

Subject: **Allahabad High Court** on Educational Institution Registration 10(23C)(vi)

City Montessori School

Writ Petition Allowed: CCIT Rejection Order Quashed

Relevant Extract of Allahabad High Court ruling

It may also be mentioned that for seeking the exemption under Section 10(23C), the assessee will have to follow the guidelines mentioned in Form No.56D (Rule 2CA). One of the conditions in Form 56-D is that assessee will have to submit the audited accounts and balance sheets for the last three years along with a note on the examination of accounts and on the activities as reflected in the accounts and in the annual reports with special reference to the appropriation of income towards objects of the university or other educational institution. From the audited accounts, one can easily see whether the funds were utilized for the expansion of educational institution/activity or for personal profits. In the present case, the opposite-parties have not brought any material on record to prove that the surplus earned by the assessee petitioner was utilized for personal profit/gain on anyone including the Founder-Manager/Director. Whatever fund was acquired, the same was utilised for the expansion of educational activities of institution. Initially there were five students and now the institution is imparting education to more than 34,000 students as pointed out during the course of arguments.

Thus, the assessee is fully satisfying all the statutory requirements for getting exemption under Section 10(23C)(vi) of the Income Tax Act.

We agree with the submissions of the counsel of the opposite-parties that the principle of res judicata is not applicable in the income tax matter. But finding of earlier years on the same matter are relevant as per the ratio laid down in *Sardar Kehar Singh v. CIT*, 195 ITR 769 (Rajasthan), *Taraban Raman Bhai Patel v. ITO*, 215 ITR, 323 (Gujarat) and *CIT v. Hindustan Motors Ltd.* 192 ITR, 619 (Calcutta).

Where all fundamental facts permeating through different assessment year has been found as a fact one way 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 as per the ratio laid down by Hon'ble the Supreme Court in the case of *Radha Soami Satsang v. CIT* 193 ITR 321, 329 Supreme Court.