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% 03.12.2010

Present: Ms. Prem Lata Bansal, Advocate for the Appellant.
Mr.C.S.Aggarwal Sr. Advocate with Mr. Prakash Kumar, Advocate
for the Respondent.

+ CM No. 21236/2010 (Exemption).

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Exemption as prayed for is allowed subject to just exceptions.

The application stands disposed of.

CM No. 21237/2010 (Stay).

For the reasons stated in the application, the delay in refilling the appeal is condoned.

The application stands disposed of.

ITA No. 1880/2010.

The respondent school enjoys the benefit of Section 11 and 12 of the Income Tax Act since long. It was also granted the benefit of Section 10(23C)(vi) of the Act. In the return of income filed by the respondent/assessee for the Assessment Year 2004-2005, it declared at income "Nil" under Section 10(23C)(vi) of the Act. However, according to the Assessing Officer various discrepancies were found during survey which was done under Section 133A of the Act and he held the view that there was misuse exemption granted under Section 80G of the Act. For this reason he denied exemption under Section 10(23C)(vi) of the Act and Section 11 and 12 of the Act. The CIT(A) reversed the decision of the



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Assessing Officer and ITAT has confirmed the view taken by the CIT(A). Apart from other reasons which are given by the CIT(A) as well as ITAT, an additional reason which is significant, is that same very issue came up before the Tribunal in the Assessment Years 2002-2003 and 2003-2004 pertaining to this very assessee, the Tribunal passed an orders dated 25.04.2008 and 30.09.2008 and relied upon those orders as well.

The query raised by the bench was as to whether earlier orders passed by the Tribunal were accepted by the Department or any appeal was filed challenging those orders. Learned counsel for the appellant is not in a position to give any answer. However, learned counsel for the respondent/assessee, on instructions states that no appeal was preferred by the Department in respect of those assessment years and the decision of the Tribunal was accepted by the Department. For this reason, we dismiss the present appeal.


A.K. SIKRI, J.



SURESH KAIT, J.

DECEMBER 03, 2010

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