vs. State of Karnataka (2003) (6SCC697) and P.A. Inamdar Vs. State of Maharashtra (2005) (6 SCC 537) also supports the fact that the education is not a commercial activity and hence the evidences found education is not a commercial activity and hence the evidences found during the course of search supports that the assessee has violated the provisions of law and the conditions prescribed while granting the recognition.

6.5. Education would remain as a charity only in a case where education is imparted systematically for a free prescribed by Government. A private aided or unaided professional institution or any other educational institution of a State is required to collect fees with regard to infrastructure and benefit of students of that educational institution. Collection of money over and above fee prescribed by Committee would amount to collection of capitation fee and such an institution would face legal conseqeunces for same (Vodithala Education Society Vs ADIT, [2008] 20 SOT 353 (HYD)].

6.6 In the case of SCIENTIFIC EDUCATIONAL ADVANCEMENT SOCIETY v. UNION OF INDIA AND ANOTHER [2010], 323 ITR 84 (P&H), the Hon'ble High Court held that Educational institution should exist solely for purposes of education and if it is not, the society is not eligible for exemption u/s.10(23C)(vi) of the Act.

6.7 The Hon'ble ITAT, Hyderabad vide their orders on 22.3.2012 in the case of M/s.Islamic Educational Society had observed, as under:

"Further, we find that the Constitutional Bench of Apex Court in the case of T.M.A.Pai Foundations and others Vs State of Karnataka & Others (2002) 8 SCC 481 examined the issue of collection of capitation fees for the admission of students over and above fees prescribed by the private institution and held that the institution which are collecting capitation fees for admission of students over and above the fees prescribed cannot be construed as charitable/educational institution.....Same view was taken by Apex Court in the case of Islamic Academy of Educational and another Vs. State of Karnataka & another (2003) 6 SCC 697. If the

admissions were received compulsorily for admission of students, the assessee is not entitled for exemption neither u/s.10(23C) or u/s.11 of the IT Act.

6.8 Hon'ble Madras High Court in the case of Prathyusha Educational Trust vs Principal Commissioner of Income tax vide its order dt.27/06/2019 while upholding the order of withdrawal of 10(23C) held as under:

"Furthermore, we find that the Assessing Officer while completing the assessment had held that the facts clearly prove that the affairs of the assessee are managed by the Managing Trustee in such a manner the funds collected from some of the students admitted to the institutions run by the assessee are taken away outside the books of accounts of the assessee without even issuing receipts and thereby setting apart these funds of the assessee for purposes other than the objects of the Trust. Further, the Assessing Officer pointed out that the assessee has violated its own objectives by diverting substantial portion of its funds by and to the Managing Trustee without truly recording in the books of accounts maintained by it and as these funds were diverted outside its bocks of accounts the audit report furnished does not reflect the true and correct affaire of the assessee. After referring to the facts discovered during the course of search coupled with the admission of the Managing Trustee and the officers incharqe of the accounts in their deposition, the Assessing Officer held that such a contumacious conduct in running the affairs of the Trust to go against the basic tenets of the Trust and Trusteeship warrants cancellation of the approval. All these factual findings are perfectly justified and consequently, approved. (Emphasis supplied)"

6.9 The Hon'ble Karnataka high court in the case of Navodaya Education Trust vs Union of India (405 ITR 0030) held as under:

"The purpose of exempting such Institutions from Income Tax was obviously to restrict such exemption upon a very strict compliance with the parameters for the same and only bona fide, chaste and pure Educational Institutions could expect such exemptions from the Income Tax which as per the said norms and the rules of interpretation of such provisions of exemption have to be strictly construed by the Courts of law. Any liberal or flexible interpretation 'looking over' the strict compliance of the conditions is likely to defeat the very purpose of grant of such exemption and the business houses which additionally want to run Educational Institutions also as business enterprises cannot be allowed to take the benefit of exemption from Income Tax. under the cover of a registered Educational Trust through the Books of Accounts of the Trust, in which all kinds of other business activities may keep on happening.

24. It is only after the search operations under Section 132 of the Act, which in the present case revealed the ugly part of the Trust activities and the reasons based on such material gathered by the Income Tax. Authorities cannot be brushed aside and such reasons as stated in the impugned order are found to be sufficient for upholding the correctness of the impugned order.

.....

29. Thus on an overall analysis of the facts and legal position, this Court is of the opinion that there was ample material on record to establish that the petitioner, Trust had indulged in illegal activities and could not be said to be existing purely for Educational purposes, and rather various other business activities of the said family of Trustees and their money was passing through the cover and shields of the Books of Accounts of the petitioner - Trust rendering it as merely a skeleton for the purpose of exemption to Educational Trust and rather than a real Educational Trust, solely existing for the purpose of Education. Such sham or bogus Trusts cannot be held to be entitled to exemption under the provisions of Section 10(23-C) of the Act and therefore the Respondent Authority has rightly withdrawn the approval of the petitioner - Trust under the said provision. »

6.10 Therefore after carefully considering, the facts of the case and the decisions of various judicial authorities, I find that this is not a fit case for continuing the exemption granted u/s.10(23C)(vi) of the Income-tax Act, 1961. For the above reasons, I hold that the assessee society is not eligible for exemption u/s.10(23C)(vi) of the Income Tax Act. Therefore, the approval granted u/s.10(23C)(vi) of the IT Act by the Chief Commissioner of Income-tax, Hyderabad is hereby withdrawn w.e.f. the date of its approval.

7. We have given our thoughtful consideration to the foregoing legal issue of Pr.CIT(Central)'s jurisdiction in withdrawing the assessee's approval with effect from the date the same was granted i.e., 27-03-2008. Learned CIT-DR's written submissions (supra) has relied upon Pr.CIT's clarification dt.06-11-2020 explaining the assumption of jurisdiction to this effect as follows:

"F.No. Pr.CIT(C)/Hyd/ Aurora/2018-19

To
The Sr.AR-II, ITAT-II, Bech,
Hyderabad

Sub:- Assessee's appeal in the case of Church Educational Society, Aurora Educational Society, Tarakarama Educational society and Karshak Vidya Parishad- furnishing of information called for - Reg

Ref: Your letter in F.No. Sr.AR/ITAT/B-Bench/2020-21 dated 22.10.2020

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The report called for is submitted hereunder:

2. The conditional approval U/s.10(23)(C)(vi) was originally granted in all the four cases by Chief Commissioner of Income Tax, Hyderabad-I who was the Prescribed Authority during that period. Consequent to search operation, the aforesaid group cases were centralized with ACIT, CC-2(4), Hyderabad under the administrative control of PCIT(Central), Hyderabad. The CIT(E) amongst others PCITs, on recommendation of PCIT(Central) passed 127 orders assigning the cases to ACIT, CC-2(4), Hyderabad.

The proviso to Section 10(23)(C)(vi) of the Income Tax Act, 1961 read with rule 2CA of the Income Tax Rules, 1962 empowers the Prescribed Authority under the Act to withdraw the approval granted under such-section as per the provisions of the section10(23)(C)(vi) of the IT Act, 1961.

4. By an earlier CBDT notifications in S.O.3026(E) and 3027(E) both dated 1st December, 2014, the CBDT has authorised the Commissioners of Income Tax (Exemptions) to act as 'Prescribed authority' for the purposes of subclause (vi) and sub-clause (via) of Clause (23C) of Section 10. Thus, the role of the Chief Commissioner for such purposes has been assigned to the Commissioner of Income Tax(Exemption).

This was, however, omitted w.e.f. 05 November, 2019 vide CBDT Notification No.S03215(E)/No.60/2019 in F.No.370142/14/2018 - TPL. The CBDT vide such notification has amended Rules 2C and 2CA.

5. The amended Rule 2C is as under:

'2C. (1) The prescribed authority under sub-clause(iv),sub-clause(v), sub-clause(vi) and sub-clause(via) of clause (23C) of Section 10 shall be the Principal Commissioner of Commissioner whom the Central Board of Direct Taxes may authorise to act in this behalf.

6. Thus, as things stood as on the date of order, the CIT(Exemption), who no longer holds the jurisdiction over the case in view of the order u/s 127, cannot be taken as prescribed authority for the purpose Section 10(23)(C)(vi) In respect of aforesaid cases as the cases are centralised with PCIT(Central), Hyderabad and the person holding

that charge will become the prescribed authority in view of the afore mentioned amendment.

This is for your information and further necessary action".

8. After giving our thoughtful consideration to the foregoing facts on record, we find that the Pr.CIT(Central)'s clarification extracted in preceding paragraphs seals the outcome of the assessee's grievance. This taxpayer's detailed paper book pgs. 1 to 47 contain the ACIT, Central Circle's proposal(s) dt.10-06-2019 and 12-06-2019 recommending cancellation of its approval at pgs.1 to 77 sent to the Pr.CIT(Central Circle), latter authorities' show cause notice dt.16-09-2019 (pgs.82 to 98) issuing show cause thereby assuming jurisdiction u/s.10(23C)(vi), reply dt.03-10-2019 pg.99 and dt.04-11-2019 (pages 100 to 116) yet another fresh show cause notice in continuation to the earlier once coming from the Pr.CIT's office dt.20-12-2020 (pages No.117 to 121), assessee's reply dt.24-12-2009, Pr.CIT's order sheet entries (pages 139 to 143) and his clarification dt.06-11-2020 (supra); stand perused. All this detailed evidence makes it clear that the Pr.CIT(Central)'s initial show cause notice dt.16-09-2019 itself forming basis of the impugned entire exercise to withdraw the assessee's approval suffers from inherent lack of jurisdiction as per his own clarification that the CBDT's notification (supra) was issued much later i.e., on 05-11-2019 only. We observe in this clinching backdrop that the PCIT(Central) has erred in law and on facts not only in assuming his Section 10(23C)(vi) jurisdiction on 16-09-2019 (before having being confirmed the prescribed authority's jurisdiction to this effect on 05-11-2019) but also he has wrongly withdrawn the assessee's approval

with effect from the date it had been granted the same (supra). And that the latter action also involved illegality since this approval had come way back in the year 2009 as against the search carried out almost after a decade i.e., 23-03-2018. We thus adopt strict interpretation in the given facts and circumstances of the case in the light of Rule2CA of the Income Tax Rules, 1962 and going by hon'ble apex court's constitutional bench decision in CCCE Vs. Dilip Kumar and Company (2018) [9 SCC 1 (SC)] and conclude that the impugned order withdrawing the assessee's approval is not sustainable for want of the Pr.CIT(Central)'s jurisdiction. We make it clear that we are dealing with an instance of patent lack of jurisdiction at the threshold itself which cannot be made good in latter stages.

9. There is yet another equally significant aspect of the matter before us. There is hardly any dispute that the Pr.CIT's order; assuming but not accepting it as correct, has withdrawn the assessee's approval from the day which was granted the very relief i.e., from 27-03-2008 turning out to be well beyond the period of show cause notice itself. And that too, without even indicating as to how the assessee had violated the conditions of its approval granted earlier in all these intervening assessment years wherein it had also been assessed without any violation of the approval's conditions.

10. We therefore rely upon our foregoing detailed discussion and hold that Pr.CIT(Central) herein has erred in law and as on facts in withdrawing the assessee's approval granted u/s.10(23C)(vi) of the Act. The assessee has also filed a

detailed case law paper book as well as citing various judicial precedents but we do not deem it appropriate to deal with any of them since it is an instance of the Pr.CIT(Central)'s lack of jurisdiction. The impugned order dt.26-12-2019 forming subject matter of ITA No.320/Hyd/2020 stands reversed. The assessee's impugned approval is restored as a necessary corollary.

11. Same order to follow in the remaining three assessees' appeals ITA Nos.318/Hyd/2020, 319/Hyd/2020 and 321/Hyd/2020 as both the lower representatives are *ad idem* before us as there is no distinction on facts and law therein.

12. To sum-up, all these four assessees' appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 20th April, 2021

Sd/-	Sd/-
(LAXMI PRASAD SAHU)	**(S.S.GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad,
Dated: 20-04-2021
TNMM

Copy to :

1.Aurora Educational Society, C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1stFloor, Somajiguda, Hyderabad.

2.Church Educational Society, C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1stFloor, Somajiguda, Hyderabad.

3.Karshak Vidya Parishad, C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1stFloor, Somajiguda, Hyderabad.

4.Tarakarama Educational Society, C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1stFloor, Somajiguda, Hyderabad.

5.The Pr.Commissioner of Income Tax (Central), Hyderabad.

6.D.R. ITAT, Hyderabad.

7.Guard File.