(2010) 01 P&H CK 0237

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 858 of 2009

Kashatriya Sabha Maharana Partap Bhawan		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Jan. 29, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 10(22), 10(23C), 11(1), 11(2), 11(5)

Citation: (2010) 194 TAXMAN 442

Hon'ble Judges: M.M. Kumar, J; Jaswant Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.M. Kumar, J.

This order shall dispose of a bunch of petitions as the issues raised are common. The facts of all the cases in brief have been referred. It is, however, pertinent to mention that all the issues in this bunch of petitions are common to the decision rendered today by us in another bunch of petitions titled as Pinegrove International Charitable Trust v. Union of India [2010] 188 Taxman 402 (Punj. & Har.). The only difference is that in those cases exemption granted u/s 10(23C)(vi) of the Income Tax Act, 1961 (for brevity, "the Act") was withdrawn whereas in this bunch, the exemption has not been granted. However, in sum and substance the controversy is substantively the same as the grounds of withdrawal and non-grant of exemption are identical. Accordingly, first the facts of all these cases be noticed.

2. Facts

2.1 CWP No. 20574 of 2008

2.1-1 Amir Education Society, Faridabad-Petitioner has challenged order dated 30-9-2008 (P-8) passed by the Chief Commissioner of Income Tax, Panchkula,

rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2008-09 to 2010-11. The Petitioner is a Society registered under the Societies Registration Act, 1860. The Petitioner-Society was formed with the object of establishing a progressive School at Faridabad with a view to impart education. It has been claimed that the founder members had given their agricultural land, total measuring 65 Kanals 15 Marias, on lease for a period of 30 years on nominal lease rent of Rs. 1 per year for the exclusive use of a school, namely, Modern Delhi Public School. On the aforesaid land the construction of school building was to be made. The construction of the school building was started in the financial year 2007-08, however, the school started functioning from the financial year 2006-07 itself in a building taken on rent from Haryana Urban Development Authority in Sector 21-C, Faridabad. On 22-12-2007, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment year 2008-09 onwards in the prescribed Form 56-D. A notice of hearing dated 14-8-2008 was issued to the Petitioner-Society. It was directed to furnish certain clarifications/information as also copy of the audit report for the assessment year 2008-09.

2.1-2 The case of the Petitioner-Society for grant of exemption in respect of assessment years 2008-09 to 2010-11 was taken up by the Chief Commissioner of Income Tax, Panchkula. The Chief Commissioner, vide the impugned order dated 30-9-2008, rejected the claim of the Petitioner-Society. At the outset it has been observed by the Chief Commissioner of Income Tax that out of the 11 members of the Petitioner-Society, 9 members belongs to one Girdhar family, who control and manage the affairs of the Petitioner-Society. However, none of them is a outstanding educationist. All the key posts in the Petitioner-Society are manned by the male members of the Girdhar family.

2.1-3 Some discrepancies regarding unsecured loans advanced to two members, namely, Sarvshri Amir Chand and Davinder Kumar have been noticed. It has been found that there was vast difference in the amounts of loan shown in the balance sheets as on 31-3-2007. The Chief Commissioner of Income Tax also considered the report of the Commissioner of Income Tax, Faridabad, dated 11-9-2008, who has pointed out that the discrepancies in the balances of the President and Vice-President of the Petitioner-Society as on 31-3-2007 was not a clerical error but similar discrepancies were also noticed during the assessment year 2006-07. It has further been noticed that the Assessee-Petitioner has not filed copy of Form No. 10BB and the balance sheet as on 31-3-2008.

2.1-4 In para 8 of the impugned order, the Chief Commissioner has also noticed shortcomings with regard to expenditure of Rs. 79,29,132 by the Petitioner-Society under the head of Charge of Land Use, which are stated to have been paid by Shri Amir Chand to the Municipal Corporation in respect of the land lease to the Society but the same have been accounted in the books of account of the Society.

2.1-5 It has further been found that in the balance sheet and income and expenditure account of the school for the year ending 31-3-2007, the repairs of the school building have been shown whereas there was no building. On account of rent, a substantial amount of Rs. 53.87 lakhs has been debited in the income and expenditure account of the school out of the total expenditure (including depreciation) of Rs. 1.35 crores in the year ending 31-3-2007.

2.1-6 The Chief Commissioner has also referred to the objects of the Petitioner-Society, as contained various paras of the Memorandum of Association and came to the conclusion that the same are repugnant to the condition prescribed in Clause (b) of the un-numbered third proviso of Section 10(23C) of the Act as the Petitioner-Society has power to invest/ deposit its funds in forms or modes other than those specified in Section 11(5) of the Act.

2.1.7 It has also been found that there is intermingling of the accounts of the members of the Girdhar family and of the Petitioner-Society. The assets of the Petitioner-Society can very easily be reverted back to Shri Amir Chand or his other family members. Shri Amir Chand, Shri Davinder Kumar and his son have advanced substantial loans to the Petitioner-Society. Though it is shown that they arc not carrying any interest but it is immaterial since all the assets of the Society are under their control.

2.1 -8 In para 13 of the impugned order, it has been specifically noticed that as per Rule 7 of the Rules and Regulations of the Petitioner-Society, any donor of Rs. 51,000 and above can nominate one pupil for admission to a school belonging to the Society. Accordingly, it has been inferred that this clause gives an unfair advantage to the rich vis-a-vis poor as far as admissions in the school are concerned. This also shows that educational institution of the Petitioner-Society is guided by commercial considerations.

2.1-9 After considering all the aforementioned aspects, the Chief Commissioner of Income Tax finally reached the conclusion that the activities of the Petitioner-Society cannot be regarded as genuine and the condition for grant of exemption u/s 10(23C)(vi) of the Act i.e. "the educational institution should be existing solely for educational purposes and not for the purposes of profit" is not satisfied in the instant case. Thus, he has rejected the claim of the Petitioner-Society.

2.2 CWP No. 858 of 2009

2.2-1 Kshatriya Sabha, Kurukshetra-Petitioner has challenged order, dated 25-4-2008 (P-4) passed by the Chief Commissioner of Income Tax, Panchkula, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2007-08, 2008-09 and 2009-10. The Petitioner is a Society registered under the Societies Registration Act, 1860. It has been running two schools at Kurukshetra, which are affiliated to Central Board of School Education, New Delhi. It is claimed that the Petitioner Society"s educational

institution is existing solely for educational purposes and not for the purpose of profit. On 30-1-2007, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2007-08, 2008-09 and 2009-10

2.2-2 The Commissioner of Income Tax, Karnal, was asked to furnish a report, who in turn forwarded the detailed report of the Assessing Officer, vide letter dated 22-2-2008. The Assessing Officer did not recommend the case of the Petitioner-Society for exemption u/s 10(23C)(vi) of the Act, inter alia, on the ground that a portion of the income of the Assessee has been applied for purposes other than educational purposes, which is not exempted u/s 10(23C) and is taxable. The Assessing Officer also pointed out that the kitchen expenses, which were related to purposes other than the educational purposes, during the assessment years 2003-04 to 2007-08 had been debited in the income and expenditure account of the Assessee. It was also reported that additions of Rs. 1,50,468 in respect of assessment year 2003-04 and Rs. 1,48,409 in respect of assessment year 2004-05 have been made while completing the assessments u/s 143(3) of the Act. It was also mentioned by the Assessing Officer in his report that the aims and objects of the Assessee-Petitioner are to improve the social status of their community and the kitchen expenses referred to above were, in fact, incurred on the members of the Petitioner-Society/donors, who visited Kurukshetra, therefore, the same have been used for their hospitality. The Commissioner of Income Tax, Karnal, vide his letter dated 2-4-2008, also endorsed the views expressed by the Assessing Officer holding that the activities and objects of the Petitioner-Society are not solely for educational purposes.

2.2-3 Thereafter, an opportunity of being heard was afforded to the Assessee-Petitioner asking it to explain as to how it was eligible for exemption u/s 10(23C)(vi) of the Act. It was also asked to furnish copies of Form No. 10BB for the assessment year 2007-08, balance sheets of the school and Society as on 31-3-2007 and income and expenditure account for the financial year 2006-07. On 10-4-2008, the Petitioner-Society filed its written submissions as well as the documents called for. The Assessee-Petitioner took the plea that it had filed an appeal before the Commissioner of Income Tax (Appeals), Karnal, against the additions made by the Assessing Officer for the assessment year 2004-05, who deleted the same vide order dated 3-3-2008. On being asked to do so, the Commissioner of Income Tax, Karnal, again forwarded another comprehensive report of the Assessing Officer, vide letter, dated 15-4-2008, stating that detailed facts and reasons had been given by the Assessing Officer for making the additions u/s 143(3) in respect of assessment years 2003-04 and 2004-05 and that the Assessee has not furnished correct facts of its activities before the CIT(A).

2.2-4 On 17-4-2008, the Assessee-Petitioner was again asked to explain its position. Simultaneously, the Commissioner of Income Tax, Karnal, was asked to send his further report and specific comments as to whether the Assessee-Petitioner

qualifies for grant of exemption u/s 10(23C)(vi) as also to intimate whether any appeal has been preferred against the order of the CIT(A).

2.2-5 On 21-4-2008, Commissioner of Income Tax, Karnal, again sent his report to the effect that the Assessee-Petitioner''s case is of misapplication of funds for non-educational purposes and not for the attainment of the declared objects, therefore, it did not qualify for exemption. On 23-4-2008, the Assessee-Petitioner again filed its written submissions reiterating that the CIT(A) has deleted the additions made by the Assessing Officer for the assessment year 2004-05.

2.2-6 In the aforementioned factual premise, the Chief Commissioner of Income Tax, Panchkula, proceeded to decide the claim of the Petitioner-Society for grant of exemption u/s 10(23C)(vi) of the Act and in para 13 of the impugned order held as under:

13. It is seen that these factually specific and categorical findings of the Assessing Officer have not been plausibly rebutted by the Assessee in spite of the two opportunities of being heard given to it. A perusal of the enclosures with the report of the Assessing Officer also reveals that apart from kitchen expenses, certain function expenses have also been debited by the Assessee in its books of account on a regular basis. The Assessee has also not come forward with any details as to for which specific functions/ceremonies of the School these expenses have been incurred. The Assessing Officer has reported that similar types of expenses are being debited in the accounts in the ''subsequent years also. In a nutshell, from the facts brought out on record, it is seen-that the income of the Society/School is not being utilized exclusively for educational purposes and it is, therefore, clear that the educational institution run by the Society is not existing solely for educational purposes. The basic requirement of the Sub-clause (vi) of Clause (23C) of Section 10 is therefore, not fulfilled by the Assessee applicant. The application of the Assessee for the grant of exemption/approval u/s 10(23C)(vi) is, therefore, hereby rejected.

2.2-7 It is, however, relevant and pertinent to mention here that against the order passed by the CIT (Appeal), dated 3-3-2008 (P-2) and appeal by the revenue was filed before the Income Tax Appellate Tribunal, Chandigarh Bench (A), which has been dismissed by the Tribunal vide its order dated 20-10-2008 (P-3).

2.3 CWP No. 2721 of 2009.

2.3-1 Sanathan Dharam Adarsh Vidayalaya, Gurgaon-Petitioner has challenged order dated 13-1-2009 (P-6) passed by the Chief Commissioner of Income Tax, Panchkula, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2008-09, 2009-10 and 2010-11. The Petitioner is an educational institution registered as Society under the Societies Registration Act, 1860. It has been running two schools. The main object of the Petitioner-Society is to manage schools and to do such things as are incidental thereto. The Petitioner-Society was granted exemption u/s 10(23C)(vi) of the Act in

respect of assessment years 1999-2000 to 2001-02 and 2002-03 to 2004-05 vide orders dated 11-10-2006 and 5-5-2006 respectively. It is claimed that on 14-3-2005, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2005-06 to 2007-08 in the prescribed Form 56-D, however, no orders were passed on the aforementioned application. It has further been asserted that on 20-2-2008, the Petitioner-Society filed application in Form 56D for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2008-09 to 2010-11. On 16-10-2008, it filed information sought by the Chief Commissioner of Income Tax, Panchkula, while holding camp office held at Gurgaon on 14-10-2008.

2.3-2 The case of the Petitioner-Society for grant of exemption in respect of assessment years 2008-09 to 2010-11 was taken up by the Chief Commissioner of Income Tax, Panchkula. The Chief Commissioner, vide the impugned order dated 13-1-2009, rejected the claim of the Petitioner-Society primarily on the ground that the educational institution being run by the Petitioner-Society is generating substantial surplus year after year, which has ranged from 33.84 per cent to 39.36 per cent in the last four years. Even after reducing depreciation, the surplus/excess of income over expenditure in all these years is found to be quite high reaching up to 30.48 per cent in the financial year 2006-07. The Chief Commissioner

noticed the income and expenditure accounts of the Petitioner Society for the last four years starting from the year ending on 31-3-2005 up to 31-3-2008 and found that the surpluses/profits generated by the educational institutions cannot be regarded as merely incidental and the same are systematic and substantial. The Chief Commissioner after relying upon the judgment of the Uttarakhand High Court rendered in the case of CIT v. Queens Educational Society [2009] 177 Taxman 326, came to the conclusion that the Petitioner-Society is consistently and systematically generating profits and surpluses year after year and merely because it is making some capital expenditure for the assets of the schools out of this income, is not enough to claim exemption.

2.3-3 The other ground for rejecting the claim of the Petitioner-Society for grant of exemption is evident from perusal of para 14 of the impugned order. The Chief Commissioner has noticed that the Petitioner-Society had not filed the audit reports in Form No. 10BB for the assessment years 2006-07 to 2008-09, which are required to be filed mandatorily along with the returns of income under un-numbered tenth proviso of Section 10(23C) of the Act. Laying stress on the word ''solely'', which appears in Section 10(23C)(vi) of the Act, the Chief Commissioner has given a finding that it cannot be said that the Petitioner-Society and the educational institution run by it are existing solely for the purpose of education and not for the purpose of profit.

2.4 CWP No. 4954 of 2009.

2.4-1 The Maharaja Aggarsain Public School Society, Kurukshetra- Petitioner has challenged order dated 3-11-2009 (P-4) passed by the Chief Commissioner of Income Tax, Panchkula, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment year 2008-09 onwards. The Petitioner is a charitable Society established in 1981 and registered under the Societies Registration Act, 1860. It has been running a co-educational English Medium Public School up to +2 standard at Kurukshetra, which is affiliated to Central Board of School Education, New Delhi. The main object of the Petitioner-Society is to educate the rural children with the latest and modern techniques of educational practices. The Petitioner-Society was granted exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2004-05 and 2005-06 to 2007-08 vide orders dated 4-9-2006 and 29-10-2007 respectively. It is claimed that the Petitioner-Society''s educational institution is existing solely for educational purposes and not for the purpose of profit. On 19-2-2008, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2008-09 onwards in the prescribed Form 56-D.

2.4-2 The case of the Petitioner-Society was taken up by the Chief Commissioner of Income Tax, Panchkula and on 16-10-2008 the Petitioner-Society filed its written submissions. The Chief Commissioner, vide the impugned order dated 3-11-2008, rejected the claim of the Petitioner-Society primarily on the ground that the educational institution being run by the Petitioner-Society is generating substantial surplus year after year and the excess of income over expenditure after excluding depreciation was 34.83 per cent during the year ending 31-3-2008. The Chief Commissioner noticed the income and expenditure accounts of the Petitioner-Society for the last five years starting from the year ending on 31-3-2004 and up to 31-3-2008 and found that without considering depreciation the actual surplus of the educational institution in question has ranged from 32.02 per cent to 42.35 per cent during those years. It has been further pointed out that even if the depreciation is taken into account, the surplus/ excess of income over expenditure in all these years is very high and ranges from 26.22 per cent to 35.24 per cent and after incurring the capital expenditure the Assessee-Petitioner is retaining substantial surplus in its books of account year after year. The Chief Commissioner after relying upon the judgment of the Uttarakhand High Court rendered in the case of Queens Educational Society (supra) came to the conclusion that the Petitioner-Society is consistently and systematically generating profits and surpluses year after year and merely because it is making some capital expenditure for the assets of the schools out of this income, is not enough to claim exemption. Laying stress on the word ''solely'', which appears in Section 10(23C)(vi) of the Act, the Chief Commissioner has given a finding that it cannot be said that the Petitioner-Society and the educational institution run by it are existing solely for the purpose of education and not for the purpose of profit.

2.5 CWP No. 6343 of 2009.

2.5-1 Lord Jesus Education Society, Gurgaon-Petitioner has challenged order dated 3-11-2008 (P-5) passed by the Chief Commissioner of Income Tax, Panchkula, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2008-09 to 2010-11. The Petitioner is a Society registered under the Societies Registration Act, 1860. The main object of the Petitioner-Society is to start, maintain or otherwise manage schools, hostel, libraries, reading rooms, or other centers of similar-nature. The Petitioner-Society''s aim is to help, encourage and assist in spreading education for all classes of citizens of India and service to humanity. It has been running three schools for imparting education. The Petitioner-Society was granted exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2002-03 to 2004-05 and 2005-06 to 2007-08 vide orders dated 4-5-2006 and 30-5-2007 respectively. It is claimed that on 19-12-2007, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2008-09 to 2010-11 in the prescribed Form 56-D. A show-cause notice dated 14-8-2008 was issued to the Petitioner-Society. It was directed to furnish complete details of loan transactions and to clarify as to whether the funds of the institution have been invested in modes specified u/s 11(5) of the Act. The Petitioner-Society was further required to explain the reasons for not filing the audit reports in Form 10BB in respect of assessment years 2006-07 to 2008-09 along with the return of income of these years. On 8-9-2008, the Petitioner-Society furnished the required information.

2.5-2 The case of the Petitioner-Society for grant of exemption in respect of assessment years 2008-09 to 2010-11 was taken up by the Chief Commissioner of Income Tax, Panchkula. The Chief Commissioner, vide the impugned order dated 3-11-2008, rejected the claim of the Petitioner-Society. It has been observed by the Chief Commissioner of Income Tax that report of the Commissioner of Income Tax, Faridabad, dated 15-9-2008, was received to the effect that the Petitioner-Society has lent a very substantial amount of several lakhs of rupees to Shri Ashok Sardana, a Governing Body member, which was not in accordance with the provisions of Section 11(5) of the Act. The CIT, Faridabad, did not recommend the case of the Petitioner-Society for approval u/s 10(23C)(vi) of the Act. It has further been noticed that the audit reports in Form No. 10BB were not filed along with the respective returns by the Petitioner-Society.

2.5-3 With regard to advancement of loan to Shri Ashok Sardana, the stand taken by the Petitioner-Society in its reply dated 8-9-2008 was that in the year 2001 they decided to shift the Preparatory School to another building to make available the rooms for XI and XII classes. Since no premises in the vicinity of the school were available and the authorities did not allow running of the school in a residential area, therefore, a loan of Rs. 5,50,000 was given to Shri Ashok Sardana on 1 -6-2001 for construction. It was further stated that interest at the rate of 14.5 per cent has been charged on the said loan. The balance of the loan as on 31-3-2007 was Rs. 4,46,456.

2.5-4 After considering the aforementioned reply, in para 8 of the impugned order the Chief Commissioner of Income Tax came to the conclusion that if a building was required for the purposes of the school then as to why the same was not acquired or constructed in the name of the school or of the Society itself and what was the necessity to advance the loan in the name of the Trustee. It has, thus, been found that the funds of the Petitioner-Society have not been utilised/invested in terms of Clause (b) of the un-numbered third proviso of Clause (23C) of Section 10 of the Act. The Petitioner-Society has also not complied with the provisions of Section 11(5) of the Act. The Chief Commissioner has further opined that the advancement of loan amounts to appropriation of the funds of the Society for personal benefit, which is mis-application of the funds.

2.5-5 The Chief Commissioner then observed that during the financial year 2007-08, the Petitioner-Society has sold its agricultural land measuring 2.75 acres to a builder for a sale consideration of Rs. 1.125 crores. The said piece of land was purchased for Rs. 22.54 lakhs in November 2004 and development charges of approximately Rs. 15 lakhs were incurred. Furthermore, during the financial year 2007-08, rent of Rs. 9,24,000 was found to be debited. The explanation of the Assessee in this regard is that a rent of Rs. 38,500 per month each was being paid by the Society to Shri Ashok Sardana and Shri Ravi Kant, both trustees of the Society.

2.5-6 On the aforementioned two issues, it has been concluded that the Petitioner-Society has alienated its property which was purchased earlier with the surplus funds of its educational institution. Though the land was purchased in the year 2004 for educational purposes, still no educational activity was done on the said land and sold for a huge profit of Rs. 87,51,681 in the year 2008, on which amount also the Petitioner-Society is seeking exemption from tax. In relation to debiting of rent, it has been concluded that the office bearers of the Petitioner-Society are deriving monetary benefits out of the funds of the educational institution run by it. It has been found that in the case of Shri Ashok Sardana, Treasurer, who has constructed the property with the funds of the school/Society, which in fact is the mis-application of the funds, has rented out the same property to the School and is deriving rental income from such letting out of the property.

2.5-7 The Chief Commissioner of Income Tax also recorded a finding that the educational institution being run by the Petitioner-Society is generating substantial surplus year after year during the last five years. The Chief Commissioner has primarily relied upon the judgment of the Uttarakhand High Court rendered in the case of Queens Educational Society (supra). Laying stress on the word ''solely'', which appears in Section 10(23C)(vi) of the Act, the Chief Commissioner has finally concluded that it cannot be said that the Petitioner-Society and the educational institution run by it are existing solely for the purpose of education and not for the purpose of profit and rejected its case.

2.6 CWP No. 8135 of 2009.

2.6-1 Vaish Model Senior Secondary School Education Society, Bhiwani-Petitioner has challenged order, dated 26-3-2009 (P-11) passed by the Chief Commissioner of Income Tax, Panchkula, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2008-09 onwards. The Petitioner is a Society registered under the Societies Registration Act, 1860. It has been running two schools. It is claimed that the Petitioner-Society has been engaged in the activity of providing education, establishing and managing houses, museums, laboratories, exhibitions, library, lecturers, practice classes and other educational facilities including teaching of modern computer science, arts and general science for the last 13 years. Therefore, the Petitioner-Society is an educational institution existing solely for educational purposes and not for the purposes of earning profit. Initially the Petitioner-Society had been claiming exemption u/s 10(22) of the Act. On 19-3-2008, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in Form 56D in respect of assessment years 2008-09 onwards (P-4). However, when nothing was heard, the Petitioner-Society again sent a letter dated 15-9-2008 and a request was made for processing of its application for exemption (P-5). On 16-10-2008, the office of the Commissioner of Income Tax, Hisar, intimated to the Petitioner-Society that no application dated 15-3-2008 claiming exemption u/s 10(23C)(vi) was received by them. It was further mentioned in the said letter that it was not possible to submit the final accounts ending 31-3-2008 along with the application dated 15-3-2008 for exemption u/s 10(23C)(vi), claimed to have been sent under Postal Certificate on 19-3-2009. It was advised to send a fresh application for claiming exemption (P-6).

2.6-2 On 6-11-2008, the Petitioner-Society again sent a communication to the Commissioner of Income Tax, Hisar, stating that they had sent the application under postal certificate. It was further submitted that in Form 56D, it is nowhere mentioned that final account ending 31-3-2008 was required to be sent. In fact, the Petitioner-Society had only submitted audited accounts for the financial years 2004-05,2005-06 and 2006-07. The revenue authorities were also apprised that it was not possible to apply afresh for exemption u/s 10(23C)(vi) because the Petitioner-Society had already applied for the same within the prescribed time limit (P-7).

2.6-3 On 11-2-2009, a notice of hearing was sent to the Petitioner-Society to appear before the Commissioner of Income Tax, Hisar, on 5-3-2009 and to explain its case regarding existence of the Trust and genuineness of the activities along with books of account for the last three years (P-8). Thereafter, on 24-3-2009 again a notice was sent by the office of the Chief Commissioner of Income Tax, Panchkula, to the effect that from the income and expenditure accounts of the Petitioner-Society it is revealed that the educational institution run by it is generating surpluses year after year. The attention of the Petitioner-Society was drawn to the judgment of Uttarakhand High Court rendered in the case of Queens Educational Society (supra). The Petitioner-Society was further asked to explain as to how it fulfils the conditions

prescribed by various provisos of Clause (23C) of Section 10 for the grant of exemption u/s 10(23C)(vi) of the Act. The date of hearing was fixed as 26-3-2009 and no further opportunity of being heard was to be afforded since the Petitioner''s case has been considered as a time barring matter (P-9). On 26-3-2009, the Petitioner-Society filed its written submissions in response to the notice dated 24-3-2009.

2.6-4 On 26-3-2009 itself, the Chief Commissioner bf Income Tax, Panchkula, after hearing the parties passed the impugned order rejecting the claim of the Petitioner Society for grant of exemption u/s 10(23C)(vi) of the Act primarily on the expenditure account for the financial years 2005-06, 2006-07 and 2007-08, the Petitioner-Society has artificially reduced the figures of surplus by transferring substantial amounts to the School Development Fund from the actual surplus by making a debit entry in the expenditure side of the income and expenditure account. After noticing the figures of actual surpluses for the financial years 2005-06, 2006-07 and 2007-08, the Chief Commissioner found that the educational institution being run by it is generating substantial surpluses year after year, which has ranged from 25.02 per cent to 43.36 per cent in the last three years. Even after reducing depreciation, the surplus/excess of income over expenditure in all these years is found to be quite high reaching up to 37.19 per cent in the financial year 2007-08. The Chief Commissioner further noticed that the income and expenditure accounts of the Petitioner-Society for the aforementioned financial years shows that the surpluses/profits generated by the educational institutions cannot be regarded as merely incidental and the same are systematic and substantial. The Chief Commissioner after relying upon the judgment of the Uttarakhand High Court rendered in the case of Queens Educational Society (supra) came to the conclusion that the Petitioner-Society is consistently and systematically generating profits and surpluses year after year and merely because it is making some capital expenditure for the assets of the schools out of this income, is not enough to claim exemption.

2.6-5 The other ground for rejecting the claim of the Petitioner-Society for grant of exemption is evident from perusal of para 15 of the impugned order. The Chief Commissioner has noticed that the Petitioner-Society has advanced a loan of Rs. 1,08,680 to Shri O.P. Joshi, Principal of the School and Member of the Society. It has been found that the funds of the Petitioner-Society have not been utilised/invested in terms of Clause (b) of the un-numbered third proviso of Clause (23C) of Section 10 of the Act. The Petitioner-Society has also not complied with the provisions of Section 11(5) of the Act. Laying stress on the word ''solely'', which appears in Section 10(23C)(vi) of the Act, the Chief Commissioner has given a finding that it cannot be said that the Petitioner-Society and the educational institution run by it is existing solely for the purpose of education and not for the purpose of profit.

2.7 CWP No. 8258 of 2009.

2.7-1 Sanathan Dharam Shiksha Samiti, Hansi, District Hisar-Petitioner has challenged order dated 23-3-2009 (P-14) passed by the Chief Commissioner of Income Tax, Panchkula, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2005-06 to 2008-09. The Petitioner is a Society registered under the Societies Registration Act, 1860. It has been engaged for the last 17 years in the activity of providing education and other facilities for pupil''s mental, physical and moral growth through curricular and co-curricular activities and to infuse national spirit in their minds. It has been claimed that the educational institution run by the Petitioner-Society exists solely for educational purposes and not for the purposes of earning profit. On 31-3-2008, the Petitioner-Society applied for grant of exemption u/s 10(23C)(iv) and (v) of the Act in Form 56 along with the requisite documents.

2.7-2 The Income Tax Officer, Ward No. 4, Hisar, vide letter dated 12-5-2008, sought clarification from the Petitioner-Society whether it has applied for grant of exemption u/s 10(23C)(iv) and (v) or u/s 10(23C)(vi) of the Act. In response thereto the Petitioner-Society filed its reply dated 26-5-2008 to the effect that due to inadvertence it has submitted the application in Form No. 56 instead of Form No. 56D. Thus, the Petitioner-Society sought exemption u/s 10(23C)(vi) of the Act with effect from 1-4-2004 to 31-3-2008 and also furnished application in Form No. 56D. The Petitioner-Society also requested for condonation of delay in filing the application on the ground that it was not aware of the complicated provisions of the Income Tax law prior to the consultation made by it with Shri S.K. Jain, Advocate in the month of March, 2008. The Commissioner of Income Tax, Hisar, submitted his report on the aforementioned application, vide letter dated 14-1-2009. Thereafter, the case of the Petitioner-Society was fixed for hearing on 4-3-2009. On 26-2-2009, a notice was issued to the Petitioner-Society to furnish its reply/explanation on the following issues:

(i) That it had made its application in Form No. 56 which is applicable for the grant of approval u/s 10(23C)(iv) and (v) and not for the grant of approval u/s 10(23C)(vi). Since it had not made the application in the prescribed form, it was asked to explain as to how it fulfilled the mandatory condition of making of application in the prescribed form as required by the 1st proviso of Clause (23C) of Section 10 of the Income Tax Act, 1961 and also to show cause as to why its applications may not be filed as invalid.

(ii) That it had statedly filed its application in the office of the Commissioner of Income Tax, Hisar on 31-3-2008 i.e. during the financial year 2007-08 relevant to the assessment year 2008-09 though in its letter dated 16-2-2009, it had stated that it had sought the exemption/ approval for the period 1-4-2004 to 31-3-2008 which was relevant to the assessment years 2005-06 to 2008-09. In this regard, attention of the applicant Society was drawn to the provisions of 14th proviso the Clause (23C) of Section 10 and it was pointed out that since it had filed the application after the 1st

day of June, 2005 and during the financial year 2007-08, the exemption/approval could be applied for by it only from the assessment year 2008-09 and not for any earlier assessment years.

(iii) That a perusal of the Balance Sheets enclosed along with its application revealed that it had advanced a loan of Rs. 2,50,000 to "Shiv Mandir A/c" which did not appear to be an investment or deposit of its funds in a form or mode specified in Sub-section (5) of Section 11 and that, therefore, there was an apparent violation of the Clause (b)of the 3rd proviso to Clause (23C) of Section 10 by the applicant society.

(iv) The applicant society was asked to intimate as to whether it had filed the prescribed audit reports on Form No. 10BB of the Income tax Rules, 1962 along with its returns of income for the assessment years 2006-07, 2007-08 and 2008-09 required to be filed as per the 10th proviso of Clause (23C) of Section 10 and if not filed, to explain the reasons for not furnishing the same.

(v) A perusal of the Income & Expenditure accounts of the applicant society revealed that the educational institutions run by it had been generating substantial surpluses year after year. In this regard, the attention of the applicant Society was drawn to this fact and also to the judgment dated 24-9-2007 of Hon''ble Uttarakhand High Court at Nainital in ITA Nos. 103 and 104 of 2007 in the cases of CIT v. Queen''s Educational Society, Haldwani, Distt. Nainital and the applicant Society was requested to explain in view of this judgment, as to how the educational institutions being run by it could be said to be existing solely for the purposes of education and not for the purpose of profit. A copy of this judgment was also sent to the applicant Society along with the hearing notice.

2.7-3 On 4-3-2009, the Petitioner-Society filed its written submissions in response to the aforementioned notice dated 26-2-2009. On 5-3-2009, the Petitioner-Society filed the copy of the audit report in Form No. 10BB for the assessment year 2006-07.

2.7-4 On the issue of filing application under wrong form Le. Form No. 56 instead of Form No. 56D, the Commissioner of Income Tax found the explanation of the Petitioner-Society that the same was filed due to inadvertence, as insufficient and not acceptable. He then proceeded to consider the issue of filing of the application on 31-3-2008 Le. during the financial year 2007-08 relevant to the assessment year 2008-09, whereas the exemption has been sought from the assessment years 2005-06 to 2008-09. After referring to the provisions of un-numbered 14th proviso to Section 10(23C) of the Act, it has been concluded that since the application has been filed after 31-5-2006 and during the financial year 2007-08, thus, it could be made only for the assessment year 2008-09 onwards and not for any earlier assessment years. According to the Chief Commissioner the aforementioned is a procedural and mandatory provision and applicable to all the applications filed on or after 1-6-2006. It has also been stated that there is no provision for condonation of

delay. The submissions of the Petitioner-Society regarding ignorance of the change of law did not find favour with the Chief Commissioner. It has, thus, been concluded that the Application filed on 31-3-2008 could be considered only for the assessment year 2008-09 and not for earlier years.

2.7-5 In para 7.4 of the impugned order it has been emphasised that the Assessee was having substantial surpluses/profits from its educational institutions year after year, yet it had been claiming complete exemption of its income u/s 10(23C)(iiiad), whereas such exemption is available only to those educational institutions whose aggregate annual receipts do not exceed Rs. 1 crore. The educational institutions, whose aggregate annual receipts exceed Rs. 1 crore, have to seek exemption/ Approval u/s 10(23C)(vi) and they have to comply with the requirements and conditions prescribed in the various provisos of Clause (23C) of Section 10 of the Act. Thus, it has been found that the Petitioner-Society had been wrongly claiming exemption of its income u/s 10(23C)(iiiad) of the Act for the assessment years 2005-06, 2006-07 and 2007-08 and with a view to regularise its wrong and illegal claim of exemption already made by it u/s 10(23C)(iiiad), it has now made a belated claim for exemption u/s 10(23C)(vi) of the Act.

2.7-6 The defence taken by the Petitioner-Society regarding advancement of loan of Rs. 2,50,000 to Shiv Mandir account also did not find favour with the Chief Commissioner. The Petitioner-Society has pleaded that the aforementioned amount was, in fact, donated to Shiv Mandir Balika Vidyalya, Uchana, District Jind. This has been found to be against the facts on record because in all its balance sheets, the said amount has been shown as a loan due to the Petitioner-Society year after year. The authenticity of the accounts has been regularly certified by a Chartered Accountant. Thus, the Chief Commissioner has opined that had this amount been donated and given away, it could not have appeared as an amount due to the Petitioner-Society and shown as an asset in its balance sheets for all years from 31-3-2002 to 31-3-2008. It has been specifically mentioned that vide voucher dated 26-4-2001, the amount of Rs. 2,50,000 was paid to Shiv Mandir Balika Vidyalya, Uchana Mandi on account of loan. The Chief Commissioner further observed that as per Clause (b) of third proviso of Clause (23C) of Section 10 of the Act, the funds of the Assessee could be invested or deposited only in any one or more of the forms or modes specified in Sub-section (5) of Section 11 of the Act. However, in the present case, the advancement of loan of Rs. 2,50,000 clearly violates the aforementioned provision.

2.7-7 Regarding non-furnishing of audit reports on Form No. 10BB for the assessment years 2006-07 and 2007-08, the Petitioner-Society again took the plea of ignorance, which did not find favour with the Chief Commissioner of Income Tax. It has further been held that the Circular/instruction dated 9-2-1978 issued by the Central Board of Direct Taxes and judgments of High Court relied upon by the Petitioner-Society are not applicable in the present case.

2.7-8 The Chief Commissioner also found that the educational institution being run by the Petitioner-Society is generating substantial surplus year after year, which has ranged from 26.24 per cent to 45.32 per cent in the last three years. Even after reducing depreciation, the surplus/excess of income over expenditure in all these years is found to be quite high reaching up to 39.99 per cent in the financial year 2007-08. The Chief Commissioner noticed the income and expenditure accounts of the Petitioner-Society for the last three years starting from the year ending on 31-3-2006 up to 31-3-2008 and found that the surpluses/profits generated by the educational institutions cannot be regarded as merely incidental and the same are systematic and substantial. The Chief Commissioner after relying upon the judgment of the Uttarakhand High Court rendered in the case of Queens Educational Society (supra) came to the conclusion that the Petitioner-Society is consistently and systematically generating profits and surpluses year after year and merely because it is makings some capital expenditure for the assets of the schools out of this income, is not enough to claim exemption. Laying stress on the word ''solely'', which appears in Section 10(23C)(vi) of the Act, the Chief Commissioner has given a finding that it cannot be said that the Petitioner-Society and the educational institution run by it are existing solely for the purpose of education and not for the purpose of profit.

2.8 CWP No. 8981 of 2009.

2.8-1 M/s. Mehra Institute of Education, Putlighar, Amritsar-Petitioner has challenged order dated 9-3-2009 (P-8) passed by the Chief Commissioner of Income Tax, Amritsar, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of financial year 2007-08. The Petitioner is a Society registered under the Societies Registration Act, 1860 (for brevity, ''the 1860 Act''). It has been engaged for the last more than ten years in the activity of providing education through a school, namely, ''The Senior Study II'' at G.T. Road, Putlighar, Amritsar, which is affiliated with the Central Board of Secondary Education, New Delhi. It is claimed that the Petitioner-Society is an educational institution existing solely for educational purposes and not for the purposes of earning profit. The main object of the Petitioner-Society is to impart education as also to carry out research, establishment of hostels, canteens and publication for education purposes. It has also been claimed that prior to the assessment year 2007-08, the total receipts of the Petitioner-Society were below Rs. 1 crore, therefore it did not apply for exemption u/s 10(23C)(vi) of the Act. During the financial year 2006-07/assessment year 2007-08, the total receipts of the Petitioner-Society exceeded Rs. 1 crore, therefore, as per requirements of the provisions of Section 10(23C)(vi) of the Act, it has applied for grant of exemption by filing an application in the prescribed Form 56-D along with its audited accounts for the years 2005, 2006 and 2007.

2.8-2 The case of the Petitioner-Society was fixed for 20-1-2009 before the prescribed authority when judgment of the Uttarakhand High Court rendered in the

case of Queens Educational Society {supra) was supplied and it was asked to explain how exemption could be granted to the Petitioner-Society u/s 10(23C)(vi) of the Act. On 27-2-2009, the Petitioner-Society furnished its detailed reply.

2.8-3 The Chief Commissioner of Income Tax, Amritsar, vide the impugned order, dated 9-3-2009, rejected the claim of the Petitioner-Society after taking into account its income and expenditure accounts for the assessment years 2006-07, 2007-08 and 2008-09. The Chief Commissioner found that during the financial years relevant to assessment years 2007-08 and 2008-09 the gross receipts of the Petitioner-Society were more than Rs. 1 crore i.e. Rs. 1,09,86,530 and Rs. 1,42,01,993 respectively. It has also been noticed that the Petitioner-Society had shown surplus of 2.45 per cent, 8.62 per cent and 16.25 per cent from its gross receipts after deducting all expenses depreciation in respect of assessment years 2006-07, 2007-08 and 2008-09. Accordingly, the Chief Commissioner came to the conclusion that the Petitioner-Society is generating surplus out of its gross receipts year after year and it cannot be accepted that the surplus generated is merely incidental. The surplus generated by the Petitioner-Society is being utilised for creation of fixed assets and renovation. The primary reliance has been placed on the judgment of the Uttarakhand High Court rendered in the case of Queens Educational Society (supra) as well as judgment of Hon''ble the Supreme Court rendered in the case of Aditanar Educational Institutions. Addl CIT [1997] 224 ITR 3101. Laying stress on the word ''solely'', which appears in Section 10(23C)(vi) of the Act, the Chief Commissioner has given a finding that it cannot be said that the Petitioner-Society and the educational institution run by it are existing solely for the purpose of education and not for the purpose of profit. The Chief Commissioner has also rejected the claim of the Petitioner-Society on the ground that the profit/surplus earned by it are being utilised to enhance its capacity by creation of fixed assets and for renovation to earn more profit by pursuing its main object of running the educational institution.

2.9 CWP No. 9156 of 2009

2.9-1 Gurunanak Education Trust, Ludhiana-Petitioner has challenged order dated 17/19-3-2009 (P-1) passed by the Chief Commissioner of Income Tax, Ludhiana, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2000-01 and 2002-03. The Petitioner is a charitable educational trust engaged in educational activities since 23-8-1983. The Petitioner-Trust has been constituted in pursuance of resolutions dated 16-3-1983 and 15-3-1983 passed by the Managing Committee of Guru Nanak Khalsa High School Gujarkhan, Ludhiana and Guru Nanak Education Society, Ludhiana, respectively. Before formation of the Petitioner-Trust the institutions run by it were being managed by the Guru Nanak Education Society and management of Guru Nanak Khalsa High School. It is claimed that the Petitioner-Trust is running five educational institutions at Ludhiana, which have been given recognition by the Central Board of Secondary Education, the Punjab School Education Board and the

Punjab University. It has been asserted that the Petitioner-Trust is not pursuing any specific religious course or classes in its institutions, which have been detailed in para 2 of the petition. On 31-5-2006, the Petitioner-Trust applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment years 2000-01 and 2002-03 by filing an application in the prescribed Form 56-D.

2.9-2 After perusal of the Deed of Trust, the prescribed authority found that the one of the objectives of the Petitioner-Trust is ''Propagation of Sikh Tenets''. Accordingly, a show cause notice dated 15-1-2009 was issued to explain as to why the claim of exemption u/s 10(23C)(vi) of the Act be not rejected as the Petitioner-Trust is not existing ''solely'' for ''educational purposes'' but for ''propagation of Sikh tenets''. The Assessee-Petitioner was also required to furnish the details of teachers and students in the category of ''Sikhs and Non-Sikhs'' in various school/colleges associated with it. On 25-2-2009, the Petitioner-Trust filed its reply.

2.9-3 The Chief Commissioner of Income Tax, Ludhiana, after referring to the provisions of Section 10(23C)(vi) of the Act noticed that the percentage of Sikh Teaching Staff is upto 80 per cent in the institutes run by the Petitioner-Trust. It has further been observed that the percentage of Sikh students has reached 75 per cent in one of the institutes. Thus, he has opined that the Petitioner-Trust is working towards its objective of propagation of Sikh tenets. The Chief Commissioner has also rejected the contention of the Petitioner-Trust that it has amended its Trust Deed. In para 7 of the impugned order, the object of Trust Deed has been extracted, which reads thus:

Any how, therefore, this trust has been constituted for the purpose essentially for provision of education, setting up for educational Institutions and also taking such steps as may be considered necessary by the Trust for Propagation of Sikh Tenets etc. and other charitable purpose as the trust may deem fit and necessary.

2.9-4 The Chief Commissioner while stressing upon the words ''may be'' in the aforementioned object, has concluded that exemption u/s 10(23C)(vi) of the Act could not be granted to the Petitioner-Trust because it is not running its institutions solely for educational purposes but also for religious purposes of propagation of Sikh tenets and accordingly rejected its claim. In that regard reliance has been placed on the judgments of Hon''ble the Supreme Court rendered in the cases of Union of India and others Vs. M/s. Wood Papers Ltd. and another, and State of West Bengal v. Ashutosh Laahiri JT 1995 (7) 553; judgment of Rajasthan High Court in the case of Kota Co-operative Marketing Society Ltd. v. CIT [1994] 207 ITR 6081; judgment of Calcutta High Court in the case of CIT v. Sutna Stone & Lime Co. Ltd. [1982] 138 ITR 372; judgment of Kerala High Court in the case of CGT v. U.S.M. Fernandez [1989] 178 ITR 5773, as also the Full Bench judgment of this Court rendered in the case of United Riceland Ltd. v. State of Haryana [1997] 104 STC 362.

2.10 CWP No. 9517 of 2009.

2.10-1 Gurunanak Education Trust, Ludhiana-Petitioner has challenged order dated 26-3-2009 (P-1) passed by the Chief Commissioner of Income Tax, Ludhiana, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment year 2008-09. The Petitioner is a charitable educational trust engaged in educational activities Since 23-8-1983. The Petitioner-Trust has been constituted in pursuance of resolutions dated 16-3-1983 and 15-3-1983 passed by the Managing Committed of Guru Nanak Khalsa High School, Gujarkhan, Ludhiana and Guru Nanak Education Society, Ludhiana, respectively. Before formation of the Petitioner-Trust the institutions run by it were being managed by the Guru Nanak Education Society and management of Guru Nanak Khalsa High School. It is claimed that the Petitioner-Trust is running five educational institutions at Ludhiana, which have been given recognition by the Central Board of Secondary Education, the Punjab School Education Board and the Punjab University. It has been asserted that the Petitioner-Trust is not pursuing any specific religious course or classes in its institutions, which have been detailed in para 2 of the petition. On 31-3-2008, the Petitioner-Trust applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment year 2008-09 by filing an application in the prescribed Form 56-D as its gross receipts exceeded the prescribed limit of Rs. 1 crore.
2.10-2 Since the accounts of the Petitioner-Trust for the years ending on 31-3-2006, 31-3-2007 and 31-3-2008 revealed that the educational institutions run by it have been generating substantial surpluses year after year, a show-cause notice dated 3-3-2009 was issued requiring it to explain as to why exemption u/s 10(23C)(vi) may not be disallowed in respect of assessment year 2008-09. The judgment of Hon''ble the Supreme Court rendered in the case of Aditanar Educational Institution (supra) and judgment of Uttarakhand High Court in the case of Queens Educational Society (supra) were also referred to in the aforementioned show-cause notice. On 17-3-2009, the Petitioner-Trust filed its written submissions claiming that the aforementioned judgments have no application in its case.

2.10-3 During the course of the hearing, the Chief Commissioner of Income Tax, Ludhiana, also noticed that one of the objectives of the Petitioner-Trust is ''Propagation of Sikh Tenets''. Accordingly, the Petitioner-Trust was required to furnish the details of expenses incurred for spreading Sikh Tenets because it was felt by the Chief Commissioner that the Petitioner-Trust is not existing ''solely'' for ''educational purposes'' but for ''propagation of Sikh tenets''.

2.10-4 The Chief Commissioner vide the impugned order has given his findings under two heads. Firstly, on the issue of systematic surplus the finding recorded is that the total surplus of the Petitioner-Trust has ranged from 15.34 per cent to 26.92 per cent during the last three years ending on 31-3-2006, 31-3-2007 and 31-3-2008. It has, thus, been concluded that the surpluses/profits generated by the educational institutions of the Petitioner-Trust cannot be regarded as merely incidental to the main purposes rather the same are systematic and substantial. In that regard

reliance has been placed on the judgment of Uttarakhand High Court rendered in the case of Queens Educational Society (supra). The contention of the Petitioner-Trust that the surplus has been accumulated for further creation of infrastructure has also not found favour with the Chief Commissioner. Secondly, on the issue of propagation of Sikh tenets the Chief Commissioner has concluded that the Petitioner-Trust is working towards its objective of propagation of Sikh tenets and rejected its contention that it has amended its Trust Deed. In the impugned order, the object of Trust Deed has been extracted, which reads thus:

Any how, therefore, this trust has been constituted for the purpose essentially for provision of education, setting up for educational Institutions and also taking such steps as may be considered necessary by the Trust for Propagation of Sikh Tenets etc. and other charitable purpose as the trust may deem fit and necessary.

2.10-5 The Chief Commissioner has further observed that exemption u/s 10(23C)(vi) of the Act could not be granted to the Petitioner-Trust because it is not running its institutions solely for educational purposes but also for religious purposes of propagation of Sikh tenets and accordingly rejected its claim. In that regard reliance has been placed on the judgments of Hon''ble the Supreme Court rendered in the cases of Wood Papers Ltd. (supra) and Ashutosh Laahiri (supra); judgment of Rajasthan High Court in the case of Kota Co-operative Marketing Society Ltd. (supra); judgment of Calcutta High Court in the case of Sutna Stone & Lime Co. Ltd. (supra); judgment of Kerala High Court in the case of USM Fernandez(supra); as also the Full Bench judgment of this Court rendered in the case of United Riceland Ltd. (supra).

2.11 CWP No. 9707 of 2009.

2.11-1 Spring Dale Educational Society, Ludhiana-Petitioner has challenged order dated 26-3-2009 (P-4) passed by the Chief Commissioner of Income Tax, Ludhiana, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of year ending on 31-3-2008. The Petitioner is a Society registered under the Societies Registration Act, 1860. It is claimed that the main objective of the Petitioner-Society is to impart education. On 28-3-2008, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in the prescribed Form 56-D.

2.11-2 The case of the Petitioner-Society was taken up by the Chief Commissioner of Income Tax, Ludhiana. From the balance sheet of the Petitioner-Society it came to his notice that the land on which the building of the educational institution in question was being constructed, was owned by Smt. Avinash Kaur, Secretary of the Petitioner-Society, whereas rent of Rs. 3,00,000 has been paid to Shri Nirmal Singh (HUF), who is husband of said Smt. Avinash Kaur. Accordingly, a show-cause notice, dated 18-12-2008, was issued to clarify in whose hands the ownership of the property vests when the land belongs to Smt. Avinash Kaur and as to why the claim of exemption should not be rejected on this ground alone.

2.11-3 In response to the show-cause notice, the Assessee-Petitioner took the stand that the land in question was taken on lease from Shri Nirmal Singh (HUF) and others. It has been pointed out that there are two sites of land out of which constructed area measuring 5200 square yards was in existence and the educational institution also raised construction on vacant land, which was shown in the balance sheet whereas the other site was taken on lease from Shri Nirmal Singh (HUF). It was further disclosed that there is land belonging to Smt. Avinash Kaur, which is adjoining the said property, measuring 1145 square yards, was also taken on lease. The lease money is being paid by the Petitioner-Society. The other details of rent/lease money has also been furnished.

2.11-4 After scrutiny of the reply furnished by the Assessee-Petitioner, the Chief Commissioner came to the conclusion that there is diversion of the profits to the owners/family members of the Secretary of the Petitioner-Society and the construction has been made on the land belonging to the Secretary and her husband without changing the ownership of the land. Accordingly, another show-cause notice dated 16-3-2009 was issued as to why the exemption u/s 10(23C)(vi) be not rejected on the ground of diversion of profits to the family members of the Secretary of the Society. On 23-3-2009, the Petitioner-Society filed its written submissions. Upon consideration of the same, the Chief Commissioner in para 6 of the impugned order summed up that the lease deeds have been executed in such a manner so as to benefit the owners of the land and it is a case of diversion of profits. Thus, a finding has been returned that the Petitioner-Society does not solely exist for purposes of education because profits are being diverted to others and ownership status of the buildings constructed by the Petitioner-Society is not clear. The immovable property is being used for individual benefit of the office bearers of the Petitioner-Society and their relatives.

2.11-5 While rejecting the claim of the Petitioner-Society the Chief Commissioner also referred to the language of Section 10(23C)(vi) of the Act and placed reliance on the judgments of Hon''ble the Supreme Court rendered in the cases of Wood Papers Ltd. (supra) and Ashutosh Laahiri (supra); judgment of Rajasthan High Court in the case of Kota Co-operative Marketing Society Ltd. (supra); judgment of Calcutta High Court in the case of Sutna Stone & Lime Co. Ltd. (supra); judgment of Kerala High Court in the case of USM Fernandez (supra); as also the Full Bench judgment of this Court rendered in the case of United Riceland Ltd. (supra).

2.12 CWP No. 10738 of 2009.

2.12-1 A.D. Educational Society, Faridabad-Petitioner has challenged order, dated 13-1-2009 (P-1) passed by the Chief Commissioner of Income Tax, Panchkula, rejecting the application for grant of approval for exemption u/s 10(23C)(vi) of the Act in respect of assessment year 2008-09. The Petitioner is a registered educational Society engaged in educational activities at Faridabad. It has been running a school in the name and style of A.D. Public School, which is affiliated with the Central Board

of School Education. On 7-1 -2008, the Petitioner-Society applied for grant of exemption u/s 10(23C)(vi) of the Act in respect of assessment year 2008-09 in the prescribed Form 56-D since the income of the Petitioner-Society crossed the prescribed limit of Rs. 1 crore for the first time during the assessment year 2008-09. A notice was issued to the Petitioner-Society to explain certain discrepancies in the application to which it has filed reply along with the requisite details.

2.12-2 The case of the Petitioner-Society for grant of exemption in respect of assessment year 2008-09 was taken up by the Chief Commissioner of Income Tax, Panchkula. The Chief Commissioner, vide the impugned order dated 13-1-2009, rejected the claim of the Petitioner-Society primarily on two grounds. Firstly, it has been noticed that the Petitioner-Society had paid salaries to its Members, namely, Shri Suresh Chander, who has been designated as Director of the School, and also to his wife Smt. Usha Rani, another member of the Society, in violation of Clauses 7(i) and 7(ii) of the Memorandum of the Petitioner-Society. Secondly, the educational institution run by the Petitioner-Society has been generating surpluses year after year, which has ranged from 18.31 per cent to 24.47 per cent in the last four years. The Chief Commissioner noticed the income and expenditure accounts of the Petitioner-Society for the last four years starting from the year ending on 31-3-2005 up to 31-3-2008 and found that the surpluses/profits generated by the educational institutions cannot be regarded as merely incidental and the same are systematic and substantial. The Chief Commissioner after relying upon the judgment of the Uttarakhand High Court rendered in the case of Queens Educational Society (supra) came to the conclusion that the Petitioner-Society is consistently and systematically generating profits and surpluses year after year and merely because it is making some capital expenditure for the assets of the schools out of this income, is not enough to claim exemption. Laying stress on the word ''solely'', which appears in Section 10(23C)(vi) of the Act, the Chief Commissioner has given a finding that it cannot be said that the Petitioner-Society and the educational institution run by it are existing solely for the purpose of education and not for the purpose of profit.

3. Contentions of the Petitioners.

3.1 CWP No. 8135 of 2009.

3.1-1 Mr. K.L. Goyal, learned Senior counsel for the Petitioner has submitted that the impugned order passed by the Chief Commissioner suffers from fundamental malady because there is distinct difference between the cases where approval for exemption is to be granted for the first time and the cases where the approval is either to be withdrawn or it is to be renewed. According to the learned Counsel various conditions laid down in numerous provisos to Section 10(23C)(vi) of the Act would not be attracted and cannot be applied to such a case where approval for exemption is to be granted, which in fact are applicable to cases where the approval is either to be withdrawn or to be renewed. He has maintained that in case approval is to be granted for the first time then the question of application of income to the

purpose of education cannot be gone into. In that regard he has placed reliance on the observations of Hon''ble the Supreme Court in the case of American Hotel & Lodging Association, Educational Institute v. CBDT[2008] 301 ITR 861. He has further submitted that the Chief Commissioner has committed grave error in law by reckoning the loan advanced to Shri O.P. Joshi, the Principal of the institution as mis-application. According to the learned Counsel when loan is advanced to the Principal of an educational institution then it is to be regarded as application of income to an educational purpose as it would attract better talent to impart education in the institution. He has further submitted that merely because the Principal by virtue of statutory provision is ex-officio member of the Managing Committee for taking effective decisions would not divest him of his status as an employee of the institution whose primary function is to run the institution in the best possible manner. In support of the proposition that dual status of a person cannot be ignored, he has placed reliance on a Division Bench judgment of the Andhra Pradesh High Court in the case of CIT/CWT v. Polisetty Somasundaram Charities [1990] 183 ITR 3772.

3.2 CWP No. 10738 of 2009

3.2-1 Mr. Pankaj Jain, learned Counsel for the Petitioner has argued that various notifications issued by Respondents on different dates in respect of different assessment years have themselves granted exemption u/s 10(23C)(vi) of the Act. To buttress his stand, learned Counsel has placed reliance on notification 18-9-1998 in respect of assessment years 1995-96 and 1997-98, Notification dated 12-4-1999 in respect of assessment years 1998-99 to 2000-01 and Notification dated 13-12-2002 in respect of assessment year 2001-02 to 2003-04. Learned Counsel has further submitted that issuance of notification u/s 10(23C)(vi) of the Act would ipso facto be applicable to an university or educational institute because such an entity would be covered by the expression for ''charitable purpose/institution'' used in Section 2(15) and 2(16) of the Act. He has read out the definition of ''charitable purpose'' given in Section 2(15) of the Act.

3.2-2 His second submission is that principles of consistency should be followed and for the last over 25 years the Petitioner has been enjoying exemption accorded by Section 10(23C)(vi) of the Act. In that regard he has placed reliance on the observations made in para 8 by Hon''ble the Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 193 ITR 3213. The other submission made by Mr. Jain is that the Petitioner is a society registered under the Societies Registration Act, 1860. It gives medical services to the residents of Jalandhar. So the minimum requirement to proceed against the Petitioner-institute would be the satisfaction for withdrawing the exemption already accorded and is continuing for the last many decades as recorded in terms of 2nd proviso to Sub-section (vi)(a) of Clause (23C) of Section 10 of the Act. According to the learned Counsel no such satisfaction has been recorded. As a matter of fact, the Central Board of Direct Taxes has only issued

a circular on 8-12-2008 forwarding a copy of the decision of the Uttarakhand High Court in the case of Queens Educational Society (supra) for appropriate action. The learned Counsel has maintained that the Board is entitled to issue instructions u/s 116(a) and (b). It can also issue directions to the subordinate authorities u/s 119(1). However, there is an expression prohibition by the proviso to Section 119(1) that no direction could be issued so as to require any Income Tax authority to make a particular assessment or to dispose of a particular case in a particular manner or to interfere with the discretion of the Commissioner in the exercise of appellate jurisdiction. According to the learned Counsel the satisfaction recorded by the Chief Commissioner suffers from basic malady of reopening various cases on the strength of the judgment of the Uttarakhand High Court without any proper application of mind. He has maintained that there may be genuine cases but all cannot be roped in for issuing a show-cause notice which in fact reveal total non application of mind.

3.2-3 He has then placed reliance on the provisions of Section 11(1)(a) and 11(2) of the Act and argued that exemption under the aforesaid provisions cannot be denied to an Assessee on the ground that it should have invested the entire surplus amount in any or in either of the securities enumerated in Section 11(2)(a) of the Act. In that regard, he has placed reliance on the observations made by Hon''ble the Supreme Court in the case of Addl. CIT v. A.L.N. Rao Charitable Trust [1995] 216 ITR 6971.

3.2-4 His last submission is based on a Division Bench judgment of the Gujarat High Court rendered in the case of CIT v. Sheth Manilal Ranchhoddas Vishram Bhavan Trust [1992] 198 ITR 5982. Accordingly he has argued that depreciation has to be allowed if he has property while computing income for purposes of Section 11(1)(a) of the Act.

3.2-5 Another argument raised by the learned Counsel is that if the Petitioner looses exemption u/s 10(23C)(vi) of the Act then the donations received by it would remain uncovered by Section 80G(5) of the Act. According to the learned Counsel donations would not be tax free in the hands of the donor.

3.3 CWP Nos. 9156, 9517 and 10738 of 2009.

3.3-1 Mr. S.K. Mukhi, learned Counsel has stated at the outset that he would adopt the arguments advanced by learned Counsel in all the previous cases. Further, he has categorically advanced three arguments. His first submission is that accumulation of profit beyond 15 per cent have to be applied within the period of five years which would run from year to year. He has further submitted that the Chief Commissioner does not enjoy any power to delete exemption accorded to the salary of the teachers by the assessing authority. Attacking the impugned order dated 13-1-2009 passed by the Chief Commissioner (P-1) with CWP 10738 of 2009, learned Counsel has submitted that the Chief Commissioner has unnecessarily delved into an area which is wholly within the domain of the Assessing Authority. He has drawn our attention to the observations made by the Chief Commissioner to the

effect that the Petitioner-Assessee has paid salary to its members namely Suresh Chand (Director of the School) and to his wife Usha Rani, which is alleged to be in violation of Clauses 7(i) and (ii) of the Memorandum of Association. The aforesaid findings have been recorded to support the conclusion that the activities of the Petitioner-society are patently inconsistent with the provisions of Section 10(23C)(ii) of the Act. Referring to Clauses 7(i) and (ii) of the Memorandum of Association (P-3), learned Counsel has submitted that by no stretch of imagination it could be concluded that the Petitioner-society has paid any remuneration to its members. According to the learned Counsel, the remuneration paid to Shri Suresh Chander and Usha Rani, his wife, is in respect of their services rendered as teachers.

3.3-2-3 Learned Counsel has submitted that the conclusion reached by the Chief Commissioner that the Petitioner institution is not a wholly educational institution, in fact, suffers from inherent legal infirmity. According to the learned Counsel the Petitioner institution has been preaching the five basic scriptures of universal nature which have emanated from six scriptures known as religion. Withdrawal of exemption on the ground it is a religious institution imparting religious education is not well based. He has maintained that the Petitioner institution is only imparting education of ''teaching of religious tenents'' which is also part of education and not contrary to the concept of education.

3.4 CWP Nos. 20574 of 2008 and 6343 of 2009.

3.4-1 Ms. Radhika Suri, learned Counsel for the Petitioners has argued that it is wholly unwarranted on the part of the Chief Commissioner or the Assessing Authority to say that the Petitioner is accumulating profits because under Sub-section (24) of Section 2 the expression ''income'' has been defined which would include even profits. According to the learned Counsel as long as the Petitioner continues to apply 85 per cent or more than 85 per cent of its income which is inclusive profits to the object of the education or any other related objects then exemption u/s 10(23C)(iv) of the Act is to be given. She has maintained that the character of recipient of the income must have character of educational institution which is to be observed from the nature of the activities and 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 that regard reliance has been placed on para 29 of the judgment of Hon''ble the Supreme Court in American Hotel & Lodging Association''s case (supra). The crucial test is the nature of the activity. She has also placed reliance on the judgment in the case of Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, where similar principles have been laid down. The requirement of the provision is that education must be pre-dominant subject of the object which would not loose its character merely because it has incidentally earned profits. She has again drawn our attention to concluding line of para 37 of the judgment to argue that excess/deficit of income over expenditure will

not decide whether the applicant existed for profit or not. She has then made a reference to the speech of the Finance Minister published in [1998] 232 ITR 13 in support of her submission.

3.4-2 Placing reliance on the judgment of Hon''ble the Supreme Court in the case of S.RM.M.CTM. Tiruppani Trust v. CIT [1998] 230 ITR 6362 has argued that even the capital assets like purchasing of building to achieve the object of education or any other charitable object as per the provisions of memorandum would qualify for exemption. In that regard she has placed reliance on the last but one para of the judgment of Hon''ble the Supreme Court, which reads thus:

In the present case, the Assessee is not claiming any benefit u/s 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 u/s 11(1). In addition, u/s 11(1)(a) the Assessee can accumulate 25 per cent 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 per cent of the income for assessment year 1970-71. Therefore, the Assessee is entitled to accumulate this income and claim exemption from Income Tax u/s 11(1)(a).

3.4-3 The aforesaid judgment has been followed and applied by a Division Bench of the Delhi High Court in the case of CIT v. Divine Light Mission [2005] 278 ITR 6593. Therefore, she has submitted that capital expenditure cannot be excluded as long as it is created for achieving the object of education.

3.4-4 The other argument raised by her is that the scope of enquiry contemplated by Section 10(23C) of the Act with the Chief Commissioner is not to encroach upon the area allocated to the Assessing Officer as has been done in the present case.

3.5 C.W.P. No. 6343 of 2009.

3.5-1 Ms. Radhika Suri has submitted by referring to the averments made in para 14 of the petition that merely because some loan or advance has been made to Ashok Sardana it cannot be considered that the property for running the school purposes through him was not qualified. Referring to para 13 of the petition, learned Counsel has submitted that even CLU charges cannot constitute basis for refusing benefit of Section 10(23C)(vi) of the Act. Reference be made to paras 13 and 14 of the petition.

3.5-2 She has also made reference to para 10 of the order dated 3-11-2008 (P-5) showing that the Petitioner-society has earned capital gains from the sale of land and it cannot be considered to be accumulating profits for purposes other than the educational purposes. According to the learned Counsel the amount has been kept

in accordance with the provisions of Section 11(5) of the Act and therefore it could not be considered as misapplication of the income.

3.6 CWP No. 20574 of 2008.

3.6-1 Ms. Suri has referred to paras 11, 12 and 14 of the impugned order dated 30-9-2008 (P-8) and argued that the findings recorded by the Chief commission that the assets of the society can very easily be reverted back to the members of the society i.e. Shri Amrit Chand and his other family members is wholly misconceived. Referring to the memorandum of association of the society, learned Counsel has submitted that the promoters of the society could invest and deal with its funds and money in securities or property could also lend or otherwise employment. According to the learned Counsel the CLU charges are always borne by the society which is the lessee of Amrit Chand. Likewise, the assets of the society which includes construction of the building has not been alienated and no provision has been contravened. Merely because there is possibility of contravening the provisions either of the memorandum or of any law, therefore, it could not be concluded by the Chief Commissioner that the society is diverting its fund or is capable of diverting its fund to an object which is alien to the object of education. It is pertinent to notice paras 12 and 14 of the order. She has pointed out from Annexure P.7 that entry concerning more than 50 lakhs was corrected. The principal argument thus raised is that merely because power of capability of misuse could not be the basis for denying registration u/s 10(23C)(vi) of the Act unless and until it is actually misused.

3.7 CWP No. 2721 of 2009.

3.7-1 Mr. Ravi Shankar, learned Counsel for the Petitioner has referred to para 14 of the impugned order dated 13-1-2009 (P-6) passed by the Chief Commissioner of Income Tax, Panchkula and argued that the Audit Reports in Form 10BB for the assessment years 2006-07 to 2008-09 are not required to be furnished mandatorily along with the returns of income. According to the learned Counsel, a Full Bench of this Court has already held that the provision is directory in nature and the delay in filing the Audit Report in Form 10BB is not mandatory. In that regard he has placed reliance on a Full Bench judgment of this Court in case of CIT v. Punjab Financial Corporation [2002] 254 ITR 5611.

3.7-2 Elaborating his argument further he has pointed out that it was a case of granting exemption. He has argued that incidental accumulation surplus is no ground to deny exemption. In that regard he has made reference to para 13 of the impugned order. He has also placed reliance on third proviso to Section (23C)(vi) and argued that if the accumulation is not more than 15 per cent, the exemption cannot be refused. Another argument raised by the learned Counsel is that the judgment of the High Court of Uttarakhand in the case of Queens Educational Society (supra) has no application to the facts of the present case. He has adopted the arguments of Mr. Sanjay Bansal, Senior Advocate, and Mr. Akshay Bhan, Advocate, as advanced by

them in the other bunch of petitions on the other issues including the issue of capital assets created by the Petitioner as long as the same are applied to the object of education.

3.8 CWP No. 4954 of 2009.

3.8-1 In respect of this petition, Mr. Ravi Shankar has submitted that there has been excessive surplus as is evident from the document Annexure P-6 and the application for exemption could not have been rejected on that account alone.

3.9 CWP No. 8981 of 2009.

3.9-1 Mr. Akshay Bhan, learned Counsel for the Petitioner has argued that the application of the Petitioner for exemption was rejected on a misplaced belief that capital expenditure incurred by the Petitioner has not been included in the application of funds to the object of education. According to the learned Counsel the whole capital expenditure is on the items which are devoted to the advancement of education.

4. Contentions of the revenue

4.1 Mr. S.K. Garg Narwana, Ms. Urvashi Dhugga, Mr. Rajesh Sethi and Mr. Vivek Sethi, learned Counsel for the revenue have vehemently argued and have supported the orders passed by the Chief Commissioners of Income Tax. All of them have advanced the same arguments which have been advanced in Pinegrove International Charitable Trust''s case (supra).

5. After hearing learned Counsel for the parties and perusal of the pleadings with their able assistance we find that it would first be necessary to read Section 10(23C) along with its Sub-clauses (iiiab), (iiiac), (iiiad), (iv) and (vz) of the Act. The aforesaid clauses have already been reproduced in the connected matter of Pinegrove International Charitable Trust (supra). It would, therefore, be appropriate to follow the same construction which has been adopted in Pinegrove International Charitable Trust''s case (supra). After the reading of the bare provisions of Section 10(23C), we have observed in paras 6.3 and 6.4 of the said judgment as under:

6.3 Before discussing the effect of provisos, which have been inserted by the new dispensation, it is significant to refer and examine Section 10(22) vis-a-vis Section (23C)(vi), which have been held to be analogues to each other. The scope of Section 10(22) of the Act, which is precursor of Section (23C)(vi), has been analysed by their Lordships'' of Hon''ble the Supreme Court in the case of American Hotel & Lodging Association Educational Institute (supra), holding that the actual existence of the educational institution has been a precondition of the application for initial approval u/s 10(22). It has been held that on grant of approval the charging Sections 11 and 13 were not to apply. Therefore, before new dispensation, which has been applied from 1-4-1999, after the grant of exemption u/s 10(22), there was no room for assessment nor any scope for raising any demand, the grant of approval u/s 10(22)

used to have an automatic effect. The view of their Lordships'' is discernible from the following part of paras 26 and 27, which reads thus:-

26 ...Once an applicant-institution came within the phrase "exists solely for educational purposes and not for profit" no other conditions like application of income were required to be complied with. The Prescribed Authority was only required to examine the nature, activities and genuineness of the Institution. The above phrase was the only requirement for initial approval. The mere existence of profit/surplus did not disqualify the institution if the sole purpose of its existence was not profit-making but educational activities as Section 10(22) by its very nature contemplated income of such institution to be exempted. u/s 10(22) the test was restricted to the character of the recipient of income, viz., whether it had the character of educational institution in India, its character outside India was irrelevant for deciding whether its income would be exempt u/s 10(22).

27. The moot question in Section 10(22) was - whether the activities of the applicant came within the definition of "income of educational institution". u/s 10(22) one had to closely analyse the activities of the Institute, the objects of the Institute and its source of income and its utilization. Even if one of the objects enabled the Institute to undertake commercial activity, the institute would not be entitled to approval u/s 10(22). The said section inter alia excludes the income of the educational institute from the Total Income.

6.4 A 5-Judge Constitution Bench in the case of Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , has held that the test of pre-dominant object of the activity is to be seen whether an institution exists solely for education and not to earn profit. Likewise, in Aditanar Educational Institution''s case (supra) the test laid down is to find out the nature of activity. Therefore, the character of the recipient of income must have the character of educational institution, to be ascertained from the nature of the activities. The law in respect of the aforesaid test even after the new dispensation from 1-4-1999 continues to be the same as it was u/s 10(22) of the Act. The aforesaid view has been expressed by their Lordships'' of Hon''ble the Supreme Court in the case of American Hotel & Lodging Association (supra) by observing that "the judgment of this Court as applicable to Section 10(22) would equally apply to Section (23C)(vi). " The problem arises with the insertion of the provisos to Section 10(23C)(vi). It is, therefore, evident that as long as an institution exists solely for educational purposes then it would qualify for grant of exemption u/s 10(23C)(vi) of the Act.''

5.1 In para 6.5, of the said judgment the following three questions of law have been raised:

(A) Whether an educational institution would cease to exist ''solely'' for educational purposes and not for purposes of profit merely because it has generated surplus income over a period of 4/5 years after meeting its expenditure?

(B) Whether the amount spent on acquiring/constructing capital assets wholly and exclusively becomes part of the total income or it becomes entitled to exemption u/s 10(23C)(vi) of the Act?

(C) Whether an institution registered as a Society under the Societies Registration Act, 1860, lose its character as an educational institution, eligible to apply for exemption u/s 10(23C)(vi) of the Act?

5.2 Our answer to the aforesaid questions would be the same as has been given in Pinegrove International Charitable Trust''s case {supra) and the same reasoning is adopted. It is pertinent to notice that Question No. (A) has been answered in favour of the Assessee and against the revenue. Question Nos. (B) and (C) have been answered jointly in favour of the Assessee and against the revenue, as is evident from paras 8.1 to 8.12. The omnibus principles of law have been culled out in para 8.13. All these principles would apply to the facts of each of the cases in this bunch of petitions as well because the guidance for grant of exemption u/s 10(23C)(vi) of the Act has been derived from proviso 13th (unnumbered) by their Lordships'' of Hon''ble the Supreme Court in American Hotel & Lodging Association''s case (supra). The aforesaid principles have been summed up as under:

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 analogues 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 & Lodging Association (supra). To decide the entitlement of an institution for exemption u/s 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 Mfrs. Association (supra). It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not necessarily 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 & 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 per cent 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, after 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 u/s 10(23C)(vi) the Act. [See para 8.7 of the judgment - Aditanar Educational Institution case (supra)].

(5) Where more than 15 per cent of income of an educational institution is accumulated on or after 1-4-2002, the period of accumulation of the amount exceeding 15 per cent 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 Uttarakhand High Court rendered in the case of M/s. Queens Educational Society(supra) and the connected matters, is not applicable to cases fall within the provisions 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.

Emphasis supplied

5.3 When the facts of the various cases are examined in the light of the above discussion, the first thing which becomes evident is that capital assets acquired/constructed by the educational institutions have been treated as income in a blanket manner without recording any finding whether the capital assets have been applied and utilised to advance the purpose of education. It is obligatory on the part of the prescribed authority while considering the application for grant of exemption, whether expenditure incurred as capital investment is on the object of education or not. It is appropriate to mention that in all these cases, the impugned orders passed by the Chief Commissioners of Income Tax are similar in substance and appears to have been inspired by the view taken by the Uttarakhand High Court in the case of Queens Educational Society (supra), which we have not accepted in the main judgment rendered today in the case of Pinegrove International Charitable Trust (supra). The competent authority is also required to consider the question of

advancement of loan in CWP No. 8135 of 2009) to the employees of the college, which was given to one Shri O.P. Joshi, Principal of the institution in its proper perspective. The advancement of loans to the employees of the institution cannot be regarded as mis-application of the fund because good service conditions for its employees would always attract talented persons to an educational institution. If facilities like., housing, loan, car loan etc., which have prevalent in the Public Sector and Government institutions, are given then necessarily it would be regarded as expenditure spent on the object of education and not to any other purpose.

5.4 Likewise, it would be a relevant factor if an institution has enjoyed exemption for the last 21/2 decades (C WP No. 10738 of 2009). The competent authority should have recorded findings of'' facts in the case of CWP No, 10738 of 2009, insofar as the remunerations paid to Shri Suresh Chander, who is Director of the School and to his wife Smt. Usha Rani, who is teacher in the school are concerned. If the remunerations have been paid in their capacity as an employee rendering the service to the school as Director or Teacher then it would be proper to interpret the same to be for education purpose. But if the remunerations have been paid farcically then the payment made to such persons must be reckoned to have been spent on a purpose other than education. In order to avoid any reference to all individual cases, it is suffice to mention that the competent authorities should not have read the judgment of Uttarakhand High Court in the case of Queens Educational Society (supra) like a statute. The Chief Commissioners of Income Tax should have followed the Full Bench judgment of this Court rendered in the case of Punjab Financial Corpn. (supra), holding that submission of Audit Report in Form 10BB is not mandatory and it could be filed even after the filing of return. The aforesaid difficulty has arisen in CWP No. 2721 of 2009. The Respondents could have easily awaited the outcome of the appeals pending before Hon''ble the Supreme Court. It would have avoided unnecessary litigation, time and expenses.

5.5 As a sequel to the aforesaid discussion, these petitions are allowed and the impugned order passed by the Chief Commissioners of Income Tax refusing to grant exemption u/s 10(23C)(vi) of the Act or renew the same are hereby quashed. However, we leave it, open to the Respondents to pass any fresh orders, if any such necessity is felt after considering every individual case in the light of various propositions of law culled out by us in the preceding paras.

5.6 The writ petitions stands disposed of in the above terms.