HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Income Tax Appeal No. 123 / 2006

Jhunjhunu Academy Sammittee

----Appellant

Versus

Income Tax Officer Jhunjhunu

----Respondent

D.B. Income Tax Appeal No. 125 / 2006

Jhunjhunu Academy Sammittee

----Appellant

Versus

Income Tax Officer

----Respondent

For Appellant(s) : Mr. Sanjay Jhanwar

For Respondent(s) : Mr. Sameer Jain

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment

08/02/2017

1. Both these appeals involve common question of law and facts and therefore are decided by this common judgment.

2. By way of these appeals, the appellants have assailed the judgment and order of the Tribunal whereby Tribunal has dismissed the appeal preferred by the assessee and confirmed the order of CIT(A) as well as AO.

3. The facts of the case are that a survey u/s 133A was carried out at the institution on 29.10.2003. during the course of survey, it was noticed that during the previous year relevant to assessment year 2001-02, the society earned profit of Rs. 10,07,650/- but it was not furnishing its return of income. Therefore notice u/s 148 was issued after recording reasons for issue of notice u/s 148. In response to this return of income was filed on 15.2.2005 declaring nil income and claiming its total receipts exempt u/s 10(23C)(iiiad) of I.T Act. Notice u/s 141(1) was issued alongwith a questionary in response to which Shri M.S. Dhankar, C.A. appeared and produced books of accounts consisting of cash book, ledger, receipts books and expenses vouchers which were examined on test check basis and the case was discussed with him. Assessee has claimed his status as Educational society. However, there is no such independent status namely Educational society defined in section 2(31) of I.T. Act. Therefore, status of the society is taken as AOP. The assessee AOP is registered with the Registrar (Societies), Jhunjhunu and running an Educational institute namely M/s Jhunjhunu Academy, Jhunjhunu with a hostel. Perusal of Income & expenditure account for the year under consideration reveals that apart from receipt of regular fees, it has also shown receipts of donation amounting to Rs. 18,49,725/-. after claiming expenses under various heads, excess of Income of Rs. 10,07,650/- over expenditure has been shown under the school and hostel accounts. The excess amount has been claimed to be exempt u/s 10(23C)(iiiad) of I.T. Act thereby showing the taxable income at

NIL.

4. Counsel for the appellant-assessee has contended that appellant is running an educational institute namely M/s Jhunjhunu Academy and is established since many years. He contended that for the relevant year 2001-02 & 2002-03, the assessee has received income in terms of the donations from the students which has been considered by the Assessing Officer, CIT(A) & tribunal, as income and has not been considered eligible for exemption under Section 23C(iiiad) of the Income Tax Act.

5. Counsel for the appellant has taken us to the definition of Section 10 (23C) (iiiad) of the Income Tax Act which reads as under:-

> "Section 10:- In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-
>
> …….
>
> (23C)- any income received by any person on behalf of-
>
> …….
>
> (iiiad)- any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or."

6. He therefore contended that the income received by the appellant is eligible for exemption as income which has been derived by way of donation.

7. He has relied upon the following decisions:-

(i) In Queen's Education Society vs. CIT reported in (2015) 372 ITR 699 (SC), the Supreme Court held as under:-

> 19. It is clear, therefore, that the Uttarakhand High Court has erred by quoting a non existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which

expressly stated that rulings arising out of the Income Tax Act would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to Section 10(23C) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of Section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the ***Surat Art Silk Cloth*** case, Aditanar case and the American Hotel and Lodging case. It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit. In fact, in ***S.RM.M.CT.M. Tiruppani Trust v. Commissioner of Income Tax*** MANU/SC/0107/1998 : (1998) 2 SCC 584, this Court in the context of benefit claimed Under Section 11 of the Act held:

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

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

(ii) In Chief Commissioner of Income Tax, Chandigarh vs. St.

Peter's Education Society (2016) 385 ITR 66 (SC), the Supreme Court observed as under:-

> We may record at this stage that there was a difference of opinion among various High Courts on the aforesaid issue. While summarizing the law, this Court approved the judgments of Punjab and Haryana High Court, Delhi and Bombay High Courts and reversed the view taken by the Uttarakhand High Court. In so far as the judgment of the Punjab and Haryana High Court is concerned, it was given in the case of Pinegrove International Charitable Trust v. Union of India MANU/PH/0146/2010 : [2010] 327 ITR 73 (P&H). The relevant para in this behalf which also states as to how such cases are to be dealt with reads as under:
>
> "25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief Commissioner of Income-tax's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, the Revenue's appeals from the Punjab and Haryana High Court's judgment dated January 29, 2010, and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that the Revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C)read with Section 11 of the Income-tax Act."

In all those appeals which have come from the High Court of Punjab and Haryana and filed by the Department of Income-tax except one from the Gujarat High Court, the High Court has followed its aforesaid judgment in Pinegrove International Charitable Trust. Since this view stands approved, all these appeals are dismissed.

We, however, make it clear that observations made in para. 25, reproduced above, shall apply in these cases.

One appeal is from the Gujarat High Court which has also followed the view taken by the Punjab and Haryana High Court in Pinegrove International Charitable Trust, which also stands dismissed.

We also make it clear that the observations made in para. 25 in Queen's Educational Society v. CIT MANU/SC/0287/2015 : [2015] 8 SCC 47 : [2015] 372 ITR 699, 729 (SC) shall be followed.

7.1 On the previous occasion, when the matter was listed, he has relied upon the following decisions of different High Courts:-

7.2. In Brahmin Education Society vs. Assistant Commissioner of Income Tax & anr. reported in (1997) 227 ITR 317 (Ker.) it has been held as under:-

> The first point to be decided is whether it was justified on the part of the Commissioner to deny exemption under Section 80G on the ground that the society is deriving income from running chits. There is no dispute that the income derived from the chits is being made use of for educational purposes. Section 10(22) of the Income Tax Act states as follows :
>
> > "any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit."
>
> The position is well established on the strength of decisions that if a society exists solely for educational purposes and it runs an educational institution, its income will be the income of the educational institution, and, therefore, exempt under Section 10(22). The fact that the assessee had other objects, will not disentitle it to the exemption so long as the activity carried on by it is that of running an educational institution and its activities are not for profit. The question was considered by a Division Bench of this court in CIT v. Sree Narayana Chandrika

Trust MANU/KE/0114/1994 : [1995] 212 ITR 456. Their Lordships were considering Section 10(22A) which is analogous to Section 10(22). Section 10(22A) deals with income of a hospital while Section 10(22) deals with income of an educational institution. In that case the question was whether the income derived from securities can be treated as the income of the hospital. Their Lordships considered various decisions which were mostly on Section 10(22). It was held as follows (page 469) :

> " The emphasis, in our opinion, is not on whether the income was derived from the educational institution or hospital itself, but on the purpose for which the institution, trust or society was existing and utilising the income."

Their Lordships referred to the decisions in CIT v. Academy of General Education MANU/KA/0041/1983 : [1984]150ITR135(KAR) -where the income sought to be exempted included income from securities, properties and from other sources like dividends, interest, registration fee, donations, etc., and also Governing Body of Rangaraya Medical College v. ITO MANU/AP/0168/1975 : [1979]117ITR284(AP) , where the income was by way of compulsory contribution for seats in the college.

Thus, going by the reasoning of the Division Bench in CIT v. Sree Narayana Chandrika Trust MANU/KE/0114/1994 : [1995] 212 ITR 456 and other decisions, it is clear that if ah institution exists solely for the purpose of education and it derives income from any other source and if that income is used only for the purpose of education, then it will come under Section 10(22) of the Income Tax Act, It is clear from the memorandum of association of the society that chits are being conducted in order to make use of the commission for the purpose of education. There is no case for the Department that this amount is being used for any other purpose. In such circumstances, I hold that the Commissioner was wrong in holding that since chit is being conducted, which is a business activity, the petitioner is not entitled to exemption under Section 10(22) of the Income Tax Act. The refusal is based under the provisions of Section 11(4A). According to me, this is a mistake committed by the authorities. Exemption sought for was under Section 10(22). Section 11(4) is applicable only with regard to the income from various properties. It cannot override Section 10(22). Hence, this reasoning is also not correct.

7.3 In Additional Commissioner of Income Tax vs. Aditanar

Educational Institution (1979) 118 ITR 235 (Mad.) it has been held as under:-

> 9. The word " University " does not represent the genus in the present case, so that the subsequent words will have to be considered as taking their colour from this genus. As pointed out by the Supreme Court in S. Azeez Basha v. Union of India, MANU/SC/0039/1967 : [1968]1SCR833 , there was no law in India which prohibited any private individual or body from establishing a University and it was, therefore, open to a private individual or body to establish a University. There is a good deal in common between educational institutions which are not universities and those which are universities. Both teach students and both have teachers for the purpose. But what distinguishes a University from any other educational institution is that a University grants degrees of its own while other educational institutions cannot. It is this granting of degrees by a University which distinguishes it from the ordinary run of educational institutions. Thus, in law, in India there was no prohibition against establishment of Universities by private individuals or bodies and in fact the famous Viswabharathi University was started by Rabindranath Tagore as a private individual. It was only in 1956 by Sub-section (1) of Section 22 of the University Grants Commission Act (III of 1956) it was laid down that the right of conferring or granting degrees should be exercised only by a University established or incorporated by or under a Central Act or a State legislature. The other " educational institution " cannot come within the category " University ". The term " University " stands for a higher degree of education than scholastic level. " Any educational institution " would fall within the scope of Section 10(22) even though it may have or may not have anything to do with the University. The categories are so different that the University cannot be the genus, and the " other educational institution " the species thereof. Thus, the college here could come under the " other educational institution ".
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> 10. The further contention was that the institution, in order to qualify for the exemption under Section 10(22) should itself be the educational institution and that it was not enough if it ran an educational institution. It was pointed out that the assessee could assist colleges and that in case it merely rendered assistance, it would be in the nature of a financial body, which did not itself impart education. It is difficult to

accept the argument that, in the present case, the assessee is not the educational institution. The assessee has come into existence for the purpose of establishing, running, managing or assisting colleges, schools and other educational organisations. In pursuance of its objects, as seen earlier, the assessee has established a college. It is stated that the management of the college had to be vested in a registered body. It is not clear whether two registered bodies were contemplated, one being the assessee and the other the managing body. In para. 8 of its order, the Tribunal has observed as follows.

> "Ultimately, affiliation for the P.U.C. course was granted to the college by the Madras University on condition that the management of the college should be by a registered body."

7.4 In Commissioner of Income Tax vs. A.M.M. Arunachalam Educational Society (2000) 243 ITR 229 (Mad.) it has been held as under:-

> Counsel for the Revenue fairly stated that the first question is required to be answered in favour of the assessee, having regard to the decision of the Supreme Court in the case of Aditanar Educational Institution v. Addl. CIT MANU/SC/0338/1997 : [1997] 224 ITR 310(SC) . Having perused the decision of the apex court we must hold that the law laid down therein applies to the facts of the case. The object of the assessee is to run the educational institution and that is what it has been doing. It has been held by the apex court in the case of Aditanar Educational Institution v. Addl. CIT MANU/SC/0338/1997 : [1997] 224 ITR 310(SC) , that the petitioner educational society formed for the sole purposes of establishing, running and managing or assisting schools and colleges is an educational institution and is entitled to exemption under Section 10(22) of the Act.
>
> The first question referred to us is, therefore, answered in favour of the assessee and against the Revenue.
>
> There is no dispute about the fact that the assessee exists only for educational purposes, namely, for running a school and not for purposes of profit. It is an educational institution. Section 10(22) of the Act exempts "any income" of such institution. That would clearly include dividend income as well.
>
> It is obvious that granting exemption to the income of

the educational institutions is to enable such institutions to utilise the monies available with them for the purpose of running the educational institutions. The source from which the money is received is not of any consequence, what is relevant is the application. So long as the institution is an educational institution which is not engaged in earning profit, income of such institution is exempt under Section 10(22) .

7.5 In Commissioner of Income Tax vs. Doon Foundation (1985) 154 ITR 208 (Cal.) it has been held as under:-

The memorandum of association clearly shows that the assessee had for its objects, inter alia, to establish, run, manage or assist colleges, schools, technical and vocational institutes. The objects indicate that the society is existing solely for educational purposes. Clause 7 provides that if any activity as enumerated in Clause 3 is found to be outside the scope of the educational purpose, it shall be deemed as non est and shall be deemed to be excluded from the objects of the foundation. The contention of Mr. Maitra that the assessee-society is neither a university nor an educational institution and, therefore, cannot get any exemption under Section 10(22) cannot be accepted. Section 10 provides that in computing the total income of a previous year of any person, any income falling within any of the clauses of Section 10 shall not be included. Sub-section (22) of Section 10 provides that any income of a university or other educational institution existing solely foreducational purposes and not for purposes of profit will not be included in the total income. The assessee runs an educational institution. If the educational institution run by the assessee exists solely for educational purposes, in that event, income of such institution cannot be included in the total income of the assessee-society. If the educational institution exists solely for educational purposes and not for purposes of profit, in that event the fact that the recipient or owner of the income is a person other than the educational institution or university, would not affect the position. The word "institution" has not been defined in the Act. A society registered under the Societies Registration Act whose primary objects are to establish, support, manage or conduct schools, colleges, etc., would also come within the purview of an educational institution. If a society primarily engages itself in educational activities or runs a school or college, it is entitled to claim exemption under Section 10(22). It is immaterial whether the society itself is an educational institution or it runs an educational institution. We are also unable to accept

the contention of Mr. Maitra that an educational institution to be eligible for exemption under Section 10(22)should be affiliated to any university or any board. Section 10(22) does not impose such a condition. So long as the income is derived from an educational institution existing solely for educational purposes and not for purposes of profit, such income is entitled to exemption under Section 10(22), whether or not such educational institution is affiliated to any university or college or board. If the contention of the Revenue is accepted, then many of the societies running institutions solely for imparting education would not get the benefit of Section 10(22). Education as envisaged in Section 10(22) may be imparted in a school or college or institution which may or may not be affiliated to, or recognised by, a university or board. In this case, the ITO has not rejected the claim of the assessee on the ground that the assessee has any object of profit or the society exists for the purposes of profit. The assessee-society has no motive for profit or personal gain. It is neither a tutorial home nor a coaching institution which runs solely for the purpose of profit or personal gain. The ground on which the claim was rejected was that the assessee had objects other than educational objects. From the objects as enumerated hereinabove, it would be clear that all the objects of the assessee are educational objects or are connected with education. It has not been shown to us which of the objects are unconnected with education. Even where a society or trust which owns an educational institution has charitable objects other than educational objects, even then, taking all the relevant factors into consideration like the aims and objects, the power enabling the society or the trust to function, its activities, etc., if it is found that the source generating the income exists solely for the purpose of education, such a society or trust is entitled to exemption underSection 10(22) in respect of only the income derived from the educational institution.

14. The further contention of Mr. Maitra is that in this case, the assessee has not yet set up the educational institution and cannot, therefore, get the exemption. According to Mr. Maitra, the assessee has only taken some steps for holding regular classes for teaching Hindi and purchased some books and periodicals for a library and it cannot be said that during the relevant previous year, the assessee was running any educational institution. The condition precedent for claiming exemption under Section 10(22) is, whether the educational institution exists solely for educational purposes and not for purposes of profit. There is no dispute nor can it be disputed that the assessee-society exists solely for educational purposes. The assessee has commenced activities connected with the imparting of education. For the purpose of holding regular

> classes for teaching of Hindi, the assessee has taken all preliminary steps including purchase of books and periodicals. Such activities are the steps towards running of a full-fledged teaching course. We are, therefore, unable to accept the contention of the Revenue that the assessee did not start running any educational institution during the previous year in question. The educational institution has been established or set on foot during the relevant previous year. In our opinion, the decision in the case of Saraswath Poor Students Fund MANU/KA/0080/1984 : [1984]150ITR142(KAR) , has no application to the facts of this case inasmuch as in that case the primary object of the assessee was to extend financial help to students and not to establish any educational institution or to impart education to students. Here, the objects are to establish and run an educational institution and to impart education to students and for that purpose, steps have been taken by the assessee-society.

7.6 In Secondary Board of Education vs. Income Tax Officer (1972) 86 ITR 408 (Ori.) it has been held as under:-

> There are other classes of educational institutions which exist solely for educational purposes. Those institutions cannot be run efficiently without substantial income made from different sources. The sources of income generally are collection of fees from the students, grants given by the Government and donations. Such income may however be insufficient to cope with the growing needs when dynamic progress is intended to be made in educational sphere. To supplement such income those institutions may taken recourse to some profit earning business. The profit would go to the general fund and would be appropriated towards expansion and development of educational schemes taken up by those institutions. In such a case, though incidentally profit is earned to meet the growing needs, all the same the institution exists solely for educational purposes and not for purposes of profit. Thus a distinction is to be kept in mind by looking into the dominant object of the institution. It is on the basis of these tests that this case is to be examined.

7.7 In Educational Institute of American Hotel and Motel Association vs. Commissioner of Income Tax (1996) 219 ITR 183 (AAR) it has been held as under:-

> 9. On examination, the conditions precedent to the availability of the exemption to an educational institution can be stated thus :

(a) the educational institution must actually exist for the application of the said Section and the mere taking of steps would not be sufficient to attract the exemption ;

(b) the educational institution need not be affiliated to any university or Board, in fact a society need not itself be imparting education and it is enough if it runs some schools or colleges ;

(c) the educational institution must exist solely for educational purposes and not for purposes of profit but merely because there is a surplus that is to say, a surplus of receipts over expenditure, it cannot be said that the educational institution exists for profit ;

(d) an entity may be having income from different sources but if a particular income is from an educational institution which exists solely for educational purposes and not for purposes of profit, then that income would be entitled to exemption and further the income should be directly relatable to the educational activity.

8. The Supreme Court judgment which sought to be relied upon by subsequent judgment in Additional Commissioner of Income Tax, Gujarat vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 wherein observation of the majority view of J. Khanna and J. Gupta referred in Sole Trustee, Lokashikshana Trust vs. CIT (1975) 101 ITR 234 (SC), has been disapproved and minority view of Beg J. has been approved.

9. Counsel for the respondent Mr. Jain has taken us to the order of AO as well as CIT(A) and Tribunal and contended that it is totally a family affair and income which has been derived is only for the purpose of profit. Therefore, one of the condition of Section 23C(iiiad) of the Act is not complied with on the basis of his profit motive.

10. He has relied upon paragraph no.4,5,6, 11, 25 & 26 of the Supreme Court Judgment in Queen’s Educational Society (supra) which is sought to be relied upon by Mr. Jhanwar and contended that in view of Clause (4) & (5) of paragrpah 11 which is reproduced as under:-

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

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

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

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

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

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

11. He contended that since the conditions are not fulfilled by the appellant-trust, therefore, the view taken by the tribunal and all authorities in view of the concurrent finding is required to be upheld and no interference is called for.

12. He has relied upon the decision in Sole Trustee (supra) para no.21, 42 & 45 in answer to Mr. Jhanwar's submissions that assessement for subsequent year be accepted. He has submitted that they were registered under Section 12A therefore, assessee has accepted the order of earlier year.

13. While admitting the matter this court has framed following substantial question of law vide order dated 26.7.2007:-

"(i) whether once appellant society has been considered to be eligible for exemption under section 110(23C) (iiiad) of the Act as an educational institution, and the words used in the said section are "any income", whether donations received by the socirty would also not qualify for such exemption?"

(ii) Even when donation received by the appellant are considered to be 'income from other sources', whether the same would not qualify for exemption under section 10 (23C) (iiiad) when the said section exempts all

income of the qualifying educational institutions?

14. We have heard counsel for the parties.

15. Before coming to the basic contentions, it is not in dispute that the appellant is as by name itself suggests that it is an academic Samiti carrying on activities of educational purpose for establishing any educational institution. There is need of infrastructure and expansion of every activity whether it is a residential accommodation or physical or competitive requirement or other requirement and also the maintenance of the institution is a mandatory for which one has to collect the funds.

16. From the record it seems that an endeavour is made that during the relevant year they have a surplus fund which is prescribed or described by the authority as a profit and compared to the expenses or the other income which has been received as 34,91,251/-. Thus, it has been stated that there is profit of 33 per cent.

17. In our view, any educational institution which is required to be run they have to have a surplus fund for educational activity to sustain the consistency in the efficiency and very purpose of collecting donation is to sustain activity of institution. Merely, because surplus fund it cannot be envisaged as profit, the institution has not crossed one crore limit and they are well within their prescribed limit. The income was received by the trust which is reflected in the books of accounts.

18. In our view, the view taken by the authority is required to be reversed and it is required to be looked into the foundation of the ratio laid down by the Supreme Court in the case of Queen's Education Society (supra) where funds which has been surplus is within a corpus fund and it has been kept as reserve fund which is not in dispute and they have not crossed the limit of one crore.

19. Taking into consideration the aforesaid, we are of the opinion that the contention raised by Mr. Jhanwar is required to accepted.

20. Therefore, the first question, we answering in favour of the assessee that it is an income entitled for exemption under Section

23C(iiiad) of the Act.

21. In view of the answer to first issue, the second issue will not arise.

22. The appeal is allowed to the aforesaid extent.

A copy of this judgment be placed in each file.

(VINIT KUMAR MATHUR)J. (K.S. JHAVERI)J.

Bm Gandhi 31 & 32.