



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 59/2005</p> <p>DIRECTOR OF INCOME TAX Petitioner Through Mr. R.D. Jolly</p> <p>versus</p> <p>M/S INDO SOVIET MEDICARE & RES Respondent Through</p> <p>CORAM: HON'BLE MR. JUSTICE SWATANTER KUMAR HON'BLE MR. JUSTICE MADAN B. LOKUR</p> <p style="text-align: center;"><u>ORDER</u> 22.02.2005</p> <p>%</p> <p><u>CM No.2318/2005</u></p> <p>The application is allowed, subject to just exceptions.</p> <p>The delay in re-filing the appeal is condoned.</p> <p>CM stands disposed of.</p> <p><u>ITA No.59/2005</u></p> <p>We have heard learned counsel for the Appellant at some length. The challenge in this appeal under Section 260A of the Income-tax Act, 1961 is to the order passed by the Income Tax Appellate Tribunal dated 30th January 2004 for the Assessment Year 1990-1991.</p> <p>ITA No.59 of 2005</p>



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		<p>The basic question that was determined by the Income Tax Appellate Tribunal related to the benefit of Section 10 (22) of the Income Tax Act 1961 (hereinafter referred to as "the Act") on the ground that the assessee's work relates to the performance of contract and not for providing regular education for anybody interested in learning Russian language. The order of the Assessing Officer making certain additions in that regard and declining the benefit of the above provision to the assessee, allowed the appeal of the assessee and held that the Appellant would get a relief of Rs.54,85,870/- for the Assessment Year 1990-1991 as well as for certain other years. The order of the First Appellate Authority was confirmed by the Income Tax Appellate Tribunal, which, while examining the issue, held as under: -</p> <p>"From the foregoing, it is clear that the Appellant society is engaged in educational activities and it is entitled to exemption u/s 10 (22). For getting exemption u/s 10 (22) it is not necessary that the trust should be registered u/s 12A (a) of the I.T. Act as registration u/s 12A (a) is required only when exemption u/s 11 is sought. Besides the Appellant was not required to take permission either from CBDT or RBI as it was not intending to send money abroad and it never sent money abroad. The money collected by it was to be utilized for setting up an Institution of Russian Studies for which the Appellant hired a building and subsequently tried to acquire a land and purchased a flat. The Appellant also ran a school of paramedical education and training and when it was not able to get land and start educational institution and it</p> <p>ITA No.59 of 2005</p>

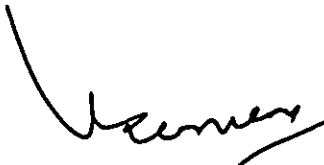
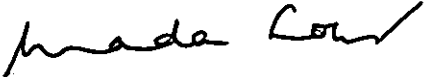


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		<p>donated all its money to leading educational institutions, educational purposes as per its aims and objects and as per permission given by the USSR Committee at whose instance money was collected. The trustees have not got any personal benefit. Paying a rent of Rs.2000/- for the entire ground floor in a building on main Vikas Marg in Delhi cannot be said to be excessive or unreasonable so as to attract provision of Section 13 (1) (c) read with Section 13 (3) of the I.T. Act. Besides provision of Section 13 is not applicable to the Appellant as its case is covered u/s 10 (22) of the I.T. Act. The surplus for both the assessment years were in the nature of capital receipts and were also covered under overriding title as the Appellant had no control over the same during these two years. As per MOU these surpluses were to be utilized for setting up a Centre for Russian language and Preparatory courses in India which was again an educational purpose and when this purpose was not achieved in subsequent years due to break up of the USSR and the money and equipments could not be sent to the USSR, the trustees in their wisdom thought it fit to donate the amount of Rs.70 lacs to leading educational institutions after receiving intimation and permission from the USSR Committee. The trustees cannot be faulted with for the same as the trustees had carried out educational activities as per the aims and objects of the Appellant trust. The ratios of decisions relied upon by the Assessing Officer are not applicable to the facts of the case. The decision of Supreme Court in the case of MCD is not applicable to the provisions of I.T. Act as that has application to the Delhi Municipal Act. Similarly, ratio of decision in the case of Bihar Institute of Mining and Office Surveys vs. CIT (1994) 123 Taxation 208 ITR 608 is not applicable to the Appellant was not running any coaching centre or holding any tutorial classes. It held regular courses in Russian language as well as in Para Medical and Training courses. It is not necessary to spend any</p>

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		<p>surplus money in the same year. The requirement of Section 10 (22) is fulfilled if the Appellant carried on educational activities for educational purposes.”</p> <p>From the above recorded findings, which are primarily based upon the appreciation of the record and are primarily finding of fact, it was found that the assessee was carrying on the educational activities in learning of the language and as such there is nothing for this Court to interfere in this finding of fact concurrently recorded by the First Appellate Authority as well as the Tribunal.</p> <p>We may also notice that for the other assessment years the appeal preferred by the Department against the order of the Income Tax Appellate Tribunal has already been dismissed by another Division Bench of this Court vide its order dated 13th September, 2004 passed in ITA No.544/2004 relating to the same assessee.</p> <p>No merit. Dismissed.</p> <p style="text-align: right;">  SWATANTER KUMAR, J </p> <p style="text-align: right;">  MADAN B. LOKUR, J </p> <p>FEBRUARY 22, 2005 kapil</p> <p>ITA No.59 of 2005</p>