

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 839/Ahd/2019  
Assessment Year 2018-19**

Parul Arogya Seva Mandal Trust, C/o. Ahmedabad Homeo Medical College, Ghuma Bhopal Road, Ahmedabad PAN: AAATP4313K (Appellant)	Vs	The Hon. Commissioner of Income Tax, (Exemption), Ahmedabad  (Respondent)
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**Assessee Represented:**  
**Revenue Represented:**

**None**  
**Shri Akhildenra Pratap  
Yadaw, CIT-DR**

Date of hearing : 13-07-2023  
Date of pronouncement : 26-07-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the order dated 08-03-2019 rejecting claim of exemption u/s. 10(23C)(vi) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the Commissioner of Income Tax (Exemptions), Ahmedabad.

2. The brief facts of the case is that the assessee is a Trust filed an application in Form No. 56D on 26-03-2018 seeking exemption u/s. 10(23C)(vi) of the Act with necessary documents. The assessee Trust is running colleges for imparting higher education on Diploma, Degree and Master (P.G.) courses of Engineering, Pharmacy, Management, Computer Application, Ayurveda, Homeopathic Medical, Physiotherapy, etc. Thus the assessee Trust was running the following colleges:

*i) Parul Institute of Engineering of Technology (Diploma Studies)(PIET-DS)*

*ii) Parul Institute of Engineering of Technology (Diploma 2<sup>nd</sup> Shift) (PIET-D 2<sup>nd</sup> shift)*

*iii) Parul Plyitechnic Institute (First Shift)(PPI)*

*iv) Parul Plyitechnic Institute (Second Shift)(PPI)*

*v) Shanti Sadan Hostel (SSH)*

*vi) Student Welfare Association) (SWA)*

3. The assessee Trust submitted that three Trusts namely (i) Parul Arogya Seva Mandal, Vadodara, (2) Parul Trust, Limda and (3) Hariom Arogya Seva Mandal, Vadodara got merged into the present Trust namely Parul Arogya Seva Mandal Trust which was approved by the Jt. Charity Commissioner, Vadodara vide order dated 31-07-2014. Thus the objects of the Trust are medical treatment for poor people, undertake general activities related to public health, Organize Family Planning Centres, undertaking activities for education from pre-primary to higher education at university levels,

to provide and take forward necessary help/assistance for development of educational activities in different branches/faculties of education.

4. The Ld. CIT(E) after going through the objects of the Trust, noticed that the assessee Trust has multiple objects in the trust deed, which does not satisfy the conditions of section 10(23C)(vi) of the Act. So a show cause notice was issued as to why its application for approval u/s. 10(23C)(vi) of the Act should not be rejected, as the trust does not comply the statutory requirements of “existing solely for educational purpose”.

4.1. In reply, the assessee filed written submission stating that the Trust exists “solely for education purpose”, Medical and other social objects are ancillary and supportive objects to achieve the main educational objects. It is further mentioned that the assessee Trust is a sponsoring body of “Parul University” which is registered under Gujarat Private University Act, 2009 and is a Deemed University status by UGC on a condition that the institute would be having broad objectives having a greater interface with society through extra mural, extension and field action related objects. It is further submitted the Trust has been approved permission for Medical education to start Medical College provided Trust should have medical objects in its Constitution. Without medical object, Trust would not have got the medical college permission; hence incorporation of medical objects is also a part of education objects. Further running hospitals is a pre-requisite for starting any medical institution in the fields of Medicine, Ayurved, Homeopathy,

Nursing or Physiotherapy. Such Hospitals are run on charitable basis, as paid patients are not considered by the regulatory bodies for the purpose of medical education. Therefore, there is no element of making any profit out of operations of such hospitals meant for medical education. In support of the same, the assessee relied upon various judgments of High Courts and Tribunals.

4.2. After considering the above reply filed by the assessee Trust, the Ld. CIT(E) denied approval u/s. 10(23C)(vi) of the Act observing as follows:

*“...9. As per the conditions stipulated in section 10(23C)(vi) of IT. Act it is mandatory that the institution should not run for the purpose of profits. However on going through the Consolidated Income and Expenditure accounts submitted by the assessee it is noticed that it has earned huge profits out of its educational activities. Same are briefly noted here under;*

Name of institution	F.Y.	Surplus as per Income & Expenditure account (in Rs.)	Total Receipts (in Rs.)	% of surplus to Income and Expenditure account
Parul Arogya Seva Mandal(PASM)Consolidated	2014-15	13,41,28,042	46,81,67,075	28.65
»do»	2015-16	6,34,48,968	36,44,79,232	17.41
»do-	2016-17	1,13,24,915	32,92,47,142	3.44
; Parul Institute of Engg. And Technology (2nd Shift)	2014-15	71,90,357	6,88,48,200	18.44
Parul Institute of Engg. And Technology(me 2 <sup>nd</sup> shift)	2014-15	24,70,143	1,42,16,350	17.38
Parul Institute of Technology (2nd Shift)	2014-15	59,17,491	4,46,86,275	13.24
Parul Institute of Technology (Me 1 <sup>st</sup> Shift)	2014-15	6,08,915	90,96,800	6.69
Parul Institute of Technology -(Me 2nd Shift)	2014-15	11,89,205	67,01,900	17.74
Parul Institute of Engg. And Technology(MCA 2nd Shift)	2014-15	7,38,095	51,81,000	14.25

Parul Institute of Engg. And Technology(MCA Integrate)	2014-15	71,511	19,47,850	3.68
Parul Institute of Engg. And Technology(Diploma 2nd Shift)	2014-15	66,28,484	5,79,29,350	11.44
-do-	2015-16	98,32,945	4,70,70,130	20.89
-do	2017-18	15,14,382	1,57,53,745	9.61
Parul Polytechnic Institute	2017-18	42,61,944	5,90,20,714	7.22
Parul Polytechnic Institute(2nd Shift)	2014-15	7,28,246	2,93,36,800	2.48
-do-	2017-18	25,95,420	1,16,06,889	22.36
-do-	2015-16	33,40,780	2,05,72,216	16.24
Shanti Sadan Hostel	2015-16	19,30,34,189	29,49,59,055	65.44
-do	2016-17	22,05,47,997	33,33,60,484	66.15
-do--	2017-18	14,85,42,612	24,79,41,624	59.91
Student Welfare Association	2015-16	1,61,74,764	2,20,88,506	73.22
-do-	2016-17	1,33,52,873	1,70,73,135	78.21
Parul Institute of Engg. And Technology(Diploma Studies)	2017-18	2,04,16,202	9,08,38,457	22.48

*From the above, it is crystal clear that the Assessee Trust has earned the income as high as 78.21% in a year. In other years also, Profit Ratio is very high. Thus the basic object and condition of the provisions are not satisfied at all by the Trust.*

*It is amply clear from a bare reading of provisions of section 10(23(vi) of 1.T. Act that the 'educational institution' must exist 'solely for educational purposes'. 'Solely means exclusively and not primarily.*

*9.1 Further, giving scholarships or to organize Family planning Centers and give cooperation where such centers are run by other institutions or Govt. etc. as mentioned in preceding para cannot be considered as activity for educational purpose. The trustees have wide power to apply funds not only for educational purpose but also for the philanthropic purpose, relief to poor in terms of medical aid, general public utility purpose like family planning etc. Therefore, the trust cannot be stated to be existing for the purpose of education only. In fact the assessee should itself impart the education and not carry out any other activities like above. In view of the same, the argument put forth by the assessee is not tenable and hence, not acceptable*

*On going through the various objects of the trust deed it is found that certain clauses are totally different from the purpose of Education and by no stretch of imagination those can be treated to be for the purpose of Education. Therefore, the basic condition of the trust existing solely for the purpose of education does not get fulfilled. Few examples of such violations are as under:*

i. Parul Trust Limda.

1. Clause No. iv relates to medical.
2. Clause v relates to social activities.

ii. Shree Hariom Arogya Seva Trust. Vadodara.

1. Clause No. c for medical treatment
2. Clause No. d for public health
3. Clause No. h in respect of upbringing and training for self-reliance to orphan and deserted women and children.

iii. Parul Arogya Seva Mandal Trust, Vadodara.

1. Clause No, a, b, & c with respect to medical treatment.
2. Clause No. d with respect to public health
3. Clause No. h with respect to upbringing and training for self-reliance to orphan and deserted women and children.

9.3 Considering the above facts of the case, the applicant having multiple objects cannot be said to be existing solely for the purpose of education. It is open to the trustee to pursue all or other objects of the trust under the garb of education. Therefore, the condition of section 10(23C) (vi) ie the applicant existing solely for educational purposes is not fulfilled in the present case,

In the case of Maharaja Sawai Mansingh ji Museum Trust 169 ITR 379, the Hon. Rajasthan High Court held that the educational institute must exist solely for educational purposes. "Solely" means exclusively and not primarily. The emphasis in section 10(23C) is on the word "solely". The Hon. Court stated as under:

*"It is amply clear from a bare reading of it that the educational institution must exist solely for educational purposes. Solely means exclusively and not primarily. Simply because certain persons may add something to their knowledge by visiting the museum, it cannot be said that the museum exists solely for educational purposes. The emphasis in section 10(22) is on the word solely".*

9.4 It is worth here to mention that the assessee trust vide order of the CCIT-IV, Ahmedabad dtd. 17-09-2014 rejection of the application filed by the assessee for seeking the approval us 10(23C)(vi) has been rejected through the speaking order Since there is no improvement/changes in the objects of the trust, therefore, the rejection order passed in the case, which has not been challenged before the appellate forum and the reasons given therein also exist and the same are squarely applicable in the matter pending at present."

4.3. The Ld. CIT(E) considered various Supreme Court judgments and held that the assessee Trust does not exist solely for educational purpose as per provisions of section 10(23C)(vi) of the Act and denied approval as follows:

“.....(a) The word 'education' occurring in section 2(15) came for judicial review in the case of Sole Trustee, Loka Shikshana Trust ([1975] 101 ITR 234 (SC). It was observed:

*"The sense in which the word 'education' has been used in section 2(15) in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word 'education' has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge Likewise, if you read newspapers and magazines, see pictures, visit art galleries museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world if you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life But that is not the sense in which the word 'education' is used in clause (15) of section 2 What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling"*

*From the aforesaid judgment of the Hon'ble Supreme Court, the word "education" used in clause (15) of section 2 of the Act of 1961 means the process of training and developing the knowledge, skill, mind and character of the students by normal schooling. In our opinion, the aforesaid meaning of the word "education", the educational purposes mentioned in section 10(23C)(vi) of the Act of 1961 can be applied. The word education connotes the process of training and developing the knowledge, skill, mind and character of students by normal schooling. Therefore, it is clear that in clause (vi) of section 10(23C), the word "solely for education" has been used in very clear sense that it must exist exclusively for education and the education is also defined in very scholastic and systematic manner. Therefore, by no stretch of imagination "subscribe or give donations to and financially or otherwise to aid any other charitable society or trust having similar objects" can be said to be "solely education".*

*(b). While interpreting the provision of section 10(23C)(vi), the Hon'ble Supreme Court in the case of American Hotel & Lodging Association, Educational Institute (supra), has held as under :-*

*"34. At the outset, we need to examine the scope of section 10(22), which is the predecessor of section 10(23C) (vi), without the provisos.*

*35. Actual existence of the educational institution was the pre-condition of the application for initial approval under section 10(22). On grant of approval under section 10(22), sections 11 and 13 did not apply. Therefore, earlier prior to 1-4-1999 when exemption was given to the appellant, there was no assessment nor demand. Section 10(22) had an automatic effect. 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. Under section 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 under section 10(22).*

*36. The moot question in section 10(22) was whether the activities of the applicant came within the definition of "income of educational institution". Under section 10(22) one had to closely analyse the activities of the institute, the objects of the institute and its source of income and its utilisation. Even if one of the objects enabled the institute to undertake commercial activity, the institute would not be entitled to approval under section 10(22) The said section inter alia excludes the income of the educational institute from the total income "*

*From the aforesaid judgment of the Hon'ble Supreme Court, it is settled law that the sole object of the applicant seeking approval u/s 10(23C)(vi) of the IT Act has to be a educational object.*

*11. Further, as per the provisions of section 10(23C)(vi) of the Act of 1961, it is obligatory on the part of the authority to examine the record and object of the society objectively and therefore taking into consideration the submission made by the applicant in detail, it is held that the objects particularly 3(c)(viii) of the Applicant Trust are contrary to the object of the educational purpose and therefore, it is concluded that the applicant does not exist solely for educational purpose. Besides, object 3(b) of the Memorandum is contrary to the definition of Charitable' as the activity is limited to the benefit of Particular class of society. Moreover the activities are run for the purpose of profits and not for charitable purposes as discussed in preceding paras. Since the applicant trust has other non-educational objects and non charitable purpose as per the trust deed mentioned above, the trust has not fulfilled the condition laid down to proviso of section 10(23C)(vi) of the Act.*

*12. In view of the above mentioned facts and legal pronouncements, it is concluded that the trust does not exist solely for educational purpose as per provisions of section 10(23)(vi) of the Act but for the profit motive and therefore, I am not inclined to accord approval for exemption under that section. Accordingly, the application of the Trust seeking approval u/s 10(23C)(vi) of the Act, is hereby rejected.*

5. Aggrieved against the same, the assessee is in appeal before us raising the Revised Grounds of Appeal:



1. *The learned Hon. CIT (Exemption) is not correct in rejecting the application of the Trust for Approval under Section 10(23C)(vi) of The Income Tax Act, 1961.*

2. *The learned Hon. CIT (Exemption) has misunderstand the provision of section 10(23C)(vi) of the Act in true spirit. As per provision of the said section it is mandatory that "Educational Institution" must exist Solely for educational purposes. Solely" means exclusively and not primarily. It is to be construed that Activities of the Trust must be solely for educational purpose irrespective of whether constitution of the trust is having ancillary objects other than educational.*

3. *The learned Hon. CIT (Exemption) is not correct in holding that the trust has earned huge profit from its educational activities. Applicant trust is existing solely for educational purpose and not for the purpose of Profit Motive.*

4. *The learned Hon. CIT (Exemption) is not correct in holding that the objects particularly 3(c)(vii) of the Applicant Trust are contrary to the objects of the educational purpose. However there is no clause 3(c)(viii) in the Trust Deed of the appellat.*

6. Today is the 15<sup>th</sup> time of hearing of the above appeal, None appeared on behalf of the assessee in spite of service of notices to the assessee Trust. There is a Letter of Authority in favour of Shri Samir Parikh, Chartered Accountant, he appeared before this Tribunal on 30-05-2022, wherein he was directed to file revised concise grounds. Thereafter neither the Representative nor the assessee appeared for the above appeal, when the case is re-posted for hearing for 9<sup>th</sup> times from 07-07-2022 to 13-07-2023. Thus it is presumed that the assessee Trust is not interested in conducting the above appeal, therefore we proceed to decide the appeal with available materials on record and with the assistance of Ld. CIT-DR.

6.1. The assessee filed a submission on record which reads as under:

*"...7 Hence it is clear that appellant trust is existing solely for educational purpose and is eligible to get exemption under section 10(23C)(vi) of the Income Tax Act, 1961.*

*8. Without prejudice to above, it is submitted that having multiple objectives along with educational object cannot be said that the institution/trust does not exist solely for educational purpose. In the decision of Hon. High Court of Delhi in case of Jaypee Institute of Information Technology Society Vs. Director General of Income-tax (Exemptions) [2009] 185Taxman 110 (Delhi), Hon. High court has laid down that*

*"If pure learning, which is one of the purposes of the universities, is to survive, it will have to be brought into relation with the life of the community as a whole, not only with the refined delights of a few gentlemen of leisure. Real education is one which makes a student socially relevant. For this purpose, his greater interface with the society is required. UGC perceives that this can be achieved through extra mural, extension and field action related programmes. These programmes may include NSS and NCC activities, other social service programmes and projects. It was with that purpose in mind that the aforesaid objective was introduced so that students in the assessee- institute were able to get 'real' education. The main purpose, therefore remained 'education' which was imparted in a formal way by the assessee-institute with status of 'Deemed University' through help of teachers. The aforesaid activities would only develop the knowledge, skill or character of the students further by achieving education in true sense.*

*Therefore, the assessee-institution fulfilled the requirement of imparting formal education by a systematic instruction. If an institute/university introduces the courses with the objective of "greater interface with the society through extra mural, extension and field action related programmes', these are not the objectives independent of education but are an aid to the education. Therefore the assessee-institution fulfilled all the requirements of section 10(23C)(vi) and was thus, entitled to grant of registration and, consequently, exemption under the aforesaid provision."*

*9. It is submitted that appellant trust is carrying solely educational activities by running various educational institutions along with medical educational institution, hence it fulfilled all the conditions laid down under section 10(23C)(vi) of the Income tax act, 1961.*

10. As per Para 9 of the order, it is stated that conditions stipulated in section 10(23C) (vi) of the I.T. Act, 1961 is not full filled so far as it is mandatory that the institution should not run for the purpose of profits as from the audited accounts it is noticed that trust has earned a huge profits out of its educational activities by producing institution wise surplus and total receipts. The said figures are not correctly understood by the Hon. Commissioner of Income tax so far as trust has spent more than 85% of its aggregate income including capital expenditure incurred by the trust.

11. Hon. CIT (Exemption) is not correct in holding that applicant trust has earned a huge profit from its educational activities. While giving surplus and total income as per audited income & expenditure account, he has only considered revenue expenses and has not considered capital expenses incurred by various educational institutions and by the trust. It is submitted that trust has utilized more than 85% of its total receipts in the A.Y. 2017-2018, details is as under:

Detailed application of funds of the trust for A.Y. 2017-2018 towards educational purpose as per return of income is as under:

Particulars	Amount Rs. A.Y. 2016-2017	Amount Rs. A.Y. 2015-2016
Income of the trust	364506028	468465500
Educational Income including Fees and other educational receipts	566133867	1315531244
Total Income	930639895	1783996744
Application of Fund for Educational purpose		
Expenses incurred by educational institutions	324882247	1216273288
Expenses incurred by trust	131176064	102732683
Application of income for purchase of Capital Assets	617645516	774620375
Total Application of Income	1073703827	2093626345
(Deficit)/Surplus	(143063929)	(309629602)

The above figures are as per computation of income and ITR filed which is also submitted along with application for approval. Therefore the figures of huge surplus stated in the order of rejection of approval for different educational institutions are not correct.

12. Details of surplus amount which is carried forward from earlier years in excess of 85% of income and its application for objects of the trust U/s.11 of the Act as per computation of income is as under.

A.Y.	Total Income	Total Application of Income	Surplus /(Deficit)
2017-18	659256112	735918938	(76662826)
2016-17	930639895	1073703827	(143063932)
2015-16	1783996744	2093626345	(309629601)

13. As per Para 11 of the order, Hon. CIT(Exemption) has concluded that, taking in to consideration the submission made by the applicant in detail, it is held that the objects particularly 10(23C)(vi) of the Applicant trust are contrary to the object of the educational purpose and therefore it is concluded that the applicant does not exist solely for educational purpose as per provision of section 10(23C)(vi) of the Act but for the profit motive and therefore i am not inclined to accord approval for exemption under that section. Accordingly, the application of the Trust seeking approval u/s 10(23C)(vi) of the Act is hereby rejected.

14. It is submitted that the Hon. CIT (Exemption) is not understood the provision of section 10(23C)(vi) of the Act in true spirit. As per provision of the said section it is mandatory that "Educational Institution" must exist 'Solely' for educational purposes. 'Solely' means exclusively and not primarily. It is to be construed that activities of the trust must be solely for educational purpose irrespective of whether constitution of the trust is having ancillary objects other than educational.

15. Appellant trust is submitted that it is existing solely for educational purpose and not for the purpose of profit motive. It is further submitted that if pure education, which is one of the purposes of the trust, is to survive, it will have to be brought into relation with the life of the community as a whole, not only with the refined delight of a few gentlemen of leisure. Real education is one which makes a student socially relevant. It was in that mind that other "Social Activities" objects are incorporated in the trust deed so that students in the institution were able to get "real" education. The sole/main purpose therefore remained "education". If a trust incorporated the other objective of "greater interface with the society" through extra mural, extension and field action related programmes" these are not the objectives independent of education but are an aid to the education."

16. Appellant trust is existing solely for educational purpose and not for the purpose of profit motive, it has satisfied all the conditions laid down under the provision of section 10(23C)(vi) of the I.T. Act, application for approval be granted to the applicant trust under section 10(23C) (vi) of the Income Tax Act, 1961.

17. Appellant trust is relied on following judicial pronouncements:

a. *Jaypee Institute of Information Technology Society V. Director General of Income-tax (Exemptions) [2009] 185 Taxman 110 (Delhi)*

b. *Hon. Commissioner of Income Tax (II) Vs. Hardayal Charitable & Education Trust [2014] 46 taxmann.com16 (Allhabad)*

c. *Little Angels Shiksha Samiti V. Union of India [2011] 11 taxmann.com 37 (Madhya Pradesh)*

d. *Ronald Educational & Charitable Trust V. Principal Commissioner of Income-Tax [2017] 88 taxmann.com 790(Cuttack-Trib.)*

18. On the basis of the above submission, appellant sincerely request to allow the appeal of the appellant.”

7. Per contra, the Ld. CIT-DR Shri Akhilendra Pratap Yadaw appearing for the Revenue supported the order passed by the Ld. CIT(E) and denying exemption u/s. 10(23C)(vi) on account of the assessee not carrying out the activities solely for the purpose of education. The Ld. D.R. submitted before us Hon'ble Supreme Court judgment in the case of New Noble Educational Society Vs. Chief Commissioner of Income Tax reported in [2022] 143 taxmann.com 276 and thus pleaded that the rejection of approval u/s. 10(23C)(vi) is well within the provisions of law and does not require any interference and the assessee appeal is liable to be dismissed.

8. We have given our thoughtful consideration and perused the materials on record including the submission filed by the assessee and copy of the Trust deed. By the merger of three Trusts namely (i) Parul Arogya Seva Mandal, Vadodara, (2) Parul Trust, Limda and (3) Hariom Arogya Seva Mandal, Vadodara the present Trust namely Parul Arogya Seva Mandal Trust came into existence. The objects are seen to be multiple objects other than education. The

Ld. CIT(E) considered the assessee Trust reply and found not satisfactory as the emphasis in section 10(23C)(vi) is on the word 'solely' for education. 'Education' connotes the process of training and developing the knowledge, etc., of students by normal schooling. The assessee Trust though submitted clarification regarding its medical object but conveniently remained silent on its object of scholarship. The assessee Trust also remain silent regarding its other non-educational objects such to organize Family Planning Centers, undertake activities for upbringing and training for self-reliance to orphan and deserted women and children, etc. Thus it clearly proves that the assessee is not existing "solely for the purpose of education". The assessee trust has not submitted documentary evidence, which could establish its contention that such scholarships are in fact been used by those students for the purpose of education. Thus the contention of the assessee that the activities of the Trust are only for education is also not correct. The Hon. Supreme Court in the case of Dharamposhanam 114 ITR 463 has held that whether a Trust is for charitable purpose or not is to be determined by reference to all the objects for which the trust has been brought into existence and for considering the claim of exemption, the activities under the provisions of its memorandum of association are relevant and not the activity actually conducted by the assessee. The relevant portion of the judgment is reads as under:

*"It has been urged on behalf of the appellant that what should be taken into consideration is the activity actually conducted by the assessee, and not what is open to it under the provisions of its memorandum of association. We do not agree. Whether a trust is for charitable purposes falls to be determined by reference to all the objects for which the trust has been brought into existence"*

8.1. Considering the above facts of the case, the assessee Trust having multiple objects cannot be said to be existing “solely for the purpose of education”. It is open to the trust to pursue all or any of the objects of the trust under the garb of education. Therefore in our considered view, the condition of section 10(23C)(vi) i.e the applicant existing “solely for educational purposes” is not fulfilled in the present case. The case laws relied by the assessee are all from Lower Forums and clearly distinguishable, however we hereby dealt with the judgments of the Hon’ble Apex Court only to arrive our conclusion.

9. The Hon’ble Supreme Court of India in the case of New Noble Educational Society examined term “solely” as provided in section 10(23C)(vi) and held as follows:

*“...It is evident, that in construing the term 'any university or other educational institution existing solely for educational purposes and not for purposes of profit' the other negative reference to profit, in respect of educational institutions, is in the seventh proviso which states that incomes which are profits of business, cannot be exempt, "unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business". [Para 49]*

*The basic provision granting exemption, thus enjoins that the institution should exist 'solely for educational purposes and not for purposes of profit'. This requirement is categorical. While construing this essential requirement, the proviso, which carves out the exception, so to say, to a limited extent, cannot be looked into. The expression 'solely' has been interpreted, by other judgments as the 'dominant/predominant/primary/main object. The plain and grammatical meaning of the term 'sole' or 'solely' however, is 'only' or 'exclusively'. [Para 50]*

*In all provisions of section 10(23C)(iiiab), (iiid) and (vi), the positive condition 'solely for educational purposes' and the negative injunction 'and not for purposes of profit' loom large as compulsive mandates, necessary for exemption. The expression 'solely' is therefore important. Thus, a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education. Having regard to the plain and unambiguous terms of the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation. [Para 51]*

*The seventh proviso to section 10(23C)(vi) alludes to business and profits (being profits and gains of business, unless the business is incidental to the attainment*

*of its objectives and separate books of account are maintained by it in respect of such business'). The interpretation of section 10(23C), therefore, is that the trust or educational institution must solely exist for the object it professes (in this case, education, or educational activity only), and not for profit. The seventh proviso however carves an exception to this rule, and permits the trust or institution to record (or earn) profits, provided the 'business' which has to be read as the education or educational activity and nothing other than that is incidental to the attainment of its objectives (ie., the objectives of, or relating to, education). [Para 58]*

*The interpretation adopted by the judgments in American Hotel and Lodging Association v. Central Board of Direct Taxes [2008] 170 Taxman 306/301 ITR 86 (SC)/[2008] 10 SCC 509 as well as Queens Education Society v. CIT [2015] 55 taxmann.com 255 (SC) as to the meaning of the expression 'solely' are erroneous. The trust or educational institution, which seeks approval or exemption, should solely be concerned with education, or education related activities. If, incidentally, while carrying on those objectives, the trust earns profits, it has to maintain separate books of account. It is only in those circumstances that "business' income can be permitted- provided, as stated earlier, that the activity is education, or relating to education. The judgment in American Hotel (supra) as well as Queens Education Society (supra) do not state the correct law, and are accordingly overruled. [Para 60]"*

10. Thus the Hon'ble Supreme Court summarized the conclusion as follows:

*".....(a) It is held that the requirement of the charitable institution, society or trust etc., to 'solely engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.*

*(b) Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under section 10(23C). At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities."*

11. Respectfully following the Apex Court judgment, we have no hesitation in confirming the denial of exemption u/s. 10(23C)(vi) of the Act to the assessee. Thus the Grounds raised by the assessee are devoid of merits and the same are liable to be dismissed.



12. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 26-07-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 26/07/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद