

All India Personality Vs. Dcit

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jun-25-2004

Judge : K Singhal, M Nayar

Appellant : All India Personality

Respondent : Dcit

Judgement :

1. This appeal is directed against the order of block assessment Under Section 158BC passed by DCIT-II, New Delhi. The Block Period comprised of 1.4.88 to 15.1.99.

2. Briefly stated, the facts are these: The assessee is a society registered under the Societies Registration Act, 1860. This Society was set up in 1980. The main object of the society is to establish schools in India and to provide good quality education to all without distinction of race or creed or caste or social status. It did not file any return of income for any assessment year under the bonafide belief that it was not required to file any return of income in as much as the income of the society was totally exempt under the provisions of Section 10(22) of Income-tax Act, 1961 (in short Act). A survey operation as well as search and seizure operation was carried out at the premises of the assessee on 15th January, 1999. In response to notice Under Section 158BC, the assessee filed the block return declaring nil undisclosed income.

3. After examining the materials placed on record, the AO found as under: 1. That assessee Society was managed by Lt. Col. Prem Saran Satsangi, who was patron/Chairman of the Society as well as by other persons, who are relatives of Mr. P.S. Satsangi, namely, Dr. Rohit Jaiman (son-in-law) as President, Mrs. U.B. Satsangi (wife) as Vice President and Mrs. S.S. Jaiman (daughter) as Secretary. The other persons in the management were Col. S.P. Srivastava as Vice President and Mr. Lakshman Kumar as Joint Secretary.

2. The assessee Society was running four schools, namely, (i) at Satbari, Mehrauli, New Delhi; (ii) at Navrangpur, Gurgaon; (iii) at Ricco Industrial Area, Bhiwadi (Rajasthan); (iv) Utopia CSIS Malbaro Heights.

3. That perusal of the income and expenditure account for the block period revealed that if only revenue expenditure is taken into account to the exclusion of capital expenditure then the surplus would work out to higher figure every year. Percentage-wise, it will vary from 46% to 18%. Even after debiting the capital expenditure, the institution was earning substantial income year after year except in asstt. years 1990-91 and 1992-93.

4. That Society was indulging in various non-educational activities such as making speculative investments with motive to earn higher profit. Such investments were noted as under: (b) Payment of Rs. 4,33,620/- to BVR Plantation in financial years 95-96 and 98-99.

(c) Payment of Rs. 2 lacs to Consortium Finance on 15.12.94 and 6.9.95.

5. That Society was utilizing its income to help the founder and his family members/associates to acquire personal assets by advancing them moneys from time to time as per the following details:

S.No.	Name of the person	Date	Amount
1.			

Col. P.S. Satsangi, Chairman 3.12.88 1,00,000/- 15.5.89 60,000/-2.

Smt. Shakuntala Jaiman 2.7.94 1,00,000/- Secretary/Principal 29.12.97 2,50,000/- (Chairman's daughter)3.

Mrs. Unou Satsangi 23.12.92 70,000/- Vice President 11.8.98 1,20,000/-
(Chairman's wife) 14.1.99 70,500/- 14.1.99 72,500/-4.

Mr. Y. Sinha 1.12.93 30,000/- Manager 7.11.94 90,000/- 11.3.95 20,000/-5.

Dr. Rohit Jaiman 23.4.90 1,34,000/- President (Chairman's son-in-law) 29.12.97
1,75,000/- 6. Immovable properties owned by the Society were continuously being
used for giving on hire to outsiders with the sole motive of earning profit. The hire
charges received from year to year were quite substantial as per details given
below:- 7. The Society indulged in dealings in real estate with the sole motive of
earning income e.g.

a. Property No. 29A, Kalu Sarai, New Delhi: The land in question was purchased
in October, 1991 for Rs. 2,13,000/- including stamp duty.

Further, investment of Rs. 29,65,000/- was made in constructing the super
structure in the financial year 1991-92 and 1992-93. Second floor and third floor of
the property were given on rent to one Shri Dinesh Kumar Goyal in May, 1992 and
September, 1993. Subsequently, there was some dispute with the tenant and the
whole property was sold to M/s Mideast Integrated Steels Ltd. for an apparent
consideration of Rs. 32 lacs. These facts clearly indicate that the purpose of
acquisition/construction of the property was not education.

b. Property No. 328, Lado Sarai, Mehrauli, New Delhi: The property in question
was purchased in 1994 from one Shri Ashraf. Due to some technical reasons,
construction thereon was demolished by MCD in 1995. Thereafter, in 1995
property in question was again sold to Shri Muslim Khan s/o Shri Ashraf Khan and
Sh. Gulbir Singh Chauhan in exchange for 1st floor which is now in the possession
of society.

Purpose of this deal cannot be said to be educational.

c. Property at Shekh Sarai, New Delhi: The assessee obtained the rights in a DDA
flat at Sheikh Sarai which was allotted by DDA to Ms Abha Goyal by making a
payment of Rs. 6,50,188/- on 1.10.1993 and subsequently, sold such rights for Rs.
5,50,000/- to one Shri Arun Malik on 31.8.96. Purpose of this deal cannot be said

to be educational.

d. Land at Village Nainwal, Gurgaon: In the year 1996, the assessee society indulged in a property deal jointly with Shri G.S. Gill, a Non Resident Indian for purchase of land at Village Nainwal, Gurgaon. In this business venture, the society had taken a finance of Rs. 45,00,000/- from Shri G.S. Gill and a total payment of Rs. 75,00,000/- was made by the society to M/s Surya Estate & Builders for purchase of above land. Involvement of an outsider viz. Shri G.S. Gill shows that it was a joint venture to earn profit out of the proposed land deal. Further there is no documentary evidence to show that the investment has been made for educational purposes.

Purpose of this deal cannot be said to be educational.

e. Other transactions: Scrutiny of the balance sheets for various years falling within the block period revealed that in almost all the years substantial amount has been given as advance for purchase of land/immovable properties showing that the assessee was regularly indulging in property deals. The figures in the balance sheets for the last five years are as follows:- 8. Amount of surplus of income over expenditure was being invested from time to time in acquisition of FDRs with banks for the purpose of earning interest income. On many occasions the investments were made for a period of more than three years at a stretch for instance, investment of Rs. 33,05,543/- was made in FDRs with PNB Chandanhola on 26.7.1997 for 39 months.

In view of the above, the AO issued show cause notice to the assessee to explain why the exemption Under Section 10(22) be allowed to the assessee. The assessee vide letter dated 8th January, 2001 explained as under: "It vehemently contended that it was existing solely for educational purposes and not for the purpose of profit. The observation made in the show cause notice that the society had been indulging in various non-educational activities was claimed to be based on misconception and incorrect. It was stated that the funds were invested to earn interest so as to pass on the benefit to the students and educational purposes as and when required. With regard to specific investments cited in the show cause notice, the following explanations were given:- a) Rs. 1,80,000/- was paid on

2.9.96 to Anubhav Plantation on behalf of Col. P.S. Satsangi which has been recovered from him and has been accounted for in the books of accounts of the society. The investment is not in the name of the society.

b) Rs. 4,33,620/- paid to BVR Plantation during the financial year 1995-96 and 1998-99 and Rs. 2,00,000/- paid to Consortium Finance and Leasing Ltd. were stated to be investment in modes other than the modes specified in Section 11(5) of the I.T. Act. It was urged that Section 10(22) does not impose any restriction regarding the mode of investment.

c) With regard to advances made of Col. P.S. Satsangi, Mrs.

Shakuntala S. Jaiman, Mrs. U.B. Satsangi, Mr. Y. Sinha and Dr. Rohit Jaiman, it was explained that the society had given loans to Mrs.

Shakuntala S. Jaiman, Principal, Dr. Rohit Jaiman and Mr. Y. Sinha, Manager, as all of them had been working as employees or consultants for the society and were holding different positions in the society.

They were also given loans as the society was giving to other staff members and interest on such loans was being charged from them accordingly. Similarly payments had been made to Col. P.S. Satsangi for acquisition of Farm No. 31A, 32A and 33, Silver Glades Farm, Malbaro at Gurgaon (Haryana) for which he had paid earlier from his won sources and the said property was registered in the name of the society. The said amount had been adjusted from him during the F.Y. 1998-99. Therefore, acquisition of the said immovable property was not for personal use of Shri Satsangi.

Mrs. U.B. Satsangi was given the advance against Farm No. 217 and 225, Silver Glades Farms, Malbaro, Gurgaon (Haryana) admeasuring 2 acres which is being used by the society to conduct study camps and other school activities such as functions, site seeing and picnics for the students of the school. The said advance had been repaid by her also during the F.Y. 1998-99.

d) With regard to giving on hire immovable properties of the society to outsiders and transactions in sale/purchase of immovable property, it was explained that the

society had accumulated its receipts in the last ten years and had applied the same in the corpus of the society in the shape of acquisition of school land and buildings to be used for the educational purposes and not for any purposes other than education.

It was contended that the society was not carrying any activities which were unrelated to the objects of the society. The society was not doing any alleged property transactions of any commercial nature out of the funds of the society. The society had acquired properties for the purpose of education and for running schools. And all the properties of the society were being used for running schools and the earning therefrom, if any, were being used for the educational objects of the society only. Reference was made to the decision of the Hon'ble Supreme Court of India in the case of S.R.M.M.C.T.M Tiruppani Trust v. Commissioner of Income-tax (230 ITR 636) to the effect that investments in capital assets by a charitable institution implies application of income for charitable purposes.

e) On the finding relating to investment in FDRs to earn interest, it was explained that the society had been receiving deposits under the various heads of emergency deposit, caution money and child personal money from its students and the same were invested in the fixed deposits with the scheduled banks or in eligible investments Under Section 11(5) of the Income-tax Act. The society was obliged to refund such deposits to the students at the time of their withdrawals/leaving the school. That the society had been enjoying "overdraft facility" from their banks against above FDRs to meet emergency requirements for the purpose of education and was paying interest thereon. That the FDRs of the school were kept with the bank not for the purpose of earning interest but to fulfil statutory obligations of the society. Further more, investing the funds of the society in the shape of fixed deposits with banks was a prudent decision than to keep the funds idle in cash/bank saving account.

The interest in all cases was being utilized for educational purposes.

With regard to the observations relating to diversion of funds for the personal use of Col. P.S. Satsangi and his family members, it was stated that the observation to the above effect contained in the show cause notice was without any specific

ground. That the presumption probably was based on the fact that certain funds were found in the possession of those persons during the course of the search operation. It was further claimed that the funds found with the individuals had been fully explained as their personal income and tax paid thereon." 4. After considering the explanation of the assessee, the AO held as under: (i) Regarding Payment of Rs. 1,80,000/- to Anubhav Plantation on 2nd September, 1996: That the income of the society was used for personal purposes of the chairman and not for educational purposes.

The so called recovery from him is found to have been effected only after the search in January, 1999.

(ii) Regarding investment of Rs. 4,33,620/- with BVR Plantation and Rs. 2 lacs with Consortium Finance: That the funds were utilized by way of investment with a motive to earn profit and not for educational purposes. The investment with BVR Plantation still remains with that concern and the amount outstanding from M/s Consortium Finance as on 15.1.99 was at Rs. 3,812,456/-. The investment were mostly speculative in nature and were certainly not for educational purposes.

(iii) Regarding advances made to Col. Satsangi, Mrs. Shakuntala Jaiman. Mrs. U.B. Satsangi. Mr. Y. Sinha and Dr. Rohit Jaiman: That these advances were not for the purpose of education and the claim of the assessee that interest on such loans were being charged was only a half truth because interest was found to have been charged on the debit balances of some of the accounts only after the date of search in January, 1999 whereas the loans were given much earlier.

It clearly shows that the funds of the society were liberally used by the office bearers of the society and their family members for their personal purposes. These advances were interest free and interest in some of the accounts is found to have been charged only after the date of search as an after thought after the facts came to the light.

(iv) That money was advanced to Mrs. U.B. Satsangi for purchase of Farm Nos. 217 & 225 at Gurgaon. The explanation of the assessee that such farms were being used by the assessee to conduct study camps and other activities like sight

seeing, picnic etc. is far fetched.

The money was given only to make a personal investment and recovered only after the date of search.

(v) That the sum of Rs. 4,55,650/- was recovered from the possession of Col. P.S. Satsangi, Chairman of the assessee society. He had no source of income except the salary and interest income. Though he had offered the sum of Rs. 44,07,387/- as undisclosed income in his own return but still there is no explanation from where this money was earned.

(vi) That the explanation of the assessee regarding giving immovable properties on hire to the outsiders as well as the explanation regarding purchase and sale of immovable properties, was vague and general in nature. Such equities could not be considered for the purpose of education. Further, it has also being gathered that the assessee has allowed use of its immovable properties to outside institutions like EMPI (Entrepreneurship Management Processes International) and ICFAI (Institute of Chartered Financial Analysts of India) and substantial amount was received from those institutions by way of school sharing charges. However, inspite of sufficient opportunity allowed in this regard, copy of agreement was not filed. The assessee society earned substantial amount Rs. 44,35,404/- by way of common sharing charges from the two institutions during the period 1.4.1995 to 31.3.1999. It certainly cannot be claimed that the assessee carried on this activity solely for the purpose of education and not for the purpose of profit.

(vii) The explanation of the assessee that it was not doing any alleged property transactions of any commercial nature out of the funds of the society is not correct. There was enough material to indicate that society was engaged in purchase and sale of immovable properties. Such purchase and sale was not for the purpose of education.

(viii) The assessee's claim that the deposits received from the students by way of caution money, emergency deposits etc. were invested in fixed deposits as the society was obliged to refund such deposits to the students at the time of leaving school, is not correct. There is substantial increase in the investment in fixed

deposits year after year. Thus, it is apparent that the investment in fixed deposits with the banks was made only with the purpose of earning income and not to satisfy the objects of the society. Had it been so the huge amount would not have been blocked in FDRs but would have been used for promoting the objects of the society. On many occasions the investment in FDRs was made for a period of more than three years at a stretch. For instance, investment of Rs. 33,05,543/- was made in FDRs with Punjab National Bank Chandahola on 26.7.97 for 39 months.

In the light of the facts in the above paragraphs, the AO held that the assessee institution could not be said to be existing solely for educational purposes. According to him, the institution was for the purposes of profit. It was earning huge profits year after year which would not have been possible without a motive for the same and conscious planning and efforts in that direction. The magnitude of the profits earned and accumulated by the assessee year after year smack of commerce and the same cannot be dismissed as being just incidental to "existence solely for educational purposes". In any case in the given circumstances, it could not be said that assessee society did not exist for the purpose of profit.

5. It cannot also be accepted in this case that the assessee was existing solely for educational purposes if one takes into consideration the substantial benefits derived by the Founder Chairman and his family members from the institution whether in the form of substantial perks, gainful employment or availability of funds for making personal investment. It is an admitted fact that the Founder Chairman and his family members exercised full control over the affairs of the institution. There is another fact that chairman of the society Col. Satsangi, was found possessing unaccounted cash of about Rs. 44 lacs during the course of the search. He did not have any ostensible source to explain the same for which the amounts were offered to be taxed as undisclosed income. Similarly, in the case of other members of his family substantial amount were offered as undisclosed income to cover unexplained investments. It will be too much to accept it as a case of mere coincidence that they were managing the affairs of the society exercising full control over its finances.

6. In view of the above discussion, the AO denied exemption Under Section 10(22) of the Act. Reliance was also placed on the judgment of the High Court in the case of Academy of General Education, 150 ITR 135 and also the judgment of Delhi High Court in the case of Delhi Society, 246 ITR 731. Accordingly, the block assessment was completed on the total undisclosed income of Rs. 12,80,66,150/-. The findings of the AO has been upheld by the CIT(A). However, he allowed the depreciation on the assets owned by the assessee. Accordingly, subject to the claim of depreciation, the block assessment order passed by AO was confirmed by him. Aggrieved by the same, the assessee is in appeal before the Tribunal.

7. The learned counsel for the assessee has assailed the order of the CIT(A) by making various submissions. According to him, the assessee society was created for the cause of education by Lt. Col. P.S.Satsangi, an educationist. He drew our attention also to the objects of the society to point out that the only object of the society was the advancement of education through running of schools. He also pointed out that the assessee society was also registered Under Section 12A subsequent to the date of search which also shows that the object of the society was education only. It was vehemently argued by him that exemption Under Section 10(22) could not be denied to the assessee merely because there was surplus of receipts over the expenditure incurred by the assessee. Reliance was placed on the Supreme Court judgment in the case of Aditnar Education Society, 224 ITR 310 for the proposition that exemption Under Section 10(22) of the Act cannot be denied merely because there was surplus at the end of the year. It was also held in that case that the fact whether the assessee existed solely for educational purposes and not for the purpose of profit must be seen every year with reference to the materials on record. He also referred to the judgment of Delhi High Court in the case of Kannad Education Society, 246 ITR 731 for the proposition that exemption Under Section 10(22) cannot be denied where the educational institution made profits but were applied for the spread of education. Proceeding further, it was submitted that incurring of capital expenditure has also to be considered towards the cause of education and, therefore, if the profits are utilized in the construction of school buildings then it has to be held that such profits were utilized for the cause of education and no adverse inference can be drawn from the fact that assessee earned profits. Further, judgment of Supreme

Court in the case of Oxford University Press, 247 ITR 658 was referred to point out that even if profit activity could be carried on, if such profits are ultimately meant for education. He also referred to Special Bench decision of the Tribunal in the case of Bhartiya Janata Party. On facts, he pointed out that no salary was paid to Co. P.S. Satsangi and mere giving of loan cannot be said to be detrimental to the assessee.

Further, it was submitted that Section 13(2) was applicable only when such amount is in excess of the services rendered. He also referred to the Calcutta High Court judgment reported as 136 ITR 445 for the proposition that exemption cannot be denied merely because that a solitary transaction was entered into for non educational purposes. He also submitted that no adverse inference could be drawn from the cash of Rs. 45 lacs found from the possession of Col. P.S. Satsangi as it was duly assessed by the department as undisclosed income of Col.

Satsangi. Hence, this amount cannot be considered belonging to the assessee. He also referred to the Allahabad High Court judgment in the case of Modi Spinning Mills, 101 ITR 637 for the proposition that there is no undisclosed income where the assessee is not required to file a return. He also referred to the fact that in subsequent years, the exemption has been allowed to the assessee and there is no change of facts. Lastly, it was submitted that the assessee was not granted opportunity before the approval granted by the CIT. In this connection, he relied on the judgment of Supreme Court reported as AIR (1981)(SC) 136 and submitted that this judgment was not brought to the notice of Special Bench in the case of Kailash Mudgal, 72 ITD 97 where the issue was decided against the assessee. Except as stated above, no other argument was raised on behalf of the assessee.

8. The contentions of the learned counsel for assessee appears to be very attractive but after giving our due consideration to the issue before us, we are not inclined to accept the same. The main question for our consideration is whether the income of assessee is exempt from taxation Under Section 10(22) of the Act. The relevant provisions read as under: "Section 10: In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included- (22) any income of a university, or other educational

institution, existing solely for educational purposes and not for purpose of profit." A bare look to the above provisions shows that in order to claim exemption, two conditions must be satisfied (i) the university or other institution must exist solely for the purpose of education and (ii) such institution must not exist for the purpose of profit. The onus is on assessee to establish that these conditions are satisfied. The legislature in its wisdom had contemplated situations - (i) where the sole purpose of the institution may be the cause of education but in carrying out such activity, there may be some profit; or to meet the expenditure of the institution, a profit earning activity may be carried on; (2) where the institution may be involved in running schools and colleges but with the purpose of earning profits. That is perhaps the only reason that the legislature, on one hand, exempted the income of such institution while on the other hand, has denied such exemption where education is imparted with the purpose of profit.

Therefore, such distinction has to be kept in mind while granting exemption Under Section 10(22).

9. Let us explain the above distinction more elaborately. There may be an institution which may charge fees reasonably from its students in order to meet its expenditure. Such exercise may result in some surplus of receipts over expenditure. Further, such institute may also reasonably charge some more amount in order to meet future needs i.e.

construction of school building, hostel etc. This may also result in surplus for the time being. Such institutions, sometimes, may get unexpected donations which may result in income. There may also be also be a situation where expenses may not be met by the fees or the grants/donations received. In such situation, the management may decide to carry on an activity to earn profits to meet such expenses. There may also be cases where the assessee may receive donations in kind towards corpus i.e. shares or immovable property. In such cases, assessee would receive dividend/rental income. The list is illustrative and not exhaustive. All these situations fall in first category because the predominant object is not to earn profits but to cause education.

Hence, income of the institution in such case would be exempt Under Section 10(22).

10. On the other hand, there may be an institution which may also run schools and colleges with a view to earn profits. In such cases, the institute would charge disproportionate fees having no rationale with the expenditure involved. However, it is clarified that the question whether fees charged from students is disproportionate or not would depend on the facts of each case. In such cases, schools/colleges can be said to be running on purely commercial basis to earn profits. Such institute would fall in the second category. In our humble opinion, the legislature has denied exemption Under Section 10(22) in such case only by providing an exception "not for the purpose of profits". If such institutes are also allowed exemption on the ground that they are created to advance the cause of education, then the expression "not for the purpose of profits" would become redundant. An interpretation which makes the provisions redundant is not permissible in law.

11. It may be mentioned that under both the categories mentioned above, the Societies/Trusts are created with the sole object to advance the cause of education but if such object is coupled with the motive to earn profits, then such institution will not be entitled to exemption Under Section 10(22) of the Act since in such case it cannot be said to exist solely for the purpose of education. Therefore, registration Under Section 12A/12AA of the Act would not be relevant by itself for claiming exemption Under Section 10(22) though the same would be relevant for claiming exemption Under Section 11 and 12 of the Act.

Therefore, in our opinion, where education is imparted by an institution with the purpose of profit i.e. by running the schools/colleges purely on commercial basis, the assessee would not be entitled to exemption Under Section 10(22) but such case may be considered for exemption Under Section 11 if the conditions imposed by the legislature are satisfied since the profit element has been omitted from the definition of the words "charitable purpose" w.e.f. 1.4.84.

12. No direct decision has been brought to our notice by the learned counsel for the assessee for upholding the view that exemption Under Section 10(22) can be

allowed in a case where the educational institution is run purely on commercial basis. However, much reliance has been placed on the judgment of Hon'ble Supreme Court in the case of Aditanar Educational Institution, 224 ITR 310 for the proposition that exemption Under Section 10(22) cannot be denied merely because there is some surplus arising from the running of educational institution. In our opinion, that judgment does not advance the case of the assessee before us. We have gone through the said judgment. It is an authority for the proposition that if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes since the object is not to make the profits. According to their Lordships, the decisive or acid test is whether on an overall view of the matter the object is to make profit. In evaluating or apprising the above, one should bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity. These observations clearly reveal that ratio of the judgment of Supreme Court can be applied only when the surplus arises incidentally and not where the institution is run purely on commercial basis for the purpose of profit.

13. To buttress our view, it would also be appropriate at this stage to mention that every citizen of India has a fundamental right to education which flows from Article 21 read with Article 41 & 45 of Constitution of India as held by Constitution Bench of the apex court in the case of Unni Krishnan v. State of Andhra Pradesh, AIR 1993 SC 2178. In view of these Articles, every child of this country has a right to free education until he completes the age of 14 years. In view of the same, it was held that private aided institution cannot charge the fee higher than Government Institution. It was also held that imparting of education has never been treated as commerce in this country since times immemorial and has always been treated as charitable activity. It was further held that there should not be element of profiteering in carrying out the education activity.

However, it was clarified that reasonable surplus to meet the expansion cost is not profiteering.

14. The above judgment was again considered by larger bench of eleven judges in the case of T.M.A. Pai Foundation v. State of Karnataka (2202) IX AD(SC) 497

Their Lordships in Para 69 at page 537 observed as under: "In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers." The above decision clearly shows that even the private institutions should charge the reasonable fees not involving the element of profit.

Therefore, in order to discourage the institutions earning with profit motive, the legislature can always provide dis-incentives. Considering this aspect of the matter, the legislature has not allowed the income of private institutions to be exempt Under Section 10(22) of the Act - where such institution is being run purely on commercial basis.

15. In view of the above discussion, it is held that exemption Under Section 10(22) can be allowed only in the situations mentioned in the first category but such exemption cannot be allowed where education is imparted through running of schools and colleges on purely commercial basis.

16. In the present case, there is no dispute that the assessee society is found to impart education through running of school at various places. Subsequent to the search, the assessee has also been registered Under Section 12A of the Act which also shows that objects of the society is to impart the education to various sections of the society.

So far so good. However, on facts, it has been found as a result of search on 15.1.99 that assessee society had been earning huge profits from running of schools. This is apparent from the following chart:-----Asstt.

Gross revenue	Capital expenditure	Total of receipts	Income exp. claimed	Year	exp. claimed	(surplus of)
95,66,340/-	4,92,338/-	26,06,257/-	80,98,595/-	14,81,095/-	1989-90	1,56,58,708/-
1,28,08,194/-	65,33,065/-	1,93,41,159/-	(-)	36,82,550/-	1990-91	1,83,10,350/-
1,16,46,594/-	31,02,137/-	1,47,48,731/-	35,61,619/-	1992-93	2,24,86,682/-	2,24,86,682/-
1,49,43,519/-	1,08,82,988/-	2,58,26,507/-	(-)	33,39,824/-	1993-94	2,44,16,706/-
1,58,13,232/-	53,22,197/-	2,11,35,429/-	32,81,277/-	1994-95	2,67,92,408/-	2,67,92,408/-
1,84,68,635/-	74,07,591/-	2,58,76,232/-	9,16,176/-	1995-96	3,25,76,751/-	3,25,76,751/-
2,12,08,460/-	50,81,575/-	2,62,90,036/-	62,86,716/-	1996-97	4,27,70,212/-	4,27,70,212/-
2,84,29,337/-	1,27,77,321/-	4,12,06,658/-	15,63,554/-	1997-98	5,48,94,641/-	5,48,94,641/-
3,49,89,184/-	1,44,79,294/-	4,94,68,478/-	54,26,163/-	1998-99	6,25,74,701/-	6,25,74,701/-
3,35,20,093/-	1,27,24,090/-	4,62,44,183/-	1,63,30,518/-	1999-00	5,85,73,208/-	5,85,73,208/-
3,45,24,834/-		1,13,13,882/-			4,58,38,716/-	4,58,38,716/-
1,27,34,492/-						

The perusal of the above chart shows that assessee was making huge profits not only after meeting the revenue expenditure but also after meeting the capital expenditure. The profits are being earned year after year and are being accumulated. It would be sufficient if we mention that in asstt. year 1998-99 alone, the gross receipts amounted to Rs. 6.25 crores approximately while the revenue expenditure was only Rs. 3.35 crores and thus, there was surplus of income over expenditure to the tune of Rs. 2.90 crores. Even if capital expenditure of Rs. 1.27 crores is taken into consideration, still the net profit remained with the assessee was of Rs. 1.63 crores approximately. Analysis of each year would reveal that assessee was making huge profits every year except in asstt. year 1990-91 and 1992-93 where after meeting the capital expenditure, there was loss of Rs. 36 lacs and Rs. 33 lacs respectively. If capital expenditure is excluded in these two years then there was profit of Rs. 28 lacs in asstt. year 1990-91 and Rs. 75 lacs in asstt. year 1992-93. It is also to be noted that assessee is neither receiving any grant from the Government nor donations from the public. The entire statement of affairs for all the 10 years before us reveal that the education is being imparted purely on commercial basis and, therefore, we are of the view that the case of the assessee falls in the second category since the educational institution was running purely on

commercial basis. The fact that disproportionate fee is being charged from the persons to whom the education is being imparted itself shows that education was being imparted with the purpose of profit.

This fact is further corroborated by the fact that investment in fixed deposits with banks had increased from Rs. 30,20,000/- as on 31.3.90 to Rs. 3.45 crores as on the date of search i.e. 15.1.99 even after meeting cost of expansion. Hence, the case of assessee, in our humble opinion, does not fall within the ambit of Section 10(22) of the Act.

17. It would be appropriate to mention that not only the schools were being run on commercial basis but some non educational activities were also being carried on by the assessee. The same are being narrated as under: (1) The assessee society was found to be engaged in purchase and sale of flats and other immovable properties, detail of which is provided in the asstt. order at pages 5 & 6 and also by us while narrating the facts of the case. At this stage, it would be sufficient to mention that in the block period of 10 years, the assessee indulged in dealing of four properties i.e. property No. 29, Kalu Sarai, New Delhi, property No. 328, Lado Sarai, Mehrauli, New Delhi, property at Sheikh Sarai, New Delhi and the land at village Nainwal, Gurgaon. Further, there is no evidence to prove that dealing in such properties had any connection with cause of education.

(2) That the assessee made investments of Rs. 4,33,620/- with M/s BVR Plantations in financial years 1995-96 and 1998-99 as well as Rs. 2 lacs with Consortium Finance in financial years 1994-95 and 1995-96.

(3) The patron and Chairman of the society Col. P.S. Satsangi was found utilizing the funds of the assessee society freely and without any control. This is apparent from the details given at page 4 of the asstt. order and also by us in the earlier part of the order.

These payments aggregate Rs. 14,07,678/-. The perusal of the materials placed before us also shows that even prior to the block period, the Chairman of the society was using the funds of the assessee. This is apparent from the detail of advances as on 31.3.89 appearing at page 119 of the paper book. It shows that

the sum of Rs. 6,46,850/- was due from him which was reduced to Rs. 2,42,606/- by the end of the financial year 1989-90. It is further seen from the details filed at pages 285 to 287 that Col. P.S. Satsangi was receiving cheques directly in his own name though the same was being debited in his account. It is seen that on 17th March, 1992 Col.

P.S. Satsangi had received the sum of Rs. 2 lacs from M/s Dianishi Leather Export P. Ltd. on account of property No. 29, Kalu Sarai/Sarvpriya flat. Similar is the position with reference to the cheque of Rs. 8 lacs received on 23rd July, 93 from Mideast Integrated Steel Co. Ltd. on account of property No. 29, Kalu Sarai/Sarvpriya Vihar flat. Subsequently, these amounts aggregating Rs. 10 lacs were deposited in the name of school in the FDRs and the account of Col. P.S. Satsangi was credited. It is further seen that on 13.9.93 there was sale of car on behalf of the school and the sale proceeds of Rs. 1,42,129/- were retained by him directly and his account was debited. These entries show that Col. P.S. Satsangi was in a dominating position and was utilizing the funds of the society as and when he needed. These funds were utilized to the detriment of the institution as no interest was being charged from him. It is to be noted that interest was being charged on the advances from Dr. Rohit Jaiman on year to year basis which shows that when the amounts was given as advance on interest, it was duly charged. However, in the case of Col. P.S. Satsangi, no interest was charged on the amounts withdrawn by him throughout i.e. the entire block period of 10 years.

(4) It has also been found that Mrs. Shakuntalam Jaiman (daughter of Co. P.S. Satsangi) also utilized the sum of Rs. 3.5 lacs to the detriment of society. The reply of assessee dated 8.1.01 clearly shows that she was given money for purchase of Farms at Silver Glades Farms, Malbaro, Gurgaon. However, it has been stated that interest has been charged on 10.3.99. This fact is irrelevant since interest was charged after the date of search and not in the earlier years. This is nothing but an after thought. Further, there is no evidence that such Farms had any connection with education.

(5) Similarly Mrs. U.B. Satsangi, wife of the Chairman utilized various amounts aggregating Rs. 4,05,500/- during the period from 23.12.92 to 14.1.99 without

interest as is apparent from page 290 of the paper book. No doubt this amount has been recovered after the date of search. However, the fact remains that fund was utilized to the detriment of the society.

In view of the above discussion, considering the fact that the schools were being run purely on commercial basis coupled with the finding of facts given above, we are of the view that the assessee society did not exist solely for the purpose of education but with the purpose of profit. Hence, the claim of the assessee Under Section 10(22) cannot be allowed.

18. In view of the above finding, the necessary corollary is that assessee was under obligation to file its income-tax returns for assessment years falling under the block period. Failure to file the returns would bring its case within scope of Chapter XIV-B. Accordingly, we uphold the order of CIT(A).

19. Before parting with our order, we would like to mention that contention of assessee that assessment was bad in law as assessee was not given opportunity before approval by CIT(A) cannot be accepted in view of Special bench decision in the case of Kailash Mudgal (supra).

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