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NOMINAL INDEX

NOTIFICATION

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SUBJECT INDEX

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 5167 OF 2008

QUEEN'S EDUCATIONAL SOCIETY
Vs.
COMMISSIONER OF INCOME TAX

T.S. THAKUR AND R.F. NARIMAN, JJ.

16th March, 2015

HF ▶ - Appellant

EXEMPTION – INCOME TAX ACT - EDUCATIONAL INSTITUTION – ASSESSEE CLAIMS TO BE AN EDUCATIONAL SOCIETY ESTABLISHED WITH SOLE OBJECT OF IMPARTING EDUCATION – EXEMPTION CLAIMED U/S 10 (23C) (iii ad) OF INCOME TAX ACT, 1961 – CLAIM REJECTED BY ASSESSING OFFICER HOLDING THAT WHENEVER PROFIT/ SURPLUS IS MADE BY EDUCATIONAL INSTITUTION, IT CEASES TO EXIST SOLELY FOR EDUCATIONAL PURPOSE AND BECOMES PROFIT MAKING ENTERPRISE – ORDER REVERSED BY COMMISSIONER – CLAIM ACCEPTED BY TRIBUNAL HOLDING THAT PROFIT EARNED HAS NOT BEEN USED FOR OWN BENEFIT OF MEMBERS OF SOCIETY AND PROFIT IS ONLY INCIDENTAL TO MAIN OBJECT – ORDER PASSED BY ASSESSING OFFICER UPHELD BY UTTARAKHAND HIGH COURT HOLDING THAT EVEN THOUGH EDUCATIONAL INSTITUTION PLOUGHS SUCH PROFITS BACK INTO PURCHASE OF ASSETS FOR EDUCATION, YET SUCH INSTITUTION CANNOT BE SAID TO EXIST ONLY FOR EDUCATION PURPOSE – APPEAL BEFORE SUPREME COURT – FOLLOWING EARLIER JUDGEMENTS, HELD THAT MAKING SURPLUS DOES NOT CONCLUDE THAT PURPOSE IS MAKING OF PROFIT – PREDOMINANT TEST SHOULD BE APPLIED – DISTINCTION TO BE DRAWN BETWEEN MAKING OF SURPLUS AND INSTITUTION BEING CARRIED FOR PROFIT – FURTHER ACTIVITIES OF SUCH UNITS SHOULD BE MONITORED AND EXEMPTION SHOULD BE WITHDRAWN IN CASE OF VIOLATION – REVENUE GRANTED LIBERTY TO DECIDE AFRESH IF NECESSARY – APPEAL DISPOSED OF – SEC 10 (23C) (iii ad); SEC 22; SEC 10(23C) (vi) OF INCOME TAX ACT, 1961

EXEMPTION –INCOME TAX ACT - EDUCATIONAL INSTITUTION – ASSESSEE CLAIMS TO BE AN EDUCATIONAL SOCIETY ESTABLISHED WITH SOLE OBJECT OF IMPARTING EDUCATION – EXEMPTION CLAIMED U/S 10 (23C) (vi) OF INCOME TAX ACT, 1961- EXEMPTION WITHDRAWN BY CHIEF COMMISSIONER FOLLOWING JUDGEMENT OF UTTARAKHAND HIGH COURT OBSERVING THAT ASSESSEE'S SUBSTANTIAL PROFITS WERE ARISING YEAR AFTER YEAR – ORDERS SET ASIDE BY PUNJAB & HARYANA HIGH COURT HOLDING THAT AS PER 13TH PROVISO TO SEC 10 (23C) (vi) , IT HAS TO BE ASCERTAINED WHETHER EDUCATION INSTITUTION IS APPLYING PROFIT FOR THE OBJECT IT IS ESTABLISHED – MERE EARNING OF PROFIT NOT CONCLUSIVE THAT EDUCATIONAL INSTITUTION EXISTS FOR PROFIT – ASSESSING AUTHORITY

CAN ENSURE COMPLIANCE AND WITHDRAW APPROVAL GRANTED IN CASE OF VIOLATION – CAPITAL EXPENDITURE TO BE WHOLLY MEANT FOR OBJECTS OF EDUCATION IS ENTITLED FOR EXEMPTION – ODER PASSED HIGH COURT APPROVED BY SUPREME COURT - FOLLOWING EARLIER JUDGEMENTS, HELD THAT MAKING SURPLUS DOES NOT CONCLUDE THAT PURPOSE IS MAKING OF PROFIT – PREDOMINANT TEST SHOULD BE APPLIED – DISTINCTION TO BE DRAWN BETWEEN MAKING OF SURPLUS AND INSTITUTION BEING CARRIED FOR PROFIT – FURTHER ACTIVITIES OF SUCH UNITS SHOULD BE MONITORED AND EXEMPTION SHOULD BE WITHDRAWN IN CASE OF VIOLATION- REVENUE GRANTED LIBERTY TO DECIDE AFRESH IF NECESSARY- SEC 10 (23C) (vi) OF INCOME TAX ACT, 1961

EXEMPTION – LIMITATION – DELAYED FILING OF APPLICATION – APPLICATION SEEKING EXEMPTION UNDER SEC 10 (23C) (vi) FOR ASSESSMENT YEAR 2008-09 FILED ON 23.9.08 – OUGHT TO HAVE BEEN FILED ON OR BEFORE 31.3.08 – CLAIM HELD TO BE RIGHTLY REJECTED BY CHIEF COMMISSIONER INCOME TAX – WRIT PETITION DISMISSED

The appellant filed its return showing net surplus for two consecutive years. It claimed exemption u/s 10(23C) (iii ad) of the income tax act 1961. The assessing officer rejected the claim holding that whenever profit/ surplus is made by educational institution, it ceases to exist solely for educational purpose and becomes profit making enterprise. The Commissioner of Income Tax allowed the appeal of the appellant. The ITAT, dismissed the appeal by the revenue holding that profit earned has not been used for own benefit of members of society and profit is only incidental to the main object. The order passed by the assessing officer was upheld by the High Court holding that even though educational institution ploughs such profits back into purchase of assets for education, yet such institution cannot be said to exist only for education purpose.

On appeal before the Supreme Court, *it is held that the fact that an educational institution makes a surplus does not leave to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit. The predominant object must be applied – the purpose of education should not be submerged by a profit making motive. If after meeting expenditure surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. Setting aside the judgement of the Uttrakhand High Court, it is held that the correct tests which have been culled out in the three supreme court judgements namely Surat Art Silk cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes or for profit. As per the 13th proviso to section 10(23C), the Assessing Authority must monitor with regard to application of income investment or deposit by such institutions. In case of violation such approval and exemption must be withdrawn. The revenue is at liberty to pass fresh orders if necessary considering provisions of law.*

Similarly, an appeal was filed by revenue against the orders passed by the Punjab and Haryana High Court whereby the Hon'ble Court had set aside the orders of the Chief Commissioner Income Tax for withdrawl of exemption under the Act in view of the Uttarakhand High court. The court had held that it has to be ascertained whether an educational society has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit. It has to be

borne out that just because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. Thus on an application by an institution, the prescribed authority can grant approval subject to terms and conditions. The parameters of earning profit beyond 15% and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. In case of violation exemption may be withdrawn by the prescribed authority. On appeal before Supreme Court, the orders of the High Court of Punjab and Haryana were upheld holding that that the correct tests which have been culled out in the three Supreme Court judgements namely Surat Art Silk cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes or for profit. As per the 13th proviso to section 10(23C), the Assessing Authority must monitor with regard to application of income investment or deposit by such institutions. In case of violation such approval and exemption must be withdrawn. The revenue is at liberty to pass fresh orders if necessary considering provisions of law.

Also, an application seeking exemption had been filed by a petitioner assessee u/s 10 (23C)(vi) in respect of assessment years 2008-09 which could be filed during 2007-08 on or before 31.3.08. The application being filed after the prescribed period, it is held that the chief income tax commissioner has rightly rejected the claim. The court dismissed the writ petition finding no ground for interference.

Case followed:

CIT v. Surat Art Silk Cloth Manufacturers' Assn., (1980) 121 ITR 1
Aditanar Educational Institution v. Additional Commissioner of Income Tax, (1997) 224 ITR 310
American Hotel & Lodging Assn. Educational Institute v. CBDT, (2008) 301 ITR 86

Cases referred:

Pine Grove International Charitable Trust v. Union of India - (2010) 327 ITR 73 (P&H) *(Approved)*
CIT vs. Queen's Educational Society (2009) 319 ITR 160 (Uttarakhand HC) *(Reversed)*

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1. Leave granted in the special leave petitions.

2. The present appeals relate to a common judgment dated 24th September, 2007 passed by the High Court of Uttarakhand, Nainital in two income tax appeals, and a judgment of the Punjab and Haryana High Court dated 29th January, 2010 in **Pine Grove International Charitable Trust v. Union of India** - (2010) 327 ITR 73. Various other appeals (excepting Civil Appeal No.8962 of 2010) are filed by the Union of India/ Central Board of Direct Taxes in cases where the aforesaid judgment in Pine Grove has been followed.

3. The facts necessary to understand the controversy in the two income tax appeals before the Uttarakhand High Court, Nainital, may be gleaned from the facts of one of them, namely, the Queen's Educational Society case. The appellant filed its return for assessment years 2000-2001 and 2001-2002 showing a net surplus of Rs.6,58,862/- and Rs.7,82,632/- respectively. Since the appellant was established with the sole object of imparting education, it claimed exemption under Section 10(23C) (iiiad) of the Income Tax Act, 1961. The Assessing Officer vide its order dated 20th February, 2003 rejected the exemption claimed by the appellant. The CIT (Appeals) by its order dated 28th

March, 2003 allowed the appellant's appeal, and the ITAT, Delhi, by its judgment dated 7th July, 2006 passed an order dismissing the appeal preferred by the revenue. In a reference to the High Court under Section 260A of the Income Tax Act, the High Court vide the impugned judgment set aside the judgment of the ITAT and affirmed the order of the Assessing Officer.

4. These appeals from the Uttarakhand High Court, Nainital, concern themselves with the provision of Section 10(23C) (iiiad) of the Act:

> *"Section 10- Incomes not included in total income.-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-*
>
> *(23-C) any income received by any person on behalf of-*
>
> *(iii-ad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed"*

5. It will be noticed that the Section has three requirements - (a) the educational institution must exist solely for educational purposes (b) it should not be for purposes of profit and (c) the aggregate annual receipts of such institution should not exceed the amount or annual receipts as may be prescribed. Such prescription is to be found in Rule 2CA being an amount of Rs.1 crore.

6. The said Section was inserted by Finance Act No.2 of 1998 with effect from 1st April, 1999. Prior thereto, the Income Tax Act had a corresponding Section, namely, Section 10(22) which was as follows:-

> *"Section 10- Incomes not included in total income.-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 purposes of profit"*

7. We have heard learned counsel for the assessees as well as learned counsel for the revenue. The assessees argue that the impugned judgment is contrary to the law laid down by at least three Supreme Court judgments. Further, the wrong test has been adopted and followed, which is a test laid down by the Assessing Officer and not by any Supreme Court judgment - namely, that whenever a profit/surplus is made by an educational institution, it ceases to exist solely for educational purposes and becomes a profit making enterprise. In support of the Punjab and Haryana High Court judgment under appeal, counsel for the assessees argued that since the sole basis for not granting them exemption for the assessment years under question was the following of the Uttarakhand High Court judgment, if the said judgment is found to be incorrect, they are bound to succeed. For that reason, the revenue's appeal against the Punjab and Haryana High Court judgment should be dismissed. Counsel for the revenue, on the other hand, attempted to support the Uttarakhand High Court judgment by stating that the Section does not contemplate the making of large profits. If an educational institution in fact makes large profits then even though it may plough such profits back into the purchase of assets for education, yet such institution cannot be said to be existing solely for educational purposes. It would then become an institution which would really be for profit.

8. In **CIT v. Surat Art Silk Cloth Manufacturers' Assn.,** (1980) 121 ITR 1, this Court while construing the definition of "charitable purpose" in Section 2(15) of the Income Tax Act held:

> *"17. The next question that arises is as to what is the meaning of the expression "activity for profit". Every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity. The activity must, however, be for profit in order to attract the exclusionary clause and the question therefore is when can an activity be said to be one for profit? The answer to the question obviously depends on the correct connotation of the preposition "for". This preposition has many shades of meaning but when used with the active participle of a verb it means "for the purpose of" and connotes the end with reference to which something is done. It is not therefore enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. Profit-making must be the end to which the activity must be directed or in other words, the predominant object of the activity must be making a profit. Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where, on the other hand, an activity is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in advancement of the charitable purpose of the trust or institution. Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to subserve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit making motive; the latter should not masquerade under the guise of the former. The purpose of the trust, as pointed out by one of us (Pathak,J.) in Dharmadeepti v. CIT [(1978) 3 SCC 499 : 1978 SCC (Tax) 193] must be '"essentially charitable in nature" and it must not be a cover for carrying on an activity which has profit making as its predominant object. This interpretation of the exclusionary clause in Section 2 clause (15) derives considerable support from the speech made by the Finance Minister while introducing that provision. The Finance Minister explained the reason for introducing this exclusionary clause in the following words:*
>
> *"The definition of 'charitable purpose' in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them namely, the newspaper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit' should be added to the definition."*
>
> *It is obvious that the exclusionary clause was added with a view to overcoming the decision of the Privy Council in the Tribune case [AIR 1939 PC 208 : In Re the Trustees of the Tribune, (1939) 7 ITR 415] where it was held that the object of supplying the community with an organ of educated public opinion by publication of a newspaper was an object of general public utility and hence charitable in character, even though the activity of publication of the newspaper was carried on commercial lines with the object of earning profit. The publication of the*

newspaper was an activity engaged in by the trust for the purpose of carrying out its charitable purpose and on the facts it was clearly an activity which had profit making as its predominant object, but even so it was held by the Judicial Committee that since the purpose served was an object of general public utility, it was a charitable purpose. It is clear from the speech of the Finance Minister that it was with a view to setting at naught this decision that the exclusionary clause was added in the definition of "charitable purpose". The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg, J., when he said in Sole Trustee, Loka Shikshana Trust case [(1976) 1 SCC 254 : 1976 SCC (Tax) 14 : (1975) 101 ITR 234] that "if the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity". The learned Judge also added that the restrictive condition "that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit making is not the real object" (emphasis supplied). We wholly endorse these observations.

The application of this test may be illustrated by taking a simple example. Suppose the Gandhi Peace Foundation which has been established for propagation of Gandhian thought and philosophy, which would admittedly be an object of general public utility, undertakes publication of a monthly journal for the purpose of carrying out this charitable object and charges a small price which is more than the cost of the publication and leaves a little profit, would it deprive the Gandhi Peace Foundation of its charitable character? The pricing of the monthly journal would undoubtedly be made in such a manner that it leaves some profit for the Gandhi Peace Foundation, as, indeed, would be done by any prudent and wise management, but that cannot have the effect of polluting the charitable character of the purpose, because the predominant object of the activity of publication of the monthly journal would be to carry out the charitable purpose by propagating Gandhian thought and philosophy and not to make profit or in other words, profit making would not be the driving force behind this activity. But it is possible that in a given case the degree or extent of profit making may be of such a nature as to reasonably lead to the inference that the real object of the activity is profit making and not serving the charitable purpose. If, for example, in the illustration given by us, it is found that the publication of the monthly journal is carried on wholly on commercial lines and the pricing of the monthly journal is made on the same basis on which it would be made by a commercial organisation leaving a large margin of profit, it might be difficult to resist the inference that the activity of publication of the journal is carried on for profit and the purpose is non-charitable. We may take by way of illustration another example given by Krishna Iyer, J., in the Indian Chamber of Commerce case [(1976) 1 SCC 324 : 1976 SCC (Tax)

41 : (1975) 101 ITR 796] where a blood bank collects blood on payment and supplies blood for a higher price on commercial basis. Undoubtedly, in such a case, the blood bank would be serving an object of general public utility but since it advances the charitable object by sale of blood as an activity carried on with the object of making profit, it would be difficult to call its purpose charitable. Ordinarily there should be no difficulty in determining whether the predominant object of an activity is advancement of a charitable purpose or profit making. But cases are bound to arise in practice which may be on the borderline and in such cases the solution of the problem whether the purpose is charitable or not may involve much refinement and present real difficulty.

There is, however, one comment which is necessary to be made whilst we are on this point and that arises out of certain observations made by this Court in Sole Trustee, Loka Shikshana Trust case [(1976) 1 SCC 254 : 1976 SCC (Tax) 14 : (1975) 101 ITR 234] as well as Indian Chamber of Commerce case [(1976) 1 SCC 324 : 1976 SCC (Tax) 41 : (1975) 101 ITR 796] . It was said by Khanna, J. in Sole Trustee, Loka Shikshana Trust case [(1976) 1 SCC 254 : 1976 SCC (Tax) 14 : (1975) 101 ITR 234] :

"[I]f the activity of a trust consists of carrying on a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit."

And to the same effect, observed Krishna Iyer, J. in the Indian Chamber of Commerce case [(1976) 1 SCC 324 : 1976 SCC (Tax) 41 : (1975) 101 ITR 796] when he said:

> "An undertaking by a business organisation is ordinarily assumed to be for profit unless expressly or by necessary implication or by eloquent surrounding circumstances the making of profit stands loudly negatived .... A pragmatic condition, written or unwritten, proved by a prescription of profits or by long years, of invariable practice or spelt from some strong surrounding circumstances indicative of anti-profit motivation - such a condition will qualify for charitable purpose."

Now we entirely agree with the learned Judges who decided these two cases that activity involved in carrying out the charitable purpose must not be motivated by a profit objective but it must be undertaken for the purpose of advancement or carrying out of the charitable purpose. But we find it difficult to accept their thesis that whenever an activity is carried on which yields profit, the inference must necessarily be drawn, in the absence of some indication to the contrary, that the activity is for profit and the charitable purpose involves the carrying on of an activity for profit. We do not think the Court would be justified in drawing any such inference merely because the activity results in profit. It is in our opinion not at all necessary that there must be a provision in the constitution of the trust or institution that the activity shall be carried on no profit no loss basis or that profit shall be proscribed. Even if there is no such express provision, the nature of the charitable purpose, the manner in which the activity for advancing the charitable purpose is being carried on and the surrounding circumstances may clearly indicate that the activity is not propelled by a dominant profit motive. What is necessary to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is profit making or carrying out a charitable purpose. If it is the former, the purpose would not be a charitable purpose, but, if it is the latter, the charitable character of the purpose would not be lost.

9. Coming closer to the section at hand, in **Aditanar Educational Institution v. Additional Commissioner of Income Tax,** (1997) 224 ITR 310, this Court while construing the predecessor Section, namely, Section 10(22) of the Income Tax act, held:

> "The High Court has made an observation that any income which has a direct relation or incidental to the running of the institution as such would qualify for exemption. We may state that the language of Section 10(22) of the Act is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for the purposes of profit. After meeting the expenditure, 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 one to make profit. The decisive or acid test is whether on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity."

10. In **American Hotel & Lodging Assn. Educational Institute v. CBDT**, (2008) 301 ITR 86, this Court dealt with Section 10(23C)(vi) as follows:

> "29. In CIT v. Surat Art Silk Cloth Manufacturers' Assn. [(1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1] it has been held by this Court that test of predominant object of the activity is to be seen whether it exists solely for education and not to earn profit. However, the purpose would not lose its character merely because some profit arises from the activity. That, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realisation but would reflect unsound principles of management. In order to ascertain whether the institute is carried on with the object of making profit or not it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established.
>
> 30. In deciding the character of the recipient, it is not necessary to look at the profits of each year, but to consider the nature of the activities undertaken in India. If the Indian activity has no correlation with education, exemption has to be denied (see judgment of this Court in Oxford University Press [(2001) 3 SCC 359 : (2001) 247 ITR 658]). Therefore, the character of the recipient of income must have character of educational institution in India to be ascertained from the nature of the activities. If after meeting expenditure, surplus remains incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. In other words, existence of surplus from the activity will not mean absence of educational purpose (see judgment of this Court in Aditanar Educational Institution v. CIT [(1997) 3 SCC 346 : (1997) 224 ITR 310]). The test is-the nature of activity. If the activity like running a printing press takes place it is not educational. But whether the income/profit has been applied for non-educational purpose has to be decided only at the end of the financial year.
>
> 32. We shall now consider the effect of insertion of provisos to Section 10(23-C)(vi) vide the Finance (No. 2) Act, 1998. Section 10(23-C)(vi) is analogous to Section 10(22). To that extent, the judgments of this Court as applicable to Section 10(22) would equally apply to Section 10(23-C)(vi). The problem arises with the

insertion of the provisos to Section 10(23- C)(vi). With the insertion of the provisos to Section 10(23-C)(vi) the applicant who seeks approval has not only to show that it is an institution existing solely for educational purposes [which was also the requirement under Section 10(22)] but it has now to obtain initial approval from the PA, in terms of Section 10(23-C)(vi) by making an application in the standardised form as mentioned in the first proviso to that section. That condition of obtaining approval from the PA came to be inserted because Section 10(22) was abused by some educational institutions/universities. This proviso was inserted along with other provisos because there was no monitoring mechanism to check abuse of exemption provision. With the insertion of the first proviso, the PA is required to vet the application. This vetting process is stipulated by the second proviso. Under the twelfth proviso, the PA is required to examine cases where an applicant does not apply its income during the year of receipt and accumulates it but makes payment therefrom to any trust or institution registered under Section 12- AA or to any fund or trust or institution or university or other educational institution and to that extent the proviso states that such payment shall not be treated as application of income to the objects for which such trust or fund or educational institution is established. The idea underlying the twelfth proviso is to provide guidance to the PA as to the meaning of the words "application of income to the objects for which the institution is established". Therefore, the twelfth proviso is the matter of detail. The most relevant proviso for deciding this appeal is the thirteenth proviso. Under that proviso, the circumstances are given under which the PA is empowered to withdraw the approval earlier granted. Under that proviso, if the PA is satisfied that the trust, fund, university or other educational institution, etc. has not applied its income in accordance with the third proviso or if it finds that such institution, trust or fund, etc. has not invested/deposited its funds in accordance with the third proviso or that the activities of such fund or institution or trust, etc. are not genuine or that its activities are not being carried out in accordance with the conditions subject to which approval is granted then the PA is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein.

33. Having analysed the provisos to Section 10(23-C)(vi) one finds that there is a difference between stipulation of conditions and compliance therewith. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardised form in terms of the first proviso. It is only if the prerequisite condition of actual existence of the educational institution is fulfilled that the question of compliance with requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval.

34. To make the section with the proviso workable we are of the view that the monitoring conditions in the third proviso like application/utilisation of income, pattern of investments to be made, etc. could be stipulated as conditions by the PA subject to which approval could be granted."

11. Thus, the law common to Section 10(23C) (iiiad) and (vi) may be summed up as follows:

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 ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.

12. The Uttarakhand High Court in the impugned judgment dated 24th September, 2007 quoted the ITAT order in paragraph 7 as follows:

"The ITAT while granting exemption under Section 10(23C) (iiiad) recorded the following reasons:

"During the years relevant for asstt. Year 2000-01 and 2001-02, the excess of income over expenditure stood at Rs.6,58,862/- and Rs.7,82,632/- respectively. It was also noticed that the appellant society had made investment in fixed assets including building at Rs.9,52,010/- in F.Y. 1999- 2000 and Rs.8,47,742/- in FY 2000-01 relevant for Asstt. Years 2000-01 and 2001-02 respectively. Thus, if the amount of investment into fixed assets such as building, furniture and fixture etc. were also kept in view, there was hardly any surplus left..... The assessee society is undoubtedly engaged in imparting education and has to maintain a teaching and non teaching staff and has to pay for their salaries and other incidental expenses. It, therefore, becomes necessary to charge certain fee from the students for meeting all these expenses. The charging of fee is incidental to the prominent objective of the trust i.e. imparting education. The trust was initially running the school in a rented building and the surplus, i.e. the excess of the receipts over expenditure.

In the year under appeal (and in the earlier appeals) has enabled the appellant to acquire its own property, acquire computers, library books, sports equipments etc. for the benefit of the students. And more importantly the members of the society have not utilized any part of the surplus for their own benefit. The AO wrongly interpreted the resultant surplus as the main objective of the assessee trust. As held above, profit is only incidental to the main object of spreading education. If there is no surplus out of the difference between receipts and outgoings, the trust will not be able to achieve the objectives. Any education institution cannot be run in rented premises for all the times and without necessary equipment and without paying to the staff engaged in imparting education. The assessee is not getting any financial aid/assistance from the Government or other philanthropic agency and, therefore, to achieve the objective, it has to raise its own funds. But such surplus would not come within the ambit of denying exemption u/s 10(23C) (iiiad) of the Act."

13. Having set out the ITAT order, the Uttarakhand High Court held:

"Thus, in view of the established fact relating to earned profit, we do not agree with the reasoning given by the ITAT for granting exemption."

14. Having said this, the impugned judgment goes on to quote Aditanar Educational Institution v. CIT. as follows:-

> "After meeting the expenditure, if any surplus result incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purpose since the object is not one to make profit. The decisive or acid test is whether on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction difference between the corpus, the objects and powers of the concerned entity.
>
> If one looks at the object clause, there are other noble and pious objects but assessee society has done nothing to achieve the other objects except pursuing main object of providing education and earning profit. Further, with profit earned the society has strengthened or enhanced its capacity to earn more rather than to fulfill other noble objects for the cause of poor and needy people or advancement of religious purpose.
>
> Therefore, the law laid down by the Apex Court has rightly been applied and exemption has also rightly been refused by the Assessing Officer in the facts and circumstances of the case."

15. It is clear that the High Court did not apply its mind independently. What has been copied is one paragraph from the Supreme Court judgment in Aditanar followed by a paragraph of faulty reasoning by the Assessing Officer and the said faulty reasoning of the Assessing Officer has been wrongly said to be the law laid down by the Apex Court.

16. Further, the Supreme Court Judgment in Municipal Corpn. of Delhi v. Children Book Trust and Safdarjung Enclave Educational Society, (1992) 3 SCC 390 has then been followed. The aforesaid judgment dealt with a property tax provision, namely, Section 115 (4) of the Delhi Municipal Corporation Act, 1957. Three questions were raised in the said judgment as follows:-

> "56. In the present case, the questions which arise for our determination are:
>
> (i) Whether the society or body is occupying and using the land and building for a charitable purpose within the meaning of sub-section (4)?
>
> (ii) What is the meaning of the expression "supported wholly or in part by voluntary contribution"?
>
> (iii) Whether any trade or business is carried on in the premises within the meaning of sub-section (5)?"

17. In answering question one, the Court held that School Education would only come within an exemption if it involved public benefit. Having so held, the Court stated:

> "78. The rulings arising out of Income Tax Act may not be of great help because in the Income Tax Act "charitable purpose" includes the relief of the poor, education, medical relief and the advancement of any other object of general public utility. The advancement of any other object of general public utility is not found under the Delhi Municipal Corporation Act. In other words, the definition is narrower in scope. This is our answer to question No. 1."

18. Secondly, the extracted portion from the said judgment in the judgment of the Uttarakhand High Court concerned itself with question two, namely, whether the educational society is supported wholly or in part by voluntary contributions. It is part of paragraph 80 of the said judgment. If the sentences after the quoted portion are also set

out, it becomes clear that the passage relied upon by the High Court has absolutely nothing to do with the present case. The entirety of the passage is now set out herein below:

> "82. ...In other words, what we want to stress is, where a society or body is making systematic profit, even though that profit is utilised only for charitable purposes, yet it cannot be said that it could claim exemption. If, merely qualitative test is applied to societies, even schools which are run on commercial basis making profits would go out of the purview of taxation and could demand exemption. Thus, the test, according to us, must be whether the society could survive without receiving voluntary contributions, even though it may have some income by the activities of the society. The word "part" mean an appreciable amount and not an insignificant one. The "part" in other words, must be substantial part. What is substantial would depend upon the facts and circumstances of each case."

19. It is clear, therefore, that the Uttarakhand High Court has erred by quoting a non existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to Section 10(23C) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of Section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case. It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit. In fact, in S.RM.M.CT.M. Tiruppani Trust v. Commissioner of Income Tax, (1998) 2 SCC 584, this Court in the context of benefit claimed under Section 11 of the Act held:

> "9. In the present case, the assessee is not claiming any benefit under Section 11(2) as it cannot; because in respect of this assessment year, the assessee has not complied with the conditions laid down in Section 11(2). The assessee, however, is entitled to claim the benefit of Section 11(1)(a). In the present case, the assessee has applied Rs 8 lakhs for charitable purposes in India by purchasing a building which is to be utilised as a hospital. This income, therefore, is entitled to an exemption under Section 11(1). In addition, under Section 11(1)(a), the assessee can accumulate 25% of its total income pertaining to the relevant assessment year and claim exemption in respect thereof. Section 11(1)(a) does not require investment of this limited accumulation in government securities. The balance income of Rs 1,64,210.03 constitutes less than 25% of the income for Assessment Year 1970-71. Therefore, the assessee is entitled to accumulate this income and claim exemption from income tax under Section 11(1)(a)."

We set aside the judgment of the Uttarakhand High Court dated 24th September, 2007. The reasoning of the ITAT (set aside by the High Court) is more in consonance with the law laid down by this Court, and we approve its decision.

20. Revenue's appeals from the Punjab and Haryana High Court concern themselves with Sections 10(23C) (vi). A large number of writ petitions were heard in Civil Writ Petition No. 6031 of 2009 and disposed of on 29th January, 2010. By various impugned orders passed, the Chief, CIT, Chandigarh withdrew exemptions granted under Section 10(23C) (vi) of the Income Tax Act read with Rule 2CA of Income Tax Rules,

1961, for various assessment years. The operative part of the order passed by the Chief, CIT in these cases is the same and reads as follows:

> "4. I have considered the submissions of the assessee. The decisions quoted in support of its contention are not relevant and are distinguishable on facts as well as issues. It is clear that the ratio of the decision of Hon'ble Uttarakhand High Court is squarely applicable in this case. 5. The Hon'ble Supreme Court has held, in the case of Aditanar Educational Institution etc. v. Addl. Commissioner of Income Tax [224 ITR 310 (SC)], that in the case of an educational institution, after meeting the expenditure, if any surplus results incidentally, then the institution will not cease to be one existing solely for educational purposes.
>
> 6. The crucial condition is that surplus should result only incidentally and should not be aimed for. If substantial profits are earned in one year if (it)?would be duty of the institution to lower its fees for the subsequent year so that such profits are not intentionally generated. If, however, profits continue year after year than it cannot be said that the surplus is arising incidentally.
>
> 7. In the present ease, the profits are substantial and are arising year alter year and therefore, the decision of the Apex Court in the case of Aditanar Education Institution v. Addl. Commissioner of Income Tax as well as the decision of the Hon'ble Uttrakhand High Court is applicable.
>
> 8. Exemption u/s 10(23C)(vi) is not available to the assessee under the law in view of the above facts and circumstances and therefore, exemption already granted vide order dated 4th June, 2007 is hereby withdrawn.
>
> 9. The assessee is at liberty to reduce the fees being charged and price of its services and apply afresh, in which case the application will be duly considered on merits."

21. It is these orders that were set aside by the judgment of the Punjab and Haryana High Court impugned by the Revenue before us.

22. Section 10(23C)(vi) read with the 3rd and 13th provisos thereto and Section 11(5) of the Income Tax Act are as follows:-

> "Section 10- Incomes not included in total income.-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-
>
> (23-C) any income received by any person on behalf of-
>
> (vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iii-ab) or sub-clause (iii-ad) and which may be approved by the prescribed authority Provided also that the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v)[or sub-clause (vi) or sub- clause (vi-a)]-[(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and;].
>
> [(b) does not invest or deposit its funds, other than-

(i) any assets held by the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] where such assets form part of the corpus of the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] as on the 1st day of June, 1973;

[(i-a) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;]

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i)[and sub-clause (i-a)], by way of bonus shares allotted to the fund, trust or institution[or any university or other educational institution or any hospital or other medical institution];

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify, for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11:

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 any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (vi-a), is approved by the prescribed authority and subsequently that 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 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, 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;]

Section 11. Income from property held for charitable or religious purposes.-

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:-

(i) investment in savings certificates as defined in clause (c) of Section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a cooperative society engaged in carrying on the business of banking (including a cooperative land mortgage bank or a cooperative land development bank).

Explanation.-In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit in any public sector company:

[Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,-

(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

(B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;].

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and [which is eligible for deduction under clause (viii) of sub-section (1) of Section 36];

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and[which is eligible for deduction under clause (viii) of sub-section (1) of Section 36];

[(ix-a) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

Explanation.-For the purposes of this clause,-

(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(b) "public company" shall have the meaning assigned to it in Section 3 of the Companies Act, 1956;

(c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;].

(x) investment in immovable property.

Explanation.-"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;

(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);

(xii) any other form or mode of investment or deposit as may be prescribed."

23. The Punjab and Haryana High Court, by the impugned judgment dated 29th January, 2010 expressed its dissatisfaction with the view taken by the Uttarakhand High Court in the case of Queen's Educational Society as follows:

"8.8 We have not been able to persuade ourselves to accept the view expressed by the Division Bench of the Uttrakhand High Court in the case of Queens Educational Society (supra). There are variety of reasons to support our opinion. Firstly, the scope of the third proviso was not under consideration, inasmuch as, the case before the Uttrakhand High Court pertained to Section 10(23C)(iiiad) of the Act. The third proviso to Section 10(23C)(vi) is not applicable to the cases falling within the purview of Section 10(23C)(iiiad). Secondly, the judgment rendered by the Uttarkhand High Court runs contrary to the provisions of Section 10(23C)(vi) of the Act including the provisos thereunder. Section 10(23C)(vi) of the Act is equivalent to the provisions of Section 10(22) existing earlier, which were introduced with effect from 1st April, 1999 and it ignores the speech of the Finance Minister made before the introduction of the said provisions, namely. Section 10(23C) of the Act [See observations in American Hotel and Lodging Association Educational Institute's case (supra)]. Thirdly, the Uttrakhand High Court has not appreciated correctly the ratio of the judgment rendered by Hon'ble the Supreme Court in the case of Aditanar Educational Institution(supra) and while applying the said judgment including the judgment which had been rendered by Hon'ble the Supreme Court in the case of Children Book Trust (supra), it lost sight of the amendment which had been carried out with effect from 1st April, 1999 leading to the introduction of the provisions of Section 10(23C) of the Act. Lastly, that view is not consistent with the law laid down by Hon'ble the Supreme Court in American Hotel and Lodging Association Educational Institute (surpa)."

It then summed up its conclusions as follows:

"8.13 From the aforesaid discussion, the following principles of law can be summed up:-

(1) It is obligatory on the part of the Chief Commissioner of Income Tax or the Director, which are the prescribed authorities, to comply with proviso thirteen (un-numbered). Accordingly, it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.

(2) The provisions of Section 10(23C)(vi) of the Act are analogous to the erstwhile Section 10(22) of the Act, as has been laid down by Hon'ble the Supreme Court in the case of American Hotel and Lodging Association (supra). To decide the entitlement of an institution for exemption under Section 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit [See 5-Judges Constitution Bench judgment in the case of Surat Art Silk Cloth Manufacturers Association (supra)]. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by Hon'ble the Supreme Court in para 33 of its judgment in American Hotel and Lodging Association's case (supra). Thus, on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deems fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15% and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. Thereafter the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessments are complete with the finding that there is no contravention of the statutory provisions, need not be reopened. However, alter grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exists, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

(3) The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.

(4) The educational institutions, which are registered as a Society, would continue to retain their character as such and would be eligible to apply for exemption under Section 10(23C)(vi) of the Act. [See para 8.7 of the judgment-Aditanar Educational Institution case (supra)]

(5) Where more than 15% of income of an educational institution is accumulated on or after 1st April, 2002, the period of accumulation of the amount exceeding 15% is not permissible beyond five years, provided the excess income has been applied or accumulated for application wholly and exclusively for the purpose of education.

(6) The judgment of Uttrakhand High Court rendered in the case of Queens Educational Society (supra) and the connected matters, is not applicable to cases fall within the provision of Section 10(23C)(vi) of the Act. There are various reasons, which have been discussed in para 8.8 of the judgment, and the judgment of Allahabad High Court rendered in the case of City Montessori School (supra) lays down the correct law."

And finally held:

"8.15 As a sequel to the aforesaid discussion, these petitions are allowed and the impugned orders passed by the Chief Commissioner of Income Tax withdrawing the exemption granted under Section 10(23C)(iv) of the Act are hereby quashed. However, the revenue is at liberty to pass any fresh orders, if such a necessity is felt after taking into consideration the various propositions of law culled out by us in para 8.13 and various other paras.

8.16 The writ petitions stand disposed of in the above terms."

24. The view of the Punjab and Haryana High Court has been followed by the Delhi High Court in St. Lawrence Educational Society (Regd.) v. Commissioner of Income Tax & Anr., (2011) 53 DTR (Del) 130. Also in Tolani Education Society v. Deputy Director of Income Tax (Exemption) & Ors., (2013) 351 ITR 184, the Bombay High Court has expressed a view in line with the Punjab and Haryana High Court view, following the judgments of this Court in the Surat Art Silk Manufacturers Association Case and Aditanar Educational Institution case as follows:

".....The fact that the Petitioner has a surplus of income over expenditure for the three years in question, cannot by any stretch of logical reasoning lead to the conclusion that the Petitioner does not exist solely for educational purposes or, as that Chief Commissioner held that the Petitioner exists for profit. The test to be applied is as to whether the predominant nature of the activity is educational. In the present case, the sole and dominant nature of the activity is education and the Petitioner exists solely for the purposes of imparting education. An incidental surplus which is generated, and which has resulted in additions to the fixed assets is utilized as the balance-sheet would indicate towards upgrading the facilities of the college including for the purchase of library books and the improvement of infrastructure. With the advancement of technology, no college or institution can afford to remain stagnant. The Income-tax Act 1961 does not condition the grant of an exemption under Section 10(23C) on the requirement that a college must maintain the status- quo, as it were, in regard to its knowledge based infrastructure. Nor for that matter is an educational institution prohibited from upgrading its infrastructure on educational facilities save on the pain of losing the benefit of the exemption under Section 10(23C). Imposing such a condition which is not contained in the statute would lead to a perversion of the basic purpose for which such exemptions have been granted to educational institutions. Knowledge in contemporary times is technology driven. Educational institutions have to modernise, upgrade and respond to the changing ethos of education.

Education has to be responsive to a rapidly evolving society. The provisions of Section 10(23C) cannot be interpreted regressively to deny exemptions. So long as the institution exists solely for educational purposes and not for profit, the test is met."

25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of

profit. In addition, we hasten to add that the 13th proviso to Section 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. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act.

26. We now come to Civil Appeal No.8962 of 2010. Vide a judgment dated 29th January, 2010, the Punjab and Haryana High Court dismissed CWP No.7268 of 2009 in the following terms:

> "8. It is conceded position that the assessee-petitioner has filed the application on 23.9.2008 seeking exemption under Section 10(23C)(vi) in respect of assessment year 2008-09, which could have been filed during the financial year 2007-08 i.e. on or before 31.3.2008. It is, thus, evident that the application by the assessee petitioner has been filed after the prescribed period and the Chief Commissioner of Income Tax has rightly rejected the same being not maintainable.
>
> 9. As a sequel to the above discussion, we find no ground to interfere with the impugned order passed by the Chief Commissioner of Income Tax. There is no merit in the instant petition warranting its admission. Accordingly, the writ petition fails and the same is dismissed."

27. These being the facts, we see no reason to interfere. This appeal shall stand dismissed with no order as to costs.

PUNJAB & HARYANA HIGH COURT

CWP NO. 9684 OF 1990

PRAKASH PIPES INDUSTRIES LTD.
Vs.
STATE OF HARYANA AND ANOTHER

RAJIVE BHALLA AND B.S. WALIA, JJ

05th February, 2015

HF ▶ Petitioner - Assessee

REVISION – NOTICE ISSUED BY COORDINATE RANK OFFICER – ASSESSMENT CONCLUDED BY DEPUTY EXCISE & TAXATION COMMISSIONER – SHOW CAUSE NOTICE FOR RE-ASSESSMENT SERVED BY OFFICER OF COORDINATE RANK INSTEAD OF SENIOR RANK – WRIT FILED PRAYING FOR QUASHING OF SUCH NOTICE – CONCEDED BY STATE – NOTICE WITHDRAWN AND LIBERTY GRANTED TO STATE TO PROCEED AFRESH U/S 40 AS PER LAW – WRIT ALLOWED – SECTION 40 (1) AND SECTION 40(2) OF 1973 OF HGST ACT.

After the conclusion of assessment by the Deputy Excise & Taxation Commissioner, a notice for revision was issued by an officer of coordinate rank. The assessee filed a writ praying that the notice be quashed as such notice ought to be served by an officer of senior rank and not of coordinate rank. The state conceded with a prayer to withdraw the notice. The writ is allowed with liberty to the State to serve a fresh notice u/s 40(2) of the 1973 Act in accordance with law.

Present: Mr. R.K. Chhibbar, Senior Advocate with
Mr. Gaurav Mankotia, Advocate for the petitioner.

Ms. Mamta Singhal, AAG, Haryana

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RAJIVE BHALLA, J.

1. The petitioner prays for issuance of a writ of certiorari quashing show cause notice, issued under Section 40(2) of the Haryana General Sales Tax Act, 1972 (hereinafter referred to as "the Act"), proposing to revise an already concluded assessment.

2. Counsel for the petitioner submits that the assessment order was passed by the Deputy Excise and Taxation Commissioner (hereinafter referred to as "the DETC"), Hisar. The show cause notice for re-assessment under Section 40(2) of the Act was, therefore,

required to be issued by an officer senior to the DETC, Hisar, but has been issued by an officer of co-ordinate rank, namely, the DETC (Inspection-cum-Revisional Authority), thereby rendering the impugned notice null and void.

3. Counsel for the State of Haryana submits that she has been instructed by Mr. Ajay Sihag, Excise and Taxation Officer, Hisar, to make a statement that the show cause notice impugned in the present petition may be treated as withdrawn but with liberty to the State to serve a fresh notice under Section 40 (2) of the 1973 Act, after following procedure prescribed by law.

4. We have heard counsel for the parties and in view of statement made by counsel for the State of Haryana, on instructions from Mr. Ajay Sihag, allow the writ petition and set aside the show cause notice with liberty to the State of Haryana to proceed afresh, under Section 40 (2) of the Act, in accordance with law but without prejudice to the rights of the parties.

PUNJAB & HARYANA HIGH COURT

CWP No. 12106 of 2007

BHARAT SANCHAR NIGAM LIMITED
Vs.
STATE OF HARYANA AND OTHERS

RAJIVE BHALLA AND B.S. WALIA, JJ.

4th February, 2015

HF ▶ Petitioner - assessee

TELECOM SERVICES - WHETHER EXIGIBLE TO SALES TAX – DEMAND RAISED CONSIDERING TELECOM FACILITIES EXIGIBLE TO TAX – ASSESSMENT ORDER FOR RECOVERY – WRIT FILED FOR QUASHING OF SUCH ORDER – HELD, FOLLOWING BSNL JUDGEMENT, TELECOM SERVICES ARE IN NATURE OF A SERVICE THAT DO NOT INHER ELEMENT OF SALE – IMPUGNED ORDER AND DEMAND NOTICE SET ASIDE – MATTER REMITTED TO ASSESSING AUTHORITY TO DECIDE AFRESH -WRIT ALLOWED.

Demand on account of tax levied on telecom facilities was raised by assessing authority and an order for its recovery was passed by the Ld. Joint Excise and Taxation Commissioner. Allowing the writ, it is held that in view of judgement passed in the case of Bharat Sanchar Nigam Limited, the telecom services provided by the petitioner are in a nature of service and do not inher an element of sale. Therefore, impugned orders are set aside and matter is remitted back to the assessing authority for adjudicating afresh within three months of receipt of a certified copy of the order so passed.

Case followed:

Bharat Sanchar Nigam Limited and another V Union Of India and others 2006(3)SCC 1

Present: Mr. Gurpreet Singh, Addl. Central Government
Standing Counsel for the petitioner.
Ms. Mamta Singhal Talwar, AAG, Haryana.

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RAJIVE BHALLA

1. The petitioner prays for issuance of a writ of certiorari for quashing assessment order, demand notice dated 15.3.2007 (Annexure P-4) issued by the Assessing Authority, Gurgaon and order dated 27.6.2007 (Annexure P-9) passed by the Joint Excise and Taxation

Commissioner (Appeals) with a further prayer that a direction may be issued to the respondents not to realise Rs.2,50,06,196/-from the account of the petitioner.

2. Counsel for the petitioner submits that controversy in the present petition has been settled by the Supreme Court in ***Bharat Sanchar Nigam Ltd. and another v. Union of India and others, 2006(3) SCC 1***, by holding that telecom facilities are a service that do not inher any element of sale and are, therefore, not exigible to sales tax, under the Haryana General Sales Tax Act, 1973. Counsel for the petitioner also submits that in Civil Writ Petition No.18913 of 2003 (***M/s Bharat Sanchar Nigam Limited v. State of Haryana and others***), a Division Bench of this Court had set aside a similar assessment order and remitted the matter to the Assessing Officer to take a fresh decision in the matter. The Assessing Officer has, after considering the matter afresh, held that sales tax is not leviable. The writ petition may be allowed, the impugned order and the demand notice may be set aside and the State of Haryana may be directed to refund the amount paid by the petitioner as sales tax.

3. Counsel for the State of Haryana is not in a position to raise any argument, against the judgment in Civil Writ Petition No.18913 of 2003 (***M/s Bharat Sanchar Nigam Limited v. State of Haryana and others***) or controvert the facts.

4. We have heard counsel for the parties, perused the impugned order and the demand notice. The Supreme Court having held in BSNL's case (supra) that telecom services provided by the petitioner are in a nature of a service that do not inher any element of sale, the impugned orders and the demand notice are without authority of law.

5. Consequently, we allow the writ petition, set aside the demand notice (Annexure P-4) and order dated 27.6.2007 (Annexure P-9) and in terms of order dated 04.09.2006, passed in Civil Writ Petition No.18913 of 2003, remit the matter to the Assessing Officer, for adjudication afresh, within three months of receipt of a certified copy of this order.

6. The petitioner is directed to appear before the Assessing Officer, for further proceedings on 16.3.2015.

PUNJAB & HARYANA HIGH COURT

VATAP NO 41 OF 2014

STATE OF HARYANA
Vs.
WINDORZ INDIA PVT. LTD

AJAY KUMAR MITTAL AND FATEH DEEP SINGH, JJ.

22th September, 2014

HF ▶ Dealer / respondent

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST/ ROAD SIDE CHECKING – NATURE OF TRANSACTION – GOODS IN TRANSIT INTERCEPTED – DOCUMENTS SHOWING BRANCH TRANSFER PRODUCED – PENALTY IMPOSED BASED ON ENQUIRY HOLDING IT AS INTERSTATE SALE- APPEAL ALLOWED BY TRIBUNAL HOLDING THAT CHECKING OFFICER NOT TO ASSESS NATURE OF TRANSACTION- ALSO, NEITHER DOCUMENTS PRODUCED DOUBTED NOR MENS REA TO EVADE TAX ESTABLISHED – APPEAL BY REVENUE DISMISSED AS FINDINGS RECORDED BY TRIBUNAL NOT SHOWN TO BE ERRONEOUS- APPEAL DISMISSED ON MERITS AS WELL AS BEING TIME BARRED- *SEC 31(8) OF HVAT ACT.*

LIMITATION – APPEAL – APPLICATION FOR CONDONATION OF DELAY OF 485 DAYS FOR DELAYED FILING OF APPEAL – SUFFICIENT CAUSE NOT SHOWN – APPEAL DISMISSED AS BEING TIME BARRED- SEC 5 OF LIMITATION ACT, 1963.

The goods were in transit from Faridabad to Delhi and were checked near Badarpur border. Documents were produced showing branch transfer as alleged. It was suspected to be meant for interstate sale as per enquiry conducted. Penalty was imposed. The Tribunal allowed the appeal in favour of the appellant in view of the fact that the assessing officer had not doubted the documents, nor mens rea to evade the tax was established. The checking officer exercising summary jurisdiction could not have assessed the nature of transaction. On appeal filed by Revenue, it is held that the findings recorded by the Tribunal are not shown to be perverse or erroneous and therefore, no interference is called for.

Also, the application for condoning the delayed filing after 485 days is without sufficient cause. The appeal is, therefore, dismissed on merits as well as it being time barred.

Present: Ms. Tanisha Peshawaria, DAG, Haryana, for the appellant.

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the revenue under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 9.7.2012 (Annexure A-4) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") in STR No. 39 of 2006-07 in STA No. 936 of 2004-05, claiming the following substantial questions of law:-

(i) Whether the provisions of Section 31(8) of the VAT Act empowers the officer detaining the goods (checking officer) to hold enquiry into the nature of the transaction occasioning the movement of goods in order to ascertain as to whether the transaction is inter-state sale or a branch transfer?

(ii) Whether in the facts and circumstances of the case the Ld. Tribunal was justified while observing into the impugned order that Checking Officer was not empowered to go in the nature of transaction whereas Section 31(8) of VAT Act clearly provide the Checking Officer is fully empowered to decide the nature of transaction?

(iii) Whether in the facts and circumstances of the case the Ld. Tribunal was justified in observing that Checking Officer had not doubted the correctness of the documents accompanying the goods is contrary to the facts of the case and there is an error of facts apparent on the records instituting a valid reason for calling for review of impugned order whereas it is clear from the order that he has doubted the documents i.e. enquiry was held and proceedings under Section 31 of HVAT Act were held?

(iv) Whether in the facts and circumstances of the case the Ld. HTT was justified in not reviewing its earlier order when the errors in the order are apparent on the record and were brought to the notice of HTT?

(v) Whether in the facts and circumstances of the case the Ld. HTT was justified in declining the review application vide its order dated 09_07_2012?

2. The facts necessary for adjudication of the present appeal as narrated therein are that during the course of roadside checking on 17.9.2004, ... tempos bearing registration Nos. HR-38-7537 and HR-38BG-0197 loaded with glass panels of various sizes while going from Faridabad to Delhi were checked near Badarpur border. As per documents, the goods were being transported to Delhi as stock transfer from Faridabad. After enquiry, it was found that the said goods were being taken to the site of Tata Teleservices, New Delhi and the stock transfer was an interstate sale. The assessing authority vide order dated 4.10.2004 (Annexure A-1) held that it was an attempt to evade tax, imposed penalty amounting to Rs. 1,09,426/- besides tax of Rs 43,770/- . Feeling aggrieved, the dealer filed an appeal before the Joint Excise and Taxation Commissioner (Appeal) who vide order dated 30.11.2004 (Annexure A-2) dismissed the same. Against the order dated 30.11.2004 (Annexure A-2), the dealer filed an appeal before the Tribunal. The Tribunal vide order dated 10/15.5.2006 (Annexure A-3) allowed the appeal. Thereafter, the appellant filed a review petition before the Tribunal who vide order dated 9.7.2012 (Annexure A-4) dismissed the same. Hence, the present appeal.

3. We have heard learned State counsel.

4. The Tribunal had recorded that the Assessing Officer was exercising summary jurisdiction and the nature of transaction could be determined only at the time of regular assessment and not by the checking officer while the goods were in transit. Further, the Assessing Officer had not doubted the documents accompanying the goods nor had established any mens rea to evade tax.

The findings recorded by the Tribunal reads thus:-

> *"We have considered the matter carefully and have also seen the facts on record and the judgments relied upon by Sh. Sarwal. It is a matter of record that while deciding the case the officer imposing penalty has held the transaction as an inter state sales. Penalty proceedings, because these are summary in nature hence it can only be determined by the Assessing Authority at the time of regular assessment and not by the checking officer in transit. The officer has not doubted the documents accompanying the goods nor has he established any mensrea to evade tax. In such a situation when no tax evasion is there the penalty imposed in the present case cannot be maintained and is accordingly quashed. Instant appeal is allowed."*

6. Learned State counsel could not show that the findings recorded by the Tribunal were erroneous or per verse in any manner.

7. Further, the present appeal is barred by a period of 485 days. An application bearing CM No. 2757-Cll of 2014 under Section 5 of the Limitation Act, 1963 (in short "the 1963 Act") has been moved for condonation of 485 days' delay in filing the appeal.

8. The explanation given in the application for condonation of delay of 485 days does not satisfy the test of sufficient cause within the meaning of Section 5 of the Limitation Act, 1963. Thus, no ground for condonation of colossal delay of 485 days has been made out.

9. In view of the above, the appeal is dismissed on merits as well as being time barred.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

VATAP No. 69 of 2014

HERO HONDA MOTORS LIMITED
Vs.
STATE OF HARYANA AND OTHERS

RAJIVE BHALLA AND AMOL RATTAN SINGH, JJ

26nd February, 2015

HF ▶ Revenue

INTEREST – JURISDICTION – SEPARATE ORDER PASSED AFTER CONCLUSION OF ASSESSMENT – SHOW CAUSE NOTICE AGAINST PROPOSED LEVY OF INTEREST AND PENALTY SERVED DURING PENDENCY OF ASSESSMENT PROCEEDINGS – ASSESSMENT PROCEEDINGS CONCLUDED PASSING ORDER WITHOUT LEVY OF INTEREST – SEPARATE ORDER PASSED IMPOSING INTEREST ON DELAYED PAYMENT OF TAX LATER – QUESTION OF JURISDICTION RAISED BY APPELLANT CONTENDING THAT INTEREST OUGHT TO BE LEVIED AT THE TIME OF ASSESSMENT OR DEPARTMENT TO HAVE RECTIFIED ORDER U/S 33 OF ACT TO IMPOSE INTEREST – HELD SINCE NOTICE FOR LEVY OF INTEREST HAD BEEN SERVED DURING PENDENCY OF ASSESSMENT PROCEEDINGS, THERE WAS NO REQUIREMENT OF RECTIFICATION OF ASSESSMENT ORDER – NON IMPOSITION OF INTEREST ALONGWITH ASSESSMENT ORDER IS MERE IRREGULARITY ON PART OF ASSESSING AUTHORITY – APPEAL DISMISSED.

The appellant had filed an appeal against the levy of interest by a separate order when the assessment proceedings had already been concluded without levy of interest. As a preliminary issue it was argued that such interest could be levied at the time of assessment or by rectifying the error u/s 33 of the Act. It is contended by revenue that during pendency of assessment proceedings the assessing authority had issued a separate notice requiring the appellant to show cause against the levy of penalty and interest. The proceedings concluded with demand of interest but since question of interest was a subject matter of a separate notice, assessment order and order imposing interest were passed separately. It is held that this was merely an irregularity on part of assessing authority which did not render the impugned order null and void for want of jurisdiction. Since the notice had already been served during pendency of assessment proceedings, there was no need of rectifying assessment order. Therefore, appeal is dismissed. However, any opinion on merits shall be disregarded by Tribunal while deciding the appeal on merits.

Present: Mr. Sandeep Goyal, Advocate, for the appellant
Ms. Mamta Singla Talwar, AAG, Haryana for the respondents

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RAJIVE BHALLA, J.

1. The appellant challenges orders Annexures A-13, A-13/A and A-13/B passed by the Haryana Tax Tribunal, at Chandigarh holding that the assessing authority was justified in passing the order imposing interest.

2. Counsel for the appellant submits that assessment proceedings for assessment year 1998-99 concluded without levy of interest but while considering the question of penalty, a separate order was passed imposing interest. The assessing authority was required to impose interest at the time of assessment and in case interest was not imposed, was required to rectify the error by resort to Section 33 of the Haryana Sales Tax, Act, 1973 (hereinafter referred to as "the Act'). The assessing authority has no jurisdiction to pass a separate order imposing interest after assessment had concluded. Counsel for the appellant relies upon a judgment of the Hon'ble Supreme Court in Commissioner of Trade Tax, U.P. Versus Kanhai Ram Thekedar, [2005] 141 STC 1 (SC). Counsel for the appellant prays that the Tribunal has affirmed the order passed by the assessing authority without considering that such an order cannot be passed.

3. Counsel for the State of Haryana submits that during assessment proceedings, a separate notice was served, requiring the appellant to show cause why penalty and interest should not be imposed. The assessment order was passed but the show cause notice, regarding penalty and interest remained pending. The assessing authority was well within its jurisdiction to decide the notice and while dropping penalty proceedings, has imposed interest on delayed deposit of tax.

4. We have heard counsel for the parties, perused the impugned orders, but are not inclined to grant any relief to the appellant.

5. The appellant was, admittedly, being assessed to different components of value added tax. Admittedly, during pendency of assessment proceedings, the assessing authority issued a notice calling upon the appellant to show cause why penalty and interest be not imposed for delayed deposit of tax. The assessment proceedings concluded with the assessing authority demanding interest on various components of tax but as the question of interest on delayed payment of tax was subject matter of a separate show cause notice, chose not to pass any order along with the assessment order. The assessing authority passed a separate order dropping penalty proceedings, but imposing interest on delayed deposit of tax. The appellant filed an appeal which was dismissed by the appellate authority and is now agitating the matter before the Tribunal.

6. Before the Tribunal, the appellant raised a preliminary issue that there is no provision in the statute, that empowers the assessing authority, to initiate proceedings for levy/recovery of interest, after passing of the assessment order. The appellant also urged that if the assessing officer was of the opinion that interest has not been imposed, he could have rectified the assessment order, under Section 33 of the Act. The Tribunal has, by a majority of its members, rejected the aforesaid contention.

7. A considered appraisal of the facts reveals that during assessment proceedings, a separate notice was served, requiring the appellant to show cause against the proposed levy of interest and penalty. The assessing authority should have, ideally decided the question of penalty and interest along with the assessment order but its failure to do so is, at the most, an irregularity, that does not render the impugned order null and void for want of jurisdiction. The judgment in Kanhai Ram Thekedar's case (supra), does not advance the petitioner's case as revenue authorities sought to recover interest without passing an order imposing interest. In the present case, a show cause notice was issued and an order was passed levying interest.

8. An argument that once assessment stood concluded, the assessing authority could not have passed a separate order demanding interest and should have instead filed an application for rectification of the assessment order and then also within two years, disregards the fact that notice requiring the appellant to show cause against proposed levy of interest, was issued and was pending during assessment proceedings and thus, there was no need to have resort to rectification proceedings under Section 33 of the Act. Consequently, finding no merit, we dismiss the appeal and affirm the majority opinion of the Tribunal.

9. Any observation/opinion as to the merits of the controversy shall be disregarded by the Tribunal while deciding the appeal on merits.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

VATAP No. 86 of 2013
VATAP No. 87 of 2013

STATE OF HARYANA

Vs.

RAVINDRA TUBES LTD. AND OTHERS

RAJIVE BHALLA AND AMOL RATTAN SINGH, JJ

13th February, 2015

HF ▶ Assessee

REVIEW- MAINTAINABILITY OF APPLICATION- SEC 41(1) OF HVAT ACT- ASSESSMENT ORDER PASSED BY ASSESSING AUTHORITY (DETC) – REVISION MADE BY COMMISSIONER - MATTER REMITTED FOR REASSESSMENT – APPEAL BY ASSESSEE BEFORE TRIBUNAL – ORDER PASSED BY ASSESSING AUTHORITY RESTORED SETTING ASIDE ORDER OF REVISIONAL AUTHORITY – REVIEW FILED BY DETC BEFORE TRIBUNAL NOT MAINTAINABLE AS ITS OWN ORDER BEING RESTORED DID NOT RENDER HIM AGGRIEVED – APPEAL BY STATE BEFORE HIGH COURT – HELD, REVENUE OUGHT TO HAVE EMPOWERED AN OFFICER OTHER THAN THE ASSESSING AUTHORITY TO FILE AN APPLICATION FOR REVIEW IN VIEW OF SEC41(1) OF THE ACT – APPEAL DISMISSED WITH LIBERTY TO STATE TO EITHER FILE AN APPEAL AGAINST ORDER OF TRIBUNAL, OR FILE A FRESH APPLICATION FOR REVIEW BY ANY PERSON CONSIDERED AGGRIEVED – *SECTION 41(1) OF HVAT ACT*

An assessment order was passed by the Assessing Authority (DETC). Revision was taken up by the Excise and Taxation Commissioner who remitted the matter to the assessing authority for reassessment. The assessee appealed against the order of the Commissioner before Tribunal who set aside the order of revisional authority and restored order of DETC. A review application was filed before Tribunal by the DETC which was dismissed on the ground that since the DETC's order had been restored, he was not aggrieved for filing the review application. The State filed an appeal against the order. It is held by the High Court that in view of section 41(1) of the Act, where an order passed by an assessing authority is restored by the Tribunal, the assessing authority cannot file an application for review against an order restoring its order whether as assessing authority or the person aggrieved. The State should have empowered an officer other than the Assessing Authority for filing it. However, State is at liberty to file an appeal against the order of the Tribunal, or to file a fresh application for review by any person considering himself aggrieved.

Present : Ms. Mamta Singhal Talwar, AAG, Haryana for the appellant
Mr. Sandeep Goyal, Advocate for the respondents.

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RAJIVE BHALLA, J.

1. By way of this order, we shall decide VAT Appeal Nos.86 and 87 of 201 3, as the impugned orders in both appeals are similar.

2. The State of Haryana is before us challenging order dated 17.11.2011, passed by the Haryana Tax Tribunal, dismissing an application for review.

3. Counsel for the State of Haryana submits that even though orders passed by the Excise and Taxation Commissioner-cum-Revisional Authority, Hisar, were set aside and assessment orders passed by the Deputy Excise and Taxation Commissioner-cum-Assessment Authority, were restored by the Tribunal, the Act does not prohibit the Deputy Excise and Taxation Commissioner-cum-Assessment Authority, who represents the State, from filing a petition for review of the order passed by the Tribunal. The majority opir1ion recorded by the Tribunal that as the order passed by the Deputy Excise and Taxation Commissioner had been restored he had no right to file an application for review, is incorrect as the Tribunal has not considered the words and expressions used in Section 41(1) of the Act. Counsel for the State of Haryana further submits that the minority opinion, affirming the right of the Deputy Excise and Taxation Commissioner, to file an application for review, is the correct opinion in law and may, therefore, be affirmed.

4. Counsel for the respondents submits that the Deputy Excise and Taxation Commissioner, Hisar, concluded assessment on 30.08.1995. The revisional authority set aside the assessment order and remitted the matter to the assessing authority for re-assessment. The respondents challenged the order passed by the revisional authority before the Tribunal. The Tribunal, set aside the order passed by the revisional authority and restored the order passed by the assessing authority, i.e. Deputy Excise and Taxation Commissioner, Hisar. The Deputy Excise and Taxation Commissioner filed an application for review. The Tribunal has rightly held that in this situation, as the Deputy Excise and Taxation Commissioner is not a person aggrieved, he could not maintain an application for review.

5. We have heard counsel for the parties and perused the paper book..

6. The short question that arises for consideration is whether the Deputy Excise and Taxation Commissioner could maintain an application for review, under Section 41(1) of the Act, against the order passed by the Tribunal, restoring his order. Admittedly, the order passed by the Deputy Excise and Taxation Commissioner, was restored by the Tribunal. The Deputy Excise and Taxation Commissioner, filed an application for review of this order. The Tribunal has dismissed the application by holding that as order passed by the Deputy Excise and Taxation Commissioner has been restored, he is not a person aggrieved and, therefore, cannot maintain an application for review.

7. Section 41(1) of the Act empowers the "Assessing Authority" or "any person aggrieved" to file an application for review. A situation may arise, as has arisen in the present case, where an order passed by an assessing authority (the Deputy Excise and Taxation Commissioner), is restored by the Tribunal. In such a situation, the assessing authority cannot possibly file an application for review against an order restoring its order whether as the assessing authority or the person aggrieved. The revenue should have empowered an officer other than the assessing authority to file an application for review.

8. We, therefore, find no reason to differ from the majority opinion recorded by the Tribunal and while dismissing the appeal, grant liberty to the State of Haryana to either file an appeal against the order passed by the Tribunal, remanding the matter to the assessing authority or to file a fresh application for review by any person considering himself to be aggrieved.

PUNJAB & HARYANA HIGH COURT

CWP No. 8921 of 2014

RAJDHANI SALES
Vs.
STATE OF PUNJAB AND OTHERS

RAJIVE BHALLA AND B.S. WALIA, JJ.

5th February, 2015

HF ▶ None

INPUT TAX CREDIT – FAILURE TO PRODUCE ACCOUNT BOOKS – AGREED BY PETITIONER TO DEPOSIT TAX LEVIED BY DEPARTMENT ON ITS PURCHASES FROM A PARTICULAR FIRM PROVIDED DEPARTMENT AGREES TO RE- EXAMINE ITS INPUT TAX CREDIT DISALLOWED DUE TO FAILURE TO PRODUCE ACCOUNT BOOKS ETC- DEPARTMENT ACCEPTED THE PROPOSITION PROVIDED AMOUNT DUE DEPOSITED – MATTER REMITTED BY HIGH COURT TO ASSESSING OFFICER PROVIDED PETITIONER DEPOSITS RELEVANT DOCUMENTS AND DEPOSITS THE TAX FAILING WHICH ORIGINAL ORDERS TO PREVAIL.

The petitioner stated that if the state is ready to re examine the ITC disallowed for failure to produce invoices and account books , the petitioner is ready to deposit Rs 4, 83,090/- levied as tax for purchases from M/s Jai Laxmi Agro Industries. The state on the other hand submitted that if the petitioner deposits the so mentioned amount, the assessing officer shall re- examine the claim for ITC, provided all relevant documents are produced within one month. On writ being filed, it is held that the matter is restored to the Assessing Officer, to examine the claim for ITC but only if the petitioner produced relevant documents within one month. The order so passed is subject to the petitioner's depositing Rs 4,83,090/-.Failure to do so would have the original assessment order prevailing.

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.
Ms. Radhika Suri, Addl. A.G., Punjab for the respondents

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RAJIVE BHALLA, J.

1. The petitioner challenges the vires of Section 62(5) of the Punjab VAT Act, 2005 (hereinafter to be referred as 'the Act'). Counsel for the petitioner states that he has instructions to state that in case the State is ready to re-examine input tax credit disallowed for failure to produce purchase invoices and account books, the petitioner is ready to deposit Rs.4,83,090/-, the tax levied for purchase from M/s Jai Laxmi Agro Industries.

2. Counsel for the State of Punjab submits that she has instructions to state that in case the petitioner deposits Rs.4,83,090/-, the Assessing Officer shall re-examine the petitioner's claim, for entitlement to the input tax credit, provided the petitioner produces all relevant purchase invoices/documents, within one month.

3. We have heard counsel for the parties and in view of the statement made by counsel for the parties, dispose of the writ petition by setting aside the impugned orders and restoring the matter to the Assessing Officer, to examine the petitioner's claim for input tax credit, afresh and in accordance with law, but only if the petitioner produces all relevant purchase invoices/documents etc., within one month.

4. In case, the petitioner does not produce the relevant purchase invoices/documents, within one month, the original assessment order shall come into effect, forthwith. The order so passed is, however, subject to the petitioner's depositing Rs.4,83,090/- within three weeks from today.

PUNJAB & HARYANA HIGH COURT

CWP No. 16808 OF 1994

SHAKTI INDUSTRIES

Vs.

REVISIONAL AUTHORITY-CUM-DEPUTY EXCISE AND TAXATION COMMISSIONER

RAJIVE BHALLA AND AMIT RAWAL, JJ.

30th January, 2015

HF ▶ Petitioner/ assessee

ENTIES IN SCHEDULE – HOOKA (BRASS/IRON) – WHETHER CLASSIFIED AS UTENSILS- PAYMENT OF TAX ON SALE OF HOOKA AT THREE PAISA IN A RUPEE CONSIDERING IT A UTENSIL – ASSESSMENT CONCLUDED ACCEPTING THIS CONTENTION INITIALLY – SALE OF HOOKA TREATED AS GENERAL GOODS TAXABLE @ 8 % BY ASSESSING OFFICER IN FOLLOWING ASSESSMENT YEAR – APPEAL ACCEPTED BY FIRST APPELLATE AUTHORITY – REVISIONAL AUTHORITY HELD IT AS NOT FALLING UNDER CATEGORY OF UTENSILS ON BASIS OF ORDER PASSED BY TRIBUNAL IN SIMILAR CASE FOR OTHER YEARS – WRIT FILED – HELD, ABSENCE OF LEGISLATIVE INTENT TO CONFINE THE TERM 'UTENSIL' TO ANY PARTICULAR UTENSIL, OR TO THE MODE AND MANNER OF ITS USE OR TO PLACE OF ITS USE, RENDERS HOOKA TO FALL WITHIN THE MEANING OF THE WORD 'UTENSIL' LIABLE TO TAX AT THREE PAISA IN A RUPEE- OBSERVATION OF REVISIONAL AUTHORITY HELD TO BE NARROW AND ERRONEOUS- ORIGINAL ASSESSMENT ORDERS RESTORED.

As per the notification issued prescribing a rate of 3 paise in a rupee on sale of ferrous and non ferrous metal utensils including brass utensil ,the petitioner manufacturing brass/iron hookas deposited tax at three paisa in a rupee treating it as utensil. The returns were initially accepted . For the following assessment years the assessing officer held that hooka fell under the category of general goods and liable to tax @ 8 %. The first appeal was accepted. For three different years, the Revisional Authority held hookas not to be treated as utensils and ordered recovery of tax by following the judgement passed in case of M/s Standard Steel and Metal Ind V State of Haryana. Aggrieved by the order , a writ was filed. The Hon'ble High Court held that, absence of legislative intent to confine the term 'utensil' to any particular utensil, or to the mode and manner of its use or to place of its use, renders hooka to fall within the meaning of the word 'utensil' liable to tax at three paisa in a rupee. The observation of the Revisional authority was held to be narrow and erroneous and original assessment orders were restored.

Case referred:

M/s Standard Steel & Metal Industries, Sonepat vs. The State of Haryana STA No. 211 of 93-94

Present: Mr. Rajiv Agnihotri, Advocate, for the petitioner.

Ms. Mamta Singal Talwar, AAG, Haryana

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RAJIVE BHALLA, J.

1. The petitioner prays for issuance of a writ of certiorari quashing orders dated 15.04.1994 (Annexures P-8, P-8/A, P-8/B and P-8/C), passed by the Deputy Excise & Taxation Commissioner-cum-Revisional Authority, Rohtak, holding that as Hookas are not "utensils", sales tax would be charged, under the entry relating to general trade.

2. The petitioner is engaged in the business of manufacture and sale of brass/ iron Hookas and their parts. The State of Haryana, issued a notification, dated 18.03.1988, prescribing a rate of 3 paise in a rupee on sale of ferrous and non ferrous metal utensils including brass utensils. The petitioner deposited sales tax at three paise in a rupee by treating Hookas as utensils and accordingly filed a return for assessment year 1989-90, which was accepted by the Assessing Officer. However, for the next assessment year, the Assessing Officer, vide order dated 30.12.1992 held that Hookas are not utensils and by treating them as general goods charged them to sales tax @ 8%. The petitioner filed an appeal before the Joint Excise and Taxation Commissioner (Appeals), Rohtak, which was allowed on 31.03.1993, by holding that as Hookas are utensils, the petitioner is obliged to pay tax at the rate of 3 paise in a rupee. The revisional authority, however, served notices for re-assessment, for assessment years 1988-89, 1990-91, 1991-92 and 1992-93, calling upon the petitioner to show cause why these assessment orders be not revised as Hookas and their parts are not utensils.

3. The petitioner filed a writ petition, praying that the show cause notices be quashed but the writ petition was dismissed as pre-mature. The petitioner, thereafter, filed an application dated 15.06.1994, asking the revisional authority to furnish information of the material that forms the basis of its opinion that Hookas and their parts are not utensils. The revisional authority did not respond to the application but vide order dated 08.12.1993, passed orders Annexures P-8, P-8/A, P-8/B and P-8/C, holding that Hookas are not utensils and ordered recovery of the shortfall in payment of tax. The revisional authority based its opinion upon an order dated 08.12.1993, passed by the Sales Tax Tribunal, Haryana, in STA No.211 of 93-94 (M/s Standard Steel & Metal Industries, Sonepat v. The State of Haryana), holding that a Hooka is not a utensil.

4. Counsel for the petitioner submits that admittedly the State of Haryana has notified that ferrous and non-ferrous metal "utensils", including pressure cookers would invite sales tax at three paise in a rupee. The expression "utensils" is not defined in the Act or under the rules and does not restrict the meaning of the word "utensil" to utensils used in a kitchen. The meaning assigned by the revisional authority, based upon an opinion recorded by the Tribunal in the case of M/s Standard Steel & Metal Industries, Sonepat (supra), is incorrect. A utensil is a tool, receptacle/instrument, vessel or a container and may or may not be used in a kitchen and may depending upon its user, be used for various purposes, at home, in the kitchen, for ceremonial purposes, dairy farming in hotels, restaurants etc. The base of the Hooka, is a receptacle/container used for storing water. A hooka is used in rural households and is also an integral part of social interactions, thereby clearly proving that hooka is a utensil and would, therefore, fall in the entry pertaining to ferrous and non ferrous utensils. The revisional authority has not dealt with submissions oral or written advanced on behalf of the petitioner. The petitioner had been collecting and paying tax for the last many years @ 3% and as there was a bonafide dispute as to classification, namely, the levy of interest and penalty is not warranted.

5. Counsel for the revenue, on the other hand, submits that while exercising power under Section 40(2) of the Haryana General Sales Tax Act, the revisional authority has

rightly relied upon an order passed by the Tribunal in M/s Standard Steel & Metal Industries, Sonepat (supra), to hold that sale of a Hooka falls in general trade and must be taxed @ 8% to a rupee. The mere fact that the word "utensil" is not defined under the Act, does not detract from the fact that a Hooka cannot be held to be utensil as it is used for smoking and cannot be used in a kitchen, hotel, restaurant etc. As regards the assumption of jurisdiction by the revisional authority, it is contended that as the order passed by the Tribunal holding that a Hooka is not a utensil, was binding upon the Assessing Officer, the revisional authority was empowered,in the exercise of power under Section 40 of the Act, to revise the assessment orders. It is further contended that the levy of interest and penalty is a natural consequence of the failure of the petitioner to pay tax at the correct rate.

6. We have heard counsel for the parties, perused averments in the petition as well as reply filed by the State of Haryana and the impugned orders.

7. The question that calls for an answer is whether the Hooka, (brass/iron base) manufactured and sold by the petitioner is a "utensil", for purposes of payment of sale tax under the Haryana General Sales Tax Act, 1973.

8. Admittedly, vide notification dated 18.03.1988, the State of Haryana notified a rate of three paise in a rupee as sales tax for "ferrous and non-ferrous metal utensils including pressure cookers".

9. Admittedly, the petitioner was assessed to sales tax by treating the Hooka, manufactured by the petitioner, as a utensil, but for the following assessment years the Assessing Officer changed his opinion and held that a Hooka is not a utensil and, therefore, chargeable to VAT at 8 paise in a rupee. The petitioner filed an appeal, which was allowed by holding that a hooka is a utensil. The revisional authority, thereafter, revised assessments by placing reliance upon an order dated 08.12.1993, passed by the Sales Tax Tribunal Haryana in M/s Standard Steel & Metal Industries, Sonepat (supra), holding that a hooka is not a utensil. A relevant extract from the order, passed by the Sales Tax Tribunal, in M/s Standard Steel & Metal Industries, Sonepat (supra), reads as follows:-

> "*I have considered the submissions of the parties and have also seen the facts on record. The sole point for consideration before the Tribunal in the present case is whether the Hooka is a utensil or a general goods. This issue is quite clear. The utensils are those pots(goods) which are generally used in kitchens, restaurants and hotels etc. The hookas cannot be said to be utensils in common parlance and is certainly a general good which has rightly been treated as such and has been taxed at the general rate of tax. Since the tax was due with the returns, the levy of interest and penalty both is fully in accordance with the provisions of law for late payment and is hereby confirmed. I, therefore, find no force in the arguments and the appeal is dismissed."*

10. A perusal of the above order reveals that the Tribunal has without reference to any definitions of the word "utensil" or any meaningful discussion, abruptly, held that as utensils are pots/goods, that are generally used in kitchens, restaurants and hotels, a hooka cannot be classified as a utensil.

11. Before we answer the question posed, namely, whether a hooka is a utensil, for the purposes of a Haryana General Sales Tax Act, it would be appropriate to record that words and expressions used in a taxing statute are to be construed strictly and where a generic word appears in a statute, the word so used has to be interpreted and understood in it common generic sense, by reference to the local area to which it applies, and after considering legislative intent, if discernible from the statutory provision.

12. The relevant entry uses the words "ferrous and nonferrous metal utensils including pressure cookers". Neither the Act nor the Rules define the word "utensil". The word, therefore, has to be understood and interpreted in its common generic sense as understood in the State of Haryana. Before recording our final opinion as to the meaning of the word "utensil", it would be appropriate to reproduce the meaning of the word "utensil, as set out in various dictionaries both legal and general, as follows:-

> ***Shorter Oxford Dictionary***
>
> ***Utensil:- "****Any article useful or necessary in a house hold; a domestic implement, vessel, or article of furniture; and instrument or vessel in common use in a kitchen, dairy , etc; any vessel or other article serving a useful end or purpose; a tool or implement used by artisans, farmers, etc."*
>
> ***Stroud's Judicial Dictionary of Words & Phrases, Volume 3, Sixth Edition;***
>
> ***UTENSIL:-*** *"anything necessary for our use and occupation; household stuffe" (Cowel).*
>
> *CHAMBERS 21st CENTURY DICTIONARY, REVISED EDITION-*
>
> *"utensil 'ju tensil'- noun an implement or tool, especially one for every day or domestic use. Cooking utensils. 14C: from French utensil, from Latin utensils 'fit for use' or 'useful', from uti to use."*
>
> *THE NEW INTERNATIONAL WEBSTER'S COMPREHENSIVE DICTIONARY OF ENGLISH LANGUAGE, ENCYCLOPEDIC EDITION-*
>
> *"u-ten-sil (yoo-ten sel) n. A vessel, tool, implement, etc.; serving a useful purpose, especially for domestic or farming use. See synonyms under TOOL. [- OF utensile- L utensils fit for use u-tens, ppr. Of uti use]".*

13. A utensil as commonly understood and defined, is an implement, a tool, a receptacle, a vessel, a container etc. that may be used for various purposes, depending upon the nature of the utensil and the use to which it is put. The same utensil may be used in a kitchen, in a hotel, in a restaurant, for worship, for ceremonial purposes, in a dairy farm, for farming and various other purposes that may require the use of a utensil, as a tool, a receptacle, an instrument, a vessel or a container. A utensil is not necessarily confined to articles used in a kitchen, a hotel or a restaurant but is often misunderstood as referring to an item used in a kitchen. While interpreting words, used in a statute, a court shall make an attempt to discern legislative intent and if discernible, proceed to interpret the word accordingly. A perusal of the relevant entry reveals that it does not confine the word utensil to utensils used in a kitchen. If the State had intended to confine the meaning of the word "utensil" to articles used in kitchens, it could have easily added the words "used in a kitchen", after the word "utensil". The State was conscious that if it assigned such a restrictive meaning to the word 'utensil' it would lead to multiple complications and, therefore, used the generic term "utensil" without linking it to any particular utensil, except pressure cookers, or to the mode and manner of its user or to the place of its user. The word utensil, therefore, must necessarily be understood as a tool, a receptacle, a vessel, an instrument, or a container, than may be used as a tool, a receptacle, an instrument, a vessel or a container.

14. A Hooka, particularly in rural areas of the State of Haryana, is admittedly used to smoke tobacco at home. A hooka is also an integral part of social interactions in rural areas and is, therefore, used at home and in social and public interactions. A Hooka has a brass base fitted with two pipes. The first pipe is attached to an earthen pot where coal and tobacco are placed and the second pipe is used to puff tobacco smoke. The brass base is a receptacle

used for storing water and for fixing the pipes of a Hooka. A Hooka, as referred to above, is used in rural societies, at home or outside and as it is a receptacle/container used for storing water, through which smoke is passed before it is inhaled it would necessarily partake the nature of a utensil. We are, therefore, inclined to hold that in the absence of any legislative intent to confine the meaning of the word "utensil, to any particular place, mode or manner of user, the hooka manufactured by the petitioner must necessarily fall within the meaning of the word "utensil".

15. The opinion recorded by the Sales Tax Tribunal, which forms the basis of the order passed by the revisional authority, reveals a general sweeping assumption that utensils are used only in kitchens, hotels and restaurants, without referring to any definition, recording any meaningful discussion and without referring to fact that a Hooka is used at home and in social interactions, in the State of Haryana. The revisional authority, did not record any independent opinion but relied upon the opinion recorded by the Sales Tax Tribunal in M/s Standard Steel & Metal Industries, Sonepat (supra).

16. We are, therefore, of the firm opinion that the order passed by the revisional authority holding that a Hooka would fall under the entry relating to general trade is based upon a narrow and erroneous interpretation of the word "utensil".

17. In view of what has been recorded hereinabove, we answer the question in favour of the petitioner by holding that the Hooka and its parts manufactured/sold by the petitioner partake the nature of a "utensil", liable to sales tax at the rate of 3 paise in a rupee.

18. Consequently, we allow the writ petition, set aside orders dated 15.04.1994 and restore the original assessment orders.

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PUNJAB & HARYANA HIGH COURT

CWP No. 3903 of 2015

AMIT SINGLA
Vs.
UNION OF INDIA AND ANOTHER

S.J. VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA, J

11th March, 2015

HF ▶ Revenue

WRIT- ALTERNATIVE REMEDY – SHOW CAUSE NOTICE – SERVICE TAX – SHOW CAUSE NOTICE SERVED IN RESPECT OF TAX PAYABLE FOR A SPECIFIED PERIOD - ANOTHER SHOW CAUSE NOTICE SERVED IN RESPECT OF DIFFERENT SERVICES BUT PERIOD ALREADY INCLUDED IN FIRST SHOW CAUSE NOTICE – CONTENTION BY PETITIONER THAT FRESH SHOW CAUSE NOTICE CAN'T BE SERVED IN RESPECT OF DIFFERENT SERVICES FOR PERIOD WHICH IS THE SUBJECT MATTER OF FIRST SHOW CAUSE NOTICE – CHALLENGE TO SHOW CAUSE NOTICE NOT ENTERTAINED AT THIS STAGE – ISSUE TO BE ADJUDICATED BY AVAILING ALTERNATE REMEDY – WRIT DISMISSED.

A show cause notice for assessment years 2005-06 to 2009-10 was issued for recovery of service tax payable in respect of suppressed material. On appeal, the recovery by commissioner was stayed by Tribunal. However, a fresh show cause notice for assessment years 2008-09 to 2011-12 was served in respect of different services. The petitioner contended that since the two years ie 2008-09 and 2009-10 were the subject matter of both notices, fresh show cause notice could not be served. Dismissing the writ, it is held that such issue is to be adjudicated by availing alternate remedy. Challenge to show cause notice is not to be entertained at this stage by court.

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

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S.J. VAZIFDAR A.C.J.

1. The petitioner has challenged a show-cause notice dated 04.10.2013 issued pursuant to and under the provisions of Section 73(1) of the Finance Act, 1994 (for short 'the Act').

2. The petitioner contends that prior to the impugned show cause notice the respondents had served a show-cause notice dated 19.10.2010. One of the contentions in this first show cause notice was that the petitioner had suppressed material in respect of its business of 'Goods Transport Agency'. The respondents contended that the service tax was payable in respect of this part of the petitioner's business. By an order dated 27.06.2012 the Commissioner confirmed and ordered the recovery of an amount of service tax of about ` 70 lacs under section 73(1) of the Act in respect thereof. The order has been challenged by the petitioner before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi. A stay

against the order dated 27.06.2012, we are informed, has been granted and the appeal is pending.

3. The impugned show cause notice dated 04.10.2013 has been issued again under section 73 of the Act in respect of the assessment years 2008-09 to 2011-12. The earlier show-cause notice was in respect of the assessment years 2005-06 to 2009-10. The petitioner contends that two years, namely, the years 2008-09 and 2009-10 are the subject matter of both the show cause notices. However, the second show cause notice is in respect of fresh material and relating to 'Cargo Handling Services" and 'Business Auxiliary Service'. It is contended that this fresh show cause notice even though in respect of different services could not be issued in respect of the period which is already the subject matter of the first show cause notice.

4. We do not consider it either necessary or appropriate to entertain a challenge to the show cause notice on this ground at this stage. Even the issue whether the further show cause notice can be issued in respect of the same assessment year but for different taxable services ought in the first instance be adjudicated upon by availing the alternate remedy provided under the Act. Issues of fact will also be required to be gone into in the event of the question being determined against the petitioner.

5. The writ petition is, therefore, dismissed. Needless to clarify that the petition has been dismissed only on the ground that the petitioner ought to avail of the alternate remedy. We have not expressed any views on-merits.

PUNJAB VAT TRIBUNAL

VATAP No. 502 of 2013

NEELAM STEELS
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.) CHAIRMAN

12th February, 2015

HF ▶ Assessee

NON SPEAKING ORDER- APPELLATE AUTHORITY – CONTENTION RAISED BY APPELLANT THAT REASSESSMENT ORDER PASSED BEYOND LIMITATION AND WITHOUT JURISDICTION BY OFFICER - DISMISSAL OF APPEAL – REASONS FOR ITS CONCLUSION NOT MENTIONED- CONTENTIONS NOT RECORDED – APPEAL ACCEPTED BY TRIBUNAL REMITTING THE CASE BACK TO DETC FOR PASSING A SPEAKING ORDER.

It was contended by the appellant that the reassessment order passed by the Excise and Taxation officer was beyond limitation period as the reassessment was to be framed within a period of five years. But it was framed much later. Also, it was passed without jurisdiction as she had no power to frame it u/s 11 of the Act. The First Appellate Authority has given no reasons for ignoring the plea of the appellant nor has it recorded his contentions raised. No reason while passing its judgement is mentioned. It is held by the Tribunal that a non speaking order has been passed by the Appellate Authority. Matter has been remitted to Ld.DETC to pass a speaking order.

Present: Mr. K.L. Goyal, Sr. Advocate along with
Mr. Rohit Gupta, Advocate counsel for the appellant.
Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. This order of mine shall dispose of two connected Appeal Nos. 502 and 503 of 2013 against the order, dated 27-2-2013 passed by Deputy Excise & Taxation Commissioner (A) Ludhiana Division, Ludhiana whereby he dismissed the appeal against the orders, dated 28-3-2008 passed by the Appellant Authority Ludhiana-3.

2. While dealing with the case under section 20 of the Punjab General Sales Tax Act, 1948 against the re-assessment order for the assessment year 2002-03 imposed a penalty of Rs. 5,000/- under Punjab General Sales Tax Act 1948 and Rs. 4,57,137/- and also Rs.

9,14,275/- respectively under Central Sales Tax Act, 1956.

3. The counsel for the appellant has argued that the order passed by the Excise and taxation Officer is beyond jurisdiction as show was appointed as Designated Officer under the Punjab Value Added Tax Act, 2005 only and has no power to frame reassessment u/s 11(A) of the repealed act. The order is totally illegal and not sustainable. The appellant authority has not gone through the arguments and did not mention the same in the order and the reason to ignore the said arguments are also not mentioned, the onus of which was upon the assessing authority. No penalty u/s 23 of the Punjab General Sales Tax Act can legally be imposed by simply reopening the case after such a long time.

4. The counsel for the appellant has further urged that the case does not involved the application of mind. The appellant authority did not examine and discuss the reasons for framing. The reassessment of the assessment year 2002-03 after such a long time i.e. on 28-3-2008. The order is non speaking.

5. As regards the question of reassessment of the assessment for the year 2002-03, it could be reassessed within 5 years from 30-5-2003. The proceedings for the reassessment were initiated on 31-3-2006. Therefore assessment cannot be said to be time bound. As regards the other arguments raised by the appellant, the appellant authority has not assigned any reason for ignoring the same. The relevant order passed by the Deputy Excise & Taxation Commissioner reads as under:-

> *"I have heard the arguments of both the sides and gone through the facts available on the file in a careful manner. Accordingly, the arguments put forth by the counsel have no force. So in view of the facts of the case and in the interest of natural justice both the appeals are dismissed and order of Excise & Taxation Officer is sustained."*

6. The basic spirit behind the passing of the judgment is to apprise a party of the decision of the officer and the reasons for his decision. The officer while passing the judgement must record the contentions as raised by the counsel for the appellant and reasons for his agreement or dis-agreement with them while recording his conclusions. The Appellant Authority has failed in performing its obligations while passing the impugned order. The order being non speaking needs to be set-aside.

7. Resultantly, this appeal is accepted and the case is remitted back to the Deputy Excise and Taxation Officer(A) Ludhiana Division, Ludhiana for passing a speaking order. After discussing the arguments put forth by the appellant, the parties are directed to appear before Deputy Excise and Taxation Commissioner, Ludhiana on 16-3-2015. Copy of the order be placed in the connected Appeal No. 503 of 2013.

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CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT DRAFT NOTIFICATION

The _____ March, 2015

No. E&T-ETO (Ref.) 2015)/_____. The following draft of the amendment which the Administrator, Union Territory, Chandigarh, in exercise of the powers conferred by sub-section (3) of the Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), as extended to the Union Territory, Chandigarh and all other powers enabling him in this behalf, proposal to revise Schedule A, Schedule 'B', Schedule 'C', Schedule 'C-1', Schedule 'E' and Schedule 'F' appended to the said Act is hereby published for the information of persons likely to be affected thereby.

Notice is hereby given that the said draft amendment will be taken into consideration by the Chandigarh Administration on or after the expiry of 15 days from the date of its publication in the official gazette together with objections or suggestions, if any, which may be received by the Excise and Taxation Commissioner, Union Territory, Chandigarh from any person with respect to the draft amendment before the expiry of the period so specified:-

DRAFT AMENDMENT

1. In the said Schedule 'B', in Serial No. 60 and entries relating thereto, item namely 'Cell Phone' shall be omitted;
2. In the said Schedule 'C-1', item namely "Pulses", thereto shall be omitted;
3. In the said Schedule 'F', the items namely, "batteries" and "Timber" shall be omitted;
4. In the said Schedule 'A', after Serial No. 65 and the entries relating thereto, the following Serial number and item shall be added namely:
   "66. Blanket"
5. In the said Schedule 'B', after Serial No. 156 and the entries relating thereto, the following Serial number and item shall be added, namely,
   "157. Timber"
6. In the said Schedule 'C, after Serial No. 4 and the entries relating thereto, the following Serial number and item shall be added namely,
   "5. Pulses"
7. In the said Schedule 'E', after serial No: 8 and the entries relating thereto, the following Serial numbers, items and rate of taxes shall be added, namely:
   "9. Batteries - 14.30%"
   "10. Mobiles - 9.35%"

Sd/-
Sarvjit Singh, IAS,
Secretary Excise & Taxation,
Chandigarh Administration

Published by the Tribune

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NEWS OF YOUR INTEREST

BUDGET PRESENTED IN HARYANA ASSEMBLY

The Khattar government shied away from imposing new taxes in its maiden Budget presented in the Haryana Assembly today. This is in line with the priorities set by the Modi government at the Centre.

Finance Minister Capt Abhimanyu pushed for growth by granting higher allocation to almost all sectors, ignoring fiscal discipline in the hope of generating higher revenue by boosting manufacturing and industrial growth.

With higher allocations for education, skill development, job creation and power, Chief Minister Manohar Lal Khattar seeks to give a fillip to his government's "Make in Haryana" campaign.

The government expenditure from consolidated fund will be Rs 61,869.62 crore during 2015-16, while its revenue receipts will be Rs 52312.10 crore, leaving a revenue deficit of Rs 9,557.52 crore.

In this, the plan expenditure is pegged at Rs 25,743.46 crore and non-plan expenditure at Rs 43,396.83 crore in the total expenditure of Rs 69,140,29 crore.

The Finance Minister said his Budget was guided by the spirit of "faster growth, balanced regional development and good governance…Our government does not view the Budget as a mere exercise of presenting the statement of government receipts and expenditure of a given year. It is rather an expression of our vision of economic strategy and an instrument of social development, change and inclusion."

Under the Revised Estimates (2014-15), the total revenue receipts (TRR) is expected to be Rs 45,419.14 crore comprising tax revenue of Rs 33,402.75 crore and non-tax revenue of Rs 12,016.39 crore.

As per the Budget Estimates (2015-16), the TRR is Rs 52,312.10 crore of which tax revenue is estimated to be Rs 38,929.40 crore and non-tax revenue Rs 13,382.70 crore, registering a growth of 15.18 per cent over the revised estimates of 2014-15.

The Revenue Expenditure for Revised Estimates (2014-15) is estimated to be Rs 54,919.10 crore, while for Budget Estimates (2015-16) it is pegged at Rs 61,869.62 crore indicating an increase of 12.66 per cent. Of this, Rs 17,060.56 crore will be spent on salaries, Rs 5,900 crore on pensions and Rs 8,563.75 crore on interest payments on borrowings.

Though there were no new taxes, the Finance Minister announced a relief in VAT on biofertiliser, LED lights, pipe fittings and prefabricated steel structures. This concession would cost the exchequer Rs 21 crore, but benefits in terms of energy saving, etc. are expected to offset the revenue loss.

The Budget lays special emphasis on the social sector with the announcement of the Beti Bachao ASHA Protsahan Yojana, the Apki Beti-Hamari Beti Scheme and the Kanya Kosh Scheme aiming to protect the girl child.

The incentive money from for inter-caste marriages has been increased from Rs 50,000 to 1 lakh. A new scheme called 'Garvit -Youth for Rural Development' has been launched with a pilot project to accelerate socio-economic change in the rural areas.

To provide a clean environment in villages, another scheme 'Swachh Haryana-Swachh Bharat Abhiyaan' has been launched. The Vidhayak Aadarsh Gram Yojana and the 'Swaprerit Aadarsh Gram Yojna' have also being launched for development of villages with active participation of MLAs, prominent persons and organisations.

Though, several parts of the Finance Minister's speech were a repeat of what has been stated in the Governor's address and by Khattar, the Finance Minister included some items from the party manifesto such as linking 4,000 villages with 100 Mbps Internet connectivity by September, 2015; and supplying bajra and maize at a subsidized rate of Rs 1 per kg through public distribution system next year, in addition to wheat at Rs 2 per kg.

But there is no mention of unemployment allowance to the youth promised in the BJP's election manifesto. Captain Abhimanyu said his government was on a path to fiscal correction by reducing non-plan expenditure and revenue deficit.

Courtesy: The Tribune

17th March, 2015

EXCISE POLICY REGARDING LIQUOR

The Punjab cabinet on Friday approved its excise policy for the financial year 2015-16 with the aim of "**providing good quality liquor at affordable prices"** and announced a host of measures in this regard.

The minimum retail prices of Punjab Medium Liquor and Indian Made Foreign Liquor have been kept at same level as the current year. The cabinet also approved reducing the cost of country liquor. A statement issued by the Chief Minister's office said that the prices of country liquor, which was consumed by common man, would be brought down from the current level.

To add to the cheer of the country liquor enthusiasts, the cabinet has also decided added that country liquor of 75 per cent strength was being introduced keeping in view the demand from the consumers in this regard.

In another move, the new excise policy will ensure that canned beer (both light and strong) will be made available at the duty of light beer. However, the statement from Chief Minister's office added that this was being done to "wean away people from hard drinking". In more good news for the tipplers, liquor served in the functions at marriage palaces would be made available at lesser prices. Now people can buy liquor from any vend in the relevant circle. There will also not be any checking during the functions barring exceptional circumstances, the statement added.

Also, the maximum retail prices of liquor to be served in the marriage palaces for various functions, have been fixed and would be displayed conspicuously on the website of the excise department and the same would be made available by the offices of the department at the time of issuing permits.

The new policy will fetch revenue of Rs.5040 crores during 2015-16, as against revenue of Rs.4680 crores during the current year, registering an increase of Rs.360 crores.

In another major decision which will give relief to land owners across the state, the cabinet has allowed them to remove any minor mineral from their land for meeting personal land filling requirements or bonafide personal requirements including religious activities. The Cabinet also gave approval for amending the Punjab Minor Mineral Rules, 2013 thereby giving certain exemptions which will allow the farmers to level their agricultural fields and sell the extra minor mineral coming out of such activity.

The Cabinet also approved the Second Punjab Rural Water and Sanitation Sector Improvement Project of Rs.2200 Crore to be funded by the World Bank. The Project is aimed at ensuring higher service level of drinking water supply and sanitation, effective operation and maintenance of rural drinking water supply schemes and construction of toilets in all villages making Punjab free from open defecation. The project also envisages setting up water treatment facilities in villages where the water was found to be contaminated. There was also a proposal to shift source of drinking water supply from ground water to surface water in some select villages under this project. The project would be implemented in six years from 2015 to 2021.

Courtesy: Indian Express

14th March, 2015

SGA
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LOCAL AREA DEVELOPMENT TAX ON SUGAR

The Punjab government is planning to impose entry tax on sugar coming from other states. A bill was to be moved on the last day of the budget session on Wednesday, but it was deferred so that the issue could be discussed threadbare and the interests of all stakeholders – sugar manufacturers, sugarcane farmers and consumers – are protected.The idea of entry tax on sugar emerged after mill owners met Punjab chief minister Parkash Singh Badal a fortnight ago and gave him an ultimatum that they would close the mills as the industry was facing a crisis.

"The state's industry is hit by lower-priced sugar coming from Uttar Pradesh," said Rana Inderpartap Singh of Rana Sugar mills, part of the delegation that met CM. He added that price of sugarcane was `29 a kg, while sugar was selling for Rs 26 per kg.

"So, the idea to impose entry tax on sugar from outside states was discussed within the government," said Inderpartap's father Rana Gurjeet Singh who is a Congress party MLA.

"We did not want to take any decision in a hurry, so we deferred the introduction of the bill," Punjab industries minister Madan Mohan Mittal told HT.

"Punjab's sugar manufacturers are suffering because sugar entering the state's market is priced `3-4 lower per kg, compared to the state-produced sugar," he added.

He added that the government planned to impose up to 20% entry tax on the difference in price of sugar coming from outside the state and that manufactured in Punjab. Estimates by the industry department suggest that the state could collect between Rs 150 and Rs 200 crore from the levy, besides proving a level-playing field to the state sugar industry.

The entry tax would go into a corpus fund used to make payment to the sugarcane farmers. "Interest of two stake holders — the sugar manufacturer and the farmer is being guarded with the proposal, and we want consumers interest also to be protected, so the issue would be discussed in detail in a meeting of council of ministers," said Mittal.

Sources said the bill was withdrawn when deputy CM Sukhbir Singh Badal and industries minister Madan Mohan Mittal decided to take up the matter in the cabinet.

"Mills owners have threatened to shut down, so where would the sugarcane farmer go, the government must act fast and support the farmers," said state agriculture minister Tota Singh.

Punjab owes Rs 600 crore to sugarcane farmers and it has kept budgetary provision of the same amount to be paid to cooperative sugar mills, said Singh.

There are 16 sugar mills in Punjab – nine cooperative and seven private. A total of 7.5 lakh tonne of sugar is manufactured in Punjab and the total consumption is 10 lakh tonne.

"More than 2.5 lakh tonne sugar enters the state's market at lower rates, disturbing the market," added Rana Inderpartap, claiming that the entry tax was the only way to save the mills.

Courtesy: Hindustan times

27th March, 2015

POLITICS OVER AETC POST INTENSIFIES

Intense lobbying by prospective candidates from Punjab and Haryana, who are in the race for the deputation post of Assistant Excise and Taxation Commissioner (AETC), has put the top UT officials in a tight spot.

Barring the last AETC, RC Bhalla, a UT-cadre officer, the post has been occupied by a Punjab- or Haryana-cadre officer.

A section of the enterprising candidates in their effort to "grab" the post are using political connections in their respective states to impress upon their state cadre IAS officers in the UT to finalise their names.

Names of eight candidates, including five from Punjab, were forwarded along with the no-objection certificates from their respective excise secretaries to the UT for filling the post of AETC. The candidates from Punjab are Jaskaran Brar, Lajpal Jhakkar, Shalin Walia, Magnesh Sethi and Rajesh Malhotra.

Contrary to Punjab, Haryana has sent a panel of junior officers. Two of the three names in this panel are Varinder Singh and Ravinder Kaushik.

To ensure that frontrunners from Punjab are eliminated from the race, papers of pending department inquires and complaints have been reaching the office of the UT Administrator, UT Adviser, Finance Secretary and Excise Commissioner. To counter that, the affected candidates have been going to each of the officer to explain that no case was pending against them.

"The post of AETC is important as the state officers would protect the interest of the respective state while framing the excise policy," said an officer.

One of the frontrunners, who is close to the SAD leadership in Punjab, is learnt to have used his connection to put in a word before a senior Punjab-cadre officer on deputation in Chandigarh. Another candidate from Punjab Excise Department has used his closeness to a senior official in the department to prevail upon his counterpart in the UT. The matter is learnt to be in the knowledge of UT Adviser Vijay Kumar Dev.

According to an unconfirmed report, the matter has been left to the UT Administrator and Haryana Governor, Kaptan Singh Solanki, who is also holding the charge of the Punjab Governor.

Sources said one of the officers had sought another panel of officers so that the controversy could be put to rest. But the final decision is awaited. In the war between Punjab and Haryana officials, the UT claim over the post of the AETC has been pushed to the background.

Courtesy: The Tribune

27th March, 2015

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EXCISE DEPT MOVES TO RE-EMPLOY TWO OFFICIALS THROUGH BACK DOOR

The Punjab excise and taxation (E&T) department has quietly moved to re-employ a retired additional commissioner (E&T), a Punjab Civil Services (PCS) officer, and a deputy commissioner (E&T) through the back door even as the Punjab government had issued instructions not to induct a superannuated state civil servant on contract or be given extension in service.

Additional excise and taxation commissioner (administration) Surinder Kaur Riar, whose contractual services ended on December 31, 2014, has already been appointed as the additional chief executive officer of the excise and taxation technical services agency (ETTSA).

Similarly, there is a move to re-employ deputy excise and taxation commissioner SS Bangra as the assistant chief executive officer of the ETTSA, whose contractual services would end on March 31.

The Punjab government had created the ETTSA for the implementation of technical projects in the department and also to oversee its information technology (IT) related work. Punjab chief minister Parkash Singh Badal is the chairman of the ETTSA in the ex-officio capacity.

The government is also planning to give additional charge of the additional excise & taxation commissioner (administration) to Riar as the previous incumbent, Shivdular Singh Dhillon, has been transferred as the director, Punjab food and civil supplies department, after being elevated to the IAS cadre. Dhillon was also holding the additional charge of the CEO, ETTSA.

Sources revealed that Riar's file pertaining to her appointment was cleared by the chief minister's office and attempts were on to get a clearance for giving her additional charge of the additional commissioner (administration).

Punjab excise and taxation commissioner Anurag Verma confirmed that Riar had been appointed as the additional CEO of the ETTSA. Asked if she was also being appointed as additional excise and taxation commissioner (administration), Verma said he was not sure as the decision would be taken at the higher level.

"Since Dhillon has been transferred, some officer has to be posted to take the responsibility of the chair," said Verma adding that Bangra was retiring on March 31 and a final decision in the regard would be taken later.

Riar, who retired in 2011 at the age of 58, has already completed four-year contractual service on December 31, 2014.

Recently, the Punjab government had issued orders that no retired PCS officer would be re-employed or taken back on contract after December 31. The government decided not to extend services of 28 PCS officers who were re-employed on contract.

"This is gross violation of the rules by officials. The post of additional commissioner, E&T (Admn), is substantive and only a senior PCS officer could be posted on it. Moreover, the government has issued no advertisement before deciding to re-employ the two officials," said a member of Punjab PCS Officers' Association.

There is also resentment among the department officials who say they have no option but to move the court to stall the appointment of Bangar through the backdoor.

"The Punjab and Haryana high court had passed strictures against Bangra on March 18, 2013, telling the excise and taxation commissioner of Punjab not to post him on a position that directly deals with roadside checking or for the purpose of verification of goods and also for initiation of disciplinary action against him for consistently acting in violation of law," said a department official.

Courtesy: Hindustan times

27th March, 2015