**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Income Tax Appeal No.6 of 2017
Date of decision: July 14, 2017**

The Commissioner of Income Tax (Exemptions), Chandigarh

....Appellant

versus

M/s Kids-R-Kids International Education and Social Welfare trust, Chandigarh

....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Denesh Goyal, Sr. Standing Counsel for the appellant-Revenue.

AJAY KUMAR MITTAL, J.

1. The appellant-Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 10.03.2016 (**Annexure A-2**) passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, 'the Tribunal') in ITA No.781/CHD/2015, claiming the following substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case, the order of the ITAT is not perverse in holding that the Pr.CCIT has not doubted the genuineness of activities of the assessee whereas the Pr. CCIT had denied exemption as the assessee had not satisfied the condition of Section 10(23C) that it was existing solely for educational purposes? The assessee had aims and objects other than education also.

(ii) Whether on the facts and circumstances of the case, the order of the ITAT is not perverse in holding that the Pr.CCIT has not doubted the genuineness of activities of the assessee whereas the Pr. CCIT had denied exemption as the assessee had not satisfied the condition of Section 10(23C) that it was not existing for purposes of profit. The assessee had not provided for reservation in admission and free tuition to children belonging to weaker section of the society thereby indicating its profit motive?

(iii) Whether on the facts and circumstances of the case, the ITAT's order is not perverse in directing grant of approval on the basis of genuineness of activities which is a condition envisaged in the second proviso and cannot override the basic requirement of existing solely for educational purposes and not for profit?

(iv) Whether on the facts and circumstances of the case, the ITAT was justified in directing to grant exemption without commenting on Pr. CCIT's observation that the assessee had failed to fulfil the crucial condition that it was existing solely for educational purpose and not for purpose of profit?"

2. A few facts relevant for decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee filed an application for grant of exemption under Section 10(23C)(vi) of the Act for the assessment year 2014-15 on 24.09.2014 before the Principal Chief Commissioner of Income Tax, N.W. Region, Chandigarh, [in short, 'the Pr. CCIT)]. The exemption was denied holding that the assessee did not satisfy the condition contained in Section 10(23C)(vi) of the Act to the effect that it was existing solely for educational purposes and not for purposes of profit. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated 10.03.2016 (Annexure A-2), the Tribunal had directed the Pr. CCIT to grant registration to the respondent-

assessee. It was observed by the Tribunal that the only reason for denial of exemption could be where the officer was not satisfied as to the genuineness of the activities of the assessee. Since the Pr. CCIT had not doubted the activities of the Society, a direction was given to him to grant registration under Section10(23C) of the Act. Hence, the instant appeal by the appellant-Revenue.

3. We have heard learned Sr. Standing Counsel for the appellant-Revenue.

4. Section 10(23)(vi) of the Act reads thus:-

> *"Any University or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority."*

5. A perusal of the above provision shows that the recognition is given to an institution which exists solely for educational purposes provided it is not running for the purpose of profit. Secondly, it has to be approved by the prescribed authority. The only requirement for granting registration under this Section is the satisfaction of the prescribed authority with regard to the genuineness of the activities of the assessee. It has been categorically recorded by the Tribunal that the assessee is a Trust registered under Section 12AA of the Act which makes it quite clear that the assessee is pursuing the charitable activities. It was further observed that the provisions of the Right to Children to Free and Compulsory Education Act, 2009, are not applicable to the assessee being an unaided Society. Since the Pr. CCIT had not doubted the genuineness of the activities of the Society, the Tribunal directed the Pr. CCIT to grant

registration under Section 10(23C) of the Act. The relevant findings recorded by the Tribunal read thus:-

> *"The provisions of Section 10(23C)(vi) of the Act is quite clear to the fact that the only reason for denial of said exemption can be the case where the officer is not satisfied as to the genuineness of the activities of the assessee. By not applying the provisions of the Right of Education Act, it cannot be said that the assessee is not doing any genuine educational activities. For non-compliance of Right to Education Act, there is a specific appropriate authority which may take action against the assessee. Otherwise also, as stated by us earlier, the RTE provisions are not applicable to the assessee being an unaided society. It is not open to the Income tax Department to take any such step. There may be some provisions in the relevant Act for the consequences of such non-compliance but it can certainly not be in the form of not granting approval to the assessee under the Income Tax Act.*
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> *Since the Principal Chief Commissioner of Income Tax has not doubted the genuineness of the activities of the society, we hereby direct him to grant registration under Section 10(23C) of the Act."*

6. Learned Sr. Standing Counsel for the appellant-Revenue has not been able to point out any error in the order passed by the Tribunal. Reference was made to the judgment of this Court in, '**Amrawati Welfare Society vs. Central Board of Direct Taxes and Others', (2017) 390 ITR 471 (P&H),** wherein it was held that if the company had granted an interest-free loan to the assessee for the purpose of establishing and running the educational institution, the exemption could not be refused. The mere receipt of an interest-free loan was not indicative of a commercial activity for profit. The position in the present

case being different, the Revenue cannot derive any advantage from the said decision.

7. In view of the above, no substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

July 14, 2017
'gs'

Whether speaking/reasoned? **Yes**

Whether reportable? **Yes**