



Sr. No.	Date	Orders
		<p data-bbox="443 241 1554 280">* <b>IN THE HIGH COURT OF DELHI AT NEW DELHI</b></p> <p data-bbox="443 376 810 414">+ ITA 17/2002</p> <p data-bbox="619 497 1474 622">DIRECTOR OF INCOME TAX ..... Petitioner Through Mr. R.D. Jolly, Adv. with Mr. Ajay Jha, Adv.</p> <p data-bbox="954 667 1050 705">versus</p> <p data-bbox="619 788 1538 913">LOVELY BAL SHIKSHA PARISHAD ..... Respondent Through Mr. S.P. Kalra, Sr. Adv. with Mr. Tarun Diwan, Adv.</p> <p data-bbox="619 1012 1378 1137"><b>CORAM:</b> <b>HON'BLE MR. JUSTICE D.K. JAIN</b> <b>HON'BLE MR. JUSTICE MADAN B. LOKUR</b></p> <p data-bbox="1123 1218 1299 1299"><b><u>ORDER</u></b> <b>20.10.2003</b></p> <p data-bbox="459 1272 491 1310">%</p> <p data-bbox="459 1397 1570 1778">This appeal by the Revenue under Section 260 A of the Income Tax Act, 1961 (the Act for short) is directed against order dated 19 January 2001 passed by the Income Tax Appellate Tribunal, Delhi Bench F, Delhi (hereinafter referred to as the Tribunal) in ITA No. 6994 (Del) 94 pertaining to the assessment year 1991-92.</p> <p data-bbox="459 1814 1570 1944">By the impugned order the Tribunal has dismissed Revenue's appeal against the order passed by the Commissioner of Income Tax</p>



Sr. No.	Date	Orders
		<p>(Appeals) whereby the Commissioner had come to the conclusion that the respondent assessee was entitled to exemption under Section 10 (22) of the Act. While holding so the Commissioner had observed that there had been no instance of any expenditure being incurred by the assessee society for purposes other than educational and no personal benefit had been derived by any member of the society or persons close to the society. It has been further observed that the society will also not lose exemption under Section 10(22) of the Act merely because it has claimed depreciation.</p> <p>While agreeing with the Commissioner, the Tribunal has observed that the assessee had been granted exemption under Section 10(22) of the Act in the past as well. The tribunal has found that during this year also the assessee society has existed for carrying out only educational activities with no profit motive and merely because there were certain surpluses the society will not lose exemption under Section 10(22) of the Act. Hence the appeal.</p> <p>Assailing the order passed by the Tribunal Mr. R.D. Jolly, learned senior standing counsel for the Revenue has strenuously urged that the aforementioned findings recorded by the Tribunal are not correct in as much as the assessing officer had noted in the assessment year some other activities carried on by the assessee, which could not be said to</p>



Sr. No.	Date	Orders
		<p>educational activities. However, on a pointed query by the Court as to whether there was any change in the nature of activities of the assessee in the present assessment year as compared to the earlier years, learned counsel would submit that he has no instructions in this behalf.</p> <p>Mr. Kalra, learned senior counsel for the respondent, on the other hand, <del>has</del> points out that not only in the past, even after the passing of assessment order for the present assessment year the assessee has been consistently getting exemption under Section 10 (22) of the Act from the assessment years 1994-95 onwards.</p> <p>In view of the aforementioned factual position and keeping in view the fact that no change in the nature of activities has been pointed out and the assessee has been granted exemption under Section 10(22) of the Act not only in respect of the earlier years but subsequent years as well, we are of the opinion that the order of the Tribunal does not involve any substantial question of law.</p> <p>In this regard we may usefully refer to the decision of the Apex Court in <u>Radhasoami Satsang Vs. Commissioner of Income Tax</u> 1992 (193) ITR 321, wherein their Lordships of the Supreme Court had observed that though strictly speaking res judicata does not apply to Income Tax proceedings but where a fundamental aspect permeating through the different assessment years has been found as a fact one way</p>



Sr. No.	Date	Orders
		<p>or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. These observations squarely apply to the facts in hand.</p> <p>Resultantly, we decline to entertain the appeal and the same is, accordingly, dismissed.</p> <p style="text-align: right;"><i>D.K. Jain</i> D.K. JAIN, J</p> <p style="text-align: right;"><i>Madan Lokur</i> MADAN B. LOKUR, J</p> <p>OCTOBER 20, 2003 rkr</p>