

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C)No. 4726/2011**

% **Reserved on : 24th November, 2011.**
Date of Decision : 16th December, 2011.

DELHI MUSIC SOCIETY Petitioner
Through: Mr.Ramesh Singh with Mrs. Megha
Mukherjee, Advocates.

VERSUS

DIRECTOR GENERAL OF INCOME TAX Respondent
Through: Mr. Anupam Tripathi, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

R.V. EASWAR, J.:

The petitioner is the Delhi Music Society which was registered as a Society in 1953 under the Societies Registration Act, 1860. It was established with the following aims and objects:-

- (a) To teach, promote and encourage all forms of Music and Dancing, Western, Indian or any other.
- (b) To establish and run Schools and Colleges of Music and Dancing or to assist such Institutions established by others.
- (c) To arrange Workshops, Lectures and Demonstrations and to utilize any other methods of teaching.
- (d) To grant scholarships, stipends or other forms of assistance.
- (e) To arrange Concerts and Recitals by local or visiting Artists.
- (f) To own lands and buildings or to rent premises for the Society.
- (g) To collect and to hold funds and distribute the same for achieving the above purposes.
- (h) To collaborate with other organizations, Societies.

2. The society was allotted a land measuring 0.422 acres by the Ministry of Works, Housing and Supply, Land & Development Office, Government of India in Diplomatic Enclave, Nyaya Marg. Till the financial year 2007-08 the petitioner/society is stated to have been allowed exemption from income tax under Section 10(22) of the Income Tax Act, 1961 (“the Act”, for short). However, in the financial year 2008-09, the gross receipts of the petitioner exceeded Rs. 1 crore and, therefore, as stipulated in Section 10(23C)(vi) of the Act, the petitioner was obliged to apply to the “prescribed authority” for approval so that it can continue to enjoy the tax exemption. The prescribed authority referred to in the provision is the Director General of Income Tax (Exemptions), Delhi. Accordingly, the petitioner moved an application before him in form No.56D, which is the

prescribed form, on 7th September, 2009 for grant of exemption. It would appear that the application covered both clauses (vi) and (via) of Section 10(23C). We are, however, concerned only with clause (vi) which was the focus of the arguments before us. The application for exemption was for the assessment year 2010-11 onwards.

3. The prescribed authority, after giving the petitioner an opportunity of being heard, rejected the claim for exemption by order dated 27th September, 2010 which is the impugned order. In brief, he took the following objections in support of his decision:-

- (a) Since Section 10(22) of the Act was substituted by Section 10 (23C)(vi) with effect from 1st April, 1999, and since both the provisions referred to “other educational institution”, the petitioner has to satisfy that it came within the said expression.
- (b) The petitioner was imparting training in learning and operation of western musical instrument for a fee charged with reference to the type and duration of the course. After conclusion of the classes, certificates are issued to the students by awarding grades 1 to 8 depending upon the proficiency of the students, which is decided by the examinations conducted by the Trinity College and the Associated Board of the Royal School of Music, London. The petitioner itself does not award any degree/certificate.

- (c) The petitioner was not an institution recognized by the UGC or any Board constituted by the Government of India for imparting formal education in the field of western music.
- (d) Mere coaching/training imparted by the petitioner in India as per norms of foreign colleges lacks the requisite recognition from any statutory body constituted in India.
- (e) The petitioner cannot be distinguished from any coaching or training institute preparing the students for appearing any examination for obtaining a formal degree by a formally recognized institution. The petitioner is not itself awarding any certificate or degree to the students.

4. The above objections of the prescribed authority were contested by the petitioner and detailed submissions would appear to have been filed before him. However, he rejected those submissions and held that the petitioner was not entitled to be characterized as an “educational institution” within the meaning of Section 10(23C) (vi) for the assessment year 2010-11 onwards. In support of his decision, the prescribed authority mainly relied on the judgment of the Supreme Court in the case of *Sole Trustee, Loka Shikshana Trust vs. CIT (1975) 101 ITR 234* and it was observed that the word “education” has not been used in Section 2(15) of the Act in a wide sense, that it refers to systematic instruction, schooling or training given to the young in

preparation for the work of life and that it connotes the process of training and developing the knowledge, skill, mind and character of students by normal schooling . According to the prescribed authority, the petitioner did not satisfy those requirements. He also referred to the judgment of the Patna High Court in ***Bihar Institute of Mining & Mine Surveying v. CIT (1994) 208 ITR 608*** wherein it was held that coaching of the students in an institution could not be held as imparting of education as it was not a process of training and development of the students in normal schooling. It was further observed that the institution should be recognized by an authority and should have an element of normal schooling and mere preparation of the students for appearing in various competitive examinations did not amount to imparting of education.

5. The petitioner is aggrieved by the order of the prescribed authority and has approached this Court for issue of a writ of certiorari or any other appropriate writ or direction under articles 226/227 of the Constitution of India to quash the order of the prescribed authority dated 27th September, 2010 and also for staying the operation of the said order and all consequential proceedings arising out of the order. There is also a prayer for issue of a writ of mandamus or any other appropriate writ directing the respondent to allow exemption under Section 10(23C)(vi) of the Act.

6. Section 10(23C) is placed in Chapter III of the Income Tax Act, which is titled “incomes which do not form part of total income”. Clause (vi) reads as under:

“(vi)any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiid) and which may be approved by the prescribed authority;”

7. It is not the case of the petitioner that it is a “university”. Its case is that it falls under the expression “other educational institution”. There is no definition of the expression “educational institution” in the Act. However, Section 2(15) which defines the expression “charitable purposes” includes education as one of the charitable purposes. There is no definition of the word “education” in the Act. We have to, therefore, necessarily examine the authorities which have explained the content of the word “education” and “educational institution”.

8. The object clause of the memorandum of association of the petitioner says that the objects of the school are to teach western, classical music, to promote musical knowledge and the appreciation among the students as well as among the interested public by means of workshops, lectures/demonstrations, recitals etc, to acquire and maintain instruments for teaching purposes, to create and update a world class library of music literature both audio and video to add more class rooms and other required facilities for the purpose of

musical education and to construct and maintain concert hall/auditorium for the school. Clause (vi) of the memorandum of association declares that the petitioner is not a society for profit and the income and property of the society shall be applied solely towards the promotion of the objectives of the society and no portion thereof shall be paid, directly or indirectly, as dividend or bonus or any other manner to any member of the society or its officer or servant or any other person. It is true that the petitioner is not affiliated to any university in India and is not recognized by any statutory body having anything to do with education. It is also a fact that the petitioner does not have a syllabus of its own and it awards grade certificates to the students depending upon their proficiency as declared by the Trinity College, London and the Associated Board of Royal School of Music, London on the basis of the examinations conducted by them. The question before us is whether the reasons given by the prescribed authority are germane to the question as to whether the petitioner is an educational institution within the meaning of Section 10(23C)(vi).

9. The Supreme Court in the case of ***Sole Trustee, Loka Sikshana Trust*** (Supra) interpreted the word “education” in Section 2(15) of the Act and held that the word has been used to denote systematic instruction, schooling or training given to the young in preparation for the work of life and it also connotes the whole course of scholastic instruction which a person has received. It has further been observed

that the word also connotes the process of training and development of knowledge, skill, mind and character of students by normal schooling.

10. We may refer to the judgment of the Calcutta High Court in ***CIT vs. Doon Foundation (1985) 154 ITR 208 (Cal)***. Interpreting the provisions of Section 10(22) of the Act, the High Court observed as under:-

“We are also unable to accept the contention of Mr. Maitra that an educational institution to be eligible for exemption under Section 10(22) should be affiliated to any university or any board. Section 10(22) does not impose such a condition. So long as the income is derived from an educational institution existing solely for educational purposes and not for purposes of profit, such income is entitled to exemption under Section 10(22), whether or not such educational institution is affiliated to any university or college or board. If the contention of the Revenue is accepted, then many of the societies running institutions solely for imparting education would not get the benefit of Section 10(22). Education as envisaged in Section 10(22) may be imparted in a school or college or institution which may or may not be affiliated to, or recognized by, a university or board.”

This judgment takes care of the objection of the prescribed authority that the petitioner is not affiliated to, or recognized by any university or board in India and that it merely awards certificates or grades which are issued by the Trinity College and Royal School of Music, London. Since Section 10 (23C)(vi) also uses the same language as Section

10(22), the same principle should govern the interpretation of that provision also.

11. Even if these tests are applied to the case of the petitioner, the petitioner fulfills them. As has already been noticed, the petitioner is teaching and promoting all forms of music and dance, western, Indian or any other. In accordance with the object, it is running a music school in Delhi, collecting tuition fee and admission fee from the students. Teachers have been employed and they have been paid salaries. Expenditure is also incurred on the maintenance of musical instruments. All these are reflected in the income and expenditure account for the years ended 31st March, 2006 to 31st March, 2010. The petitioner has also filed audited account for these years. In annexure P-5 to the writ petition, the petitioner has annexed a write up of its activities. From this, it is seen that there are 549 students enrolled with the petitioner who are taught western instruments according to their choice such as Piano, Guitar, Electronic Key Board, Wind Instruments, Drums and Vocal. The school faculty comprises of 30 teachers with 25 of them being Grade 8 and above in western music. There is reference to scholarships that are open to the students including waiver of fees from 25% to 90%. It has been stated that several students of the school have gone on for higher musical studies to places like Moscow, London, New York, Prague and Rome. The schedule of fees effective from April, 2011 is also made part of the annexure. There

are rules and regulations governing the running of the school which are also made part of the annexure. The main rules and regulations are that the school works for all seven days a week and remains closed only on national and public holidays; that the school year is divided into four terms of three months each; that students who are attending instrumental music classes would be taught individually by the teachers; that dance students would be taught in groups; that there would be workshops/lecture demonstrations arranged for the benefit of the students from time to time and that attendance in such workshops would be compulsory; that students who report late by more than 20 minutes may be marked absent and so on. There is also a rule that the students who are irregular in attending the classes or absent themselves frequently for long periods without prior intimation, would be removed from the rolls and if any of the students are found lacking in application or discipline, they are liable to be terminated by the Principal.

12. It is seen from the above that the petitioner is being run like any school or educational institution in a systemic manner with regular classes, vacations, attendance requirements, enforcement of discipline and so on. These provisions in the rules and regulations satisfy the condition laid down in the judgment of the Hon'ble Supreme Court, ***Sole Trustee, Loka Sikshana Trust***, cited (supra) that there should be a process of training and developing the knowledge, skill, mind and

character of the students by “normal schooling”. It cannot be doubted that, having regard to the manner in which the petitioner runs the music school, that there is imparting of systematic instruction, schooling or training given to the students so that they attain proficiency in the field of their choice – vocal or instrumental in western classical music.

13. In *(1)Centre for Policy Research; (2)V.A. Pai Panandiker v. Brahma Chellaney and Others (2010) INDLAW DEL 928*, a Division Bench of this Court had occasion to examine the meaning of the word “education” in a different context. We find therein a reference to a judgment of the Hon’ble Supreme Court in *S.Azeez Basha v. Union of India [AIR (1968) SC 662]* wherein the nature of an educational institution was dealt with. It was held by the Hon’ble Supreme Court that there is a good deal in common between educational institutions which are not universities and those which are universities in the sense that both teach students and both have teachers for the purpose. It was further observed by the Hon’ble Supreme Court that what distinguishes a university from any other educational institution is that a university grants degrees of its own whereas other educational institutions cannot. These observations of the Hon’ble Supreme Court in our opinion support the stand of the petitioner that the fact that it does not conduct its own examination or awards degrees of its own is not decisive of the question whether it is an educational institution or

not. It also lends support to the petitioner's stand before the prescribed authority that it is not a mere coaching centre preparing students for competitive examinations. The coaching centres, as we understand them, are where candidates are specially prepared to appear in competitive examinations such as civil services, entrance examination for IIMs, IITs and other professional colleges. Profit motive pervades and is the essence of the business activity undertaken by the coaching institutes. The primary object of the coaching institutes is personal or self gain and activity undertaken is with the said objective. Knowledge of education may be imparted but "charity" or philanthropy is missing. No such finding or observation is recorded and stated in the impugned order. The difference between coaching centres and an "educational institution" from section 2(15) or 10(vi) is apparent.

14. It now remains for us to deal with the judgment of the Patna High Court in *Bihar Institute of Mining & Mine Surveying vs. CIT(supra)* relied on by the prescribed authority. In that case, the assessee was running an institution for a specific purpose, namely to prepare students for appearing in various examinations. It was, therefore, held that the assessee cannot be said to have an element of normal schooling. As already noticed by us, the petitioner's case is different on facts. It is not a mere coaching centre but it imparts education and learning in western classical music in the first instance.

15. A Division Bench of this Court, to which one of us (Sanjiv Khanna, J) was party, in ***Director of Income Tax (Exemptions) v Institute of Chartered Accountants of India (2011) INDLAW DEL 2316*** had occasion to examine whether running of classes by the ICAI for its students/articled clerks so as to enable them to prepare for the examinations conducted by the Institute, and for which a fee was charged, would amount to carrying on of a business activity and hence not a charitable purpose. Question “B” before the court contained an express reference to the judgment in ***Bihar Institute of Mining & Mine Surveying (Supra)*** as in that case also the DIT(E) had relied upon the said judgment to deny the exemption to the Institute. This Court held that though existence of a profit motive was not always determinative of the question whether an activity amounted to a business activity, the coaching classes were not run by the ICAI with a profit motive but were run only to prepare and train its students/articled clerks to write the accountancy examinations held by the Institute. It was thus held that the DIT(E) was not right in denying the benefit of section 10(23C)(iv) to the Institute.

16. Another aspect to be noticed is that normally coaching centres are run for shorter periods and they have no strict rules and regulations as an educational institution. There is no such thing as an academic year. Strict discipline and requirements of attendance are not

enforced. Further they are run on commercial lines and with a profit motive.

17. In the petitioner's case, the prescribed authority has not stated that the music school is being run with a profit motive. No objection to the application for approval has been taken by the prescribed authority on this ground. However, such an objection is taken in paragraph F of the "preliminary objections" in the counter affidavit filed on behalf of the respondents. In this paragraph the respondent has furnished the figures of fee receipts, surplus and what is described by him as percentage of profit in respect of three financial years, namely, 2006-07, 2007-08 and 2008-09. After setting out these figures in the form of a table, it has been stated that the petitioner exists solely for the purpose of profit making and that the activity of training or coaching the students to undergo the examinations conducted by the foreign institutions is a commercial activity. This objection/reason has not been stated in the impugned order. In ***Mohinder Singh Gill & Anr vs The Chief Election AIR 1978 (SC) 851***, the Supreme Court has observed as under:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of

a challenge, get validated by additional grounds later brought out.”

As the impugned order is silent on the aspect of profit motive, we, therefore, refrain from examining the objection further.

18. We may refer to a judgment of the Gujarat High Court in the case of *Gujarat State Co-operative Union v. CIT (1992) 195 ITR 279 (Guj)*, merely for the purpose of showing the error into which the prescribed authority fell in the present case in understanding the judgment of the Supreme Court in the case of *Loka Shikshana Trust vs. CIT(supra)*. In the case before the Gujarat High Court, the assessee was a cooperative union and it claimed exemption under Section 10(22) of the Act. Amongst other activities, as stated in the bye-laws of the assessee, the assessee was also conducting training centres and colleges for various courses having a bearing on the field of cooperative movement. The Tribunal held that the assessee was not an educational institution within the meaning of Section 10(22) since it carried on, as a part of its activities, training centres. In reaching this conclusion, the Tribunal had relied on the judgment of the Supreme Court in *Loka Shikshana Trust vs. CIT(supra)*. The Gujarat High Court disapproved the Tribunal’s understanding of the judgment of the Supreme Court. The Court held that the assessee was a society for imparting a certain branch of knowledge, namely, of the cooperative movement in various fields governing human rights and the activities

for the purpose were carried out in an organized and systematic manner by conducting regular courses for imparting instruction and training on various subjects included in the curriculum. The High Court also noticed that the assessee was receiving financial assistance from the government. After referring to the activities of the cooperative union, the High Court observed as under:-

“As noticed above, from the objects of the assessee, it is conducting training centres and colleges for various courses having a bearing on the field of co-operative movement. It appears to us that the decision of the Tribunal which seeks to rest it on the observations made by the Supreme Court in Loka Shikshana Trust’s case [1975] 101 ITR 234 (SC), for holding that, the assessee is not entitled to exemption under section 10(22) of the Act is based on a complete misreading of the observations of the Supreme Court. In Loka Shikshana Trust’s case [1975] 101 ITR 234 (SC), the Supreme Court, while dealing with the provisions of section 11 read with section 2(15) of the Act which defines “charitable purpose” observed as under (at page 241):

“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.....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."

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The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of section 2(15) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the Tribunal when it infers from these observations, in para 17 of its judgment, that the word "education" is limited to schools, colleges and similar institutions and does not extend to any other media for such acquisition of knowledge. The observations of the Supreme Court do not confine the word "education" only to scholastic instructions but other forms of education also are included in the word "education". As noticed above, the word "schooling" also means instructing or educating. It, therefore, cannot be said that the word "education" has been given an unduly restricted meaning by the Supreme Court in the said decision."

The DIT(E) in the present case has given an unduly restricted meaning to the word "education" which is not warranted in law or on facts.

19. For the above reasons, we are satisfied that the petitioner meets the requirements of an educational institution within the meaning of Section 10(23)(c)(vi) of the Act. The prescribed authority, in our view, has not taken into consideration the relevant factors in coming to the conclusion that the petitioner is not entitled to the approval as "educational institution". His understanding of the judgment of the Supreme Court in the case of *Loka Shikshana Trust vs. CIT(supra)*

seems to us to be flawed. It also appears to us that the prescribed authority has not examined and appreciated properly the nature of activities of the petitioner-school and the rules and regulations governing those activities.

20. We accordingly, quash the order dated 27th September, 2010 passed by the prescribed authority. The prescribed authority will now deal with the assessee's application for approval afresh in accordance with law in the light of the observations made by us above. The writ petition is accordingly allowed with no order as to costs.

(R.V. EASWAR)
JUDGE

(SANJIV KHANNA)
JUDGE

December 16, 2011
Bisht