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

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Date of Decision : 4th July, 2012.

W.P.(C) 13620/2009, C.M. APPL.15284/2009

MAHAVIRA FOUNDATION Petitioner
Through : Sh. Salil Kapoor and Sh. Sanat Kapoor,
Advocates.

versus

DIRECTOR GENERAL OF INCOME TAX Respondent
Through : Sh. Abhishek Maratha, Sr. Standing Counsel
with Ms. Anshul Sharma, Advocates.

W.P.(C) 5113/2010, C.M. APPL.10083/2010

MAHAVIRA FOUNDATION Petitioner
Through : Sh. Salil Kapoor and Sh. Sanat Kapoor,
Advocates.

versus

DIRECTOR GENERAL INCOME TAX Respondent
Through : Sh. Abhishek Maratha, Sr. Standing Counsel
with Ms. Anshul Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

R.V.EASWAR, J.: (ORAL)

These are two writ petitions filed by Mahavira Foundation under Article 226/227 of the Constitution of India. In WP(C) No.13620/2009 the petitioner seeks the quashing of the impugned order dated 29th July, 2009 passed by the Director General of Income Tax (Exemption), Delhi by which he refused to grant approval to the petitioner under Section 10(23C)(vi) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). WP(C) No.5113/2010 is directed against the order passed on 8th May, 2010 by the DGIT(E) under Section 154 of the Act by which the approval

granted to the petitioner by order dated 19th March, 2010 under Section 10(23C)(vi) of the Act was treated as non-est.

2. The petitioner is a society registered on 27th February, 1978 under the Societies Registration Act, 1860 in the name of “Mahavira Foundation”. It is engaged in imparting education and runs a school in Delhi by the name Mahavir Senior Model School for the past 25 years or more. It is being regularly assessed under the Act in respect of its returns filed with the Trust Ward-IV at New Delhi. The petitioner is also registered under the Act under Section 12A of the Act vide certificate dated 21st July, 1978. In respect of the amounts received as donations by the petitioner, it has been granted exemption under Section 80G of the Act from time to time and the latest of such certificates is dated 25th July, 2008 which was valid upto 31st March, 2011.

3. By order dated 6th September, 2004, the petitioner has already been granted exemption under Section 10(23C)(vi) of the Act upto and including the assessment year 2004-05 by the DGIT(E). Before the aforesaid years, the petitioner has always been granted exemption under the aforesaid Section. It is stated that the petitioner’s application for the approval under the aforesaid Section for the assessment years 2005-06 to 2007-08 is pending.

4. While so, on 21st July, 2008, the petitioner applied to the DGIT(E), the respondent herein, seeking approval under Section 10(23C)(vi) in respect of the assessment years 2008-09 to 2010-11. The application was made in the prescribed form which is form No. 56D prescribed by the Income Tax Rules, 1962. The respondent undisputedly is the prescribed authority for granting approvals in respect of the applications filed by universities or other educational institutions existing solely for educational purposes and not for purposes of profit. It is also not in dispute that the assessee made an application under Section 10(23C)(vi) in the status of “other educational institution existing solely for educational purposes and not for purposes of profit”. The second proviso to Section 10(23C)(vi) authorizes the prescribed authority, which is the respondent herein, to call for such documents, including

audited annual accounts, or information from the educational institutions as it thinks necessary in order to satisfy itself about the genuineness of the activities of the educational institution and further authorizes the prescribed authority to also make such enquiries as it deems necessary in this behalf. The third proviso mandates that the educational institution shall apply its income or accumulate the same for application wholly and exclusively to the objects for which it is established, and in the present case the object of the institution is education. These are two necessary pre-conditions by an educational institution seeking approval under Section 10(23C)(vi) of the Act. There are other conditions to be fulfilled by an educational institution such as not carrying on business unless such business is incidental to the attainment of these objects and separate books of accounts are maintained for the business, getting the books of accounts audited by a Chartered Accountant and furnishing the audited report along with the return of income, and so on, but these conditions are not relevant for the purpose of the present writ petitions. It may also be noted that as per the Finance Act, 2006, a proviso was inserted with effect from 1st June, 2006 stipulating that an educational institution, seeking approval on or after 1st June, 2006, had to make the application on or before 30th September of the relevant assessment year from which the exemption was sought. These are the gist of the provisions relating to the approval of an educational institution for the purposes of Section 10(23C)(vi) of the Act.

5. In terms of the powers vested by these provisions on the respondent, he called upon the petitioner to produce its books of accounts and vouchers in order to verify the genuineness of the activities carried on by the petitioner. The books of accounts were produced along with the vouchers. On an examination of the same, the respondent found what he describes as serious irregularities/manipulations/fabrications of the books of accounts disentitling the petitioner to the approval under the Section. Broadly these can be divided into the following categories:-

1. Payment of bills of Mahavir Video Studio in connection with the annual day celebration of the petitioner.

2. Payment of bills of M/s Beli Ram Chaman Lal Jain in connection with the silver articles supplied for the Silver Jubilee Celebration function of the petitioner-school.
3. Payment of bills of Shankar Halwai for supplies made during the annual day function of the school for the financial year 2007-08,
4. Payments made by the petitioner in respect of two identical sets of bills for the same extent.

According to the respondent, the aforesaid payments made by the petitioner were either unsubstantiated by evidence or they were forged or fabricated or manipulated and they also represented personal or bogus or exaggerated expenses. He accordingly concluded that the income of the petitioner was not applied wholly and exclusively to the objects for which it was established, namely, education and, therefore it was not entitled to the approval under Section 10(23C)(vi). It may be noted that the reason for refusal of the approval was founded on the power vested on the respondent under the third proviso to the Section which we have already noticed.

6. A perusal of the reasons and the manner in which the aforesaid expenses/payments were examined and conclusions drawn by the respondent leaves much to be desired. It is necessary to keep in mind that the petitioner has been approved in the past for the purposes of Section 10(23C)(vi) of the Act and it has also been approved for the purposes of Section 80G and hitherto no fault has been found in the manner in which the books of accounts have been maintained and expenses and payments have been made. The registration under Section 12A of the Act continues to remain in force. The respondent has not brought anything on record to show that the petitioner does not exist solely for the purpose of education but exists for the purposes of making profit. Nevertheless, it is certainly open to the respondent to invoke the third proviso to Section 10(23C)(vi) which permits him to examine whether the educational institution has applied its income wholly and exclusively to the object for which it is established, namely, education.

7. We may, therefore, proceed to examine whether the conclusion drawn by the respondent that the petitioner “manipulated and fabricated its books of accounts and vouchers and also debited personal, bogus and exaggerated expenses” is well founded and logically follows from the records produced before him for examination.

8. So far as payments made to Mahavir Video Studio is concerned, there are three payments referred to in para 3 of the impugned order. The petitioner was asked to produce the proprietor of Mahadev Video Studio for examination together with the bill books, cash books, ledger and bank passbooks. The three payments in question aggregated to Rs. 39,222/-. In respect of these payments, though the petitioner could not produce the proprietor of the Video Studio, it produced the relevant bill books from which the three bills were issued to the petitioner. The irregularities noticed by the respondent are only that one bill for Rs.35,950/- was not dated. However, the bill produced by the petitioner contained the date as 31st March, 2007 and it was explained that the date was written by it so that the period to which the payment pertained could be easily identified. From this explanation, the respondent seems to have inferred that the petitioner attempted to create a false impression that the bill was issued by the Video Studio on 31st March, 2007 while no date was put in the bill by the Studio. The argument of the respondent is that the petitioner could have put the date on any other place on the bill if the purpose was to merely identify the period to which it related and that it ought not to have put the date at the appropriate place which had been left blank by the Video Studio. We do not mean to belittle the importance of the examination of the accounts embarked upon by the respondent but it seems to us the main issue which he ought to have focused upon was to find out whether the payment had been made by the petitioner or not. He has not found that the petitioner did not make the payment of Rs.35,950/-. It was argued before us that it was a lapse on the part of the Video Studio not to have put a date on the bill but so long as the payment had been made, which has not been doubted there was no justification to conclude that the books of accounts were fabricated or manipulated, which is a serious charge.

We are inclined to agree with the argument of the petitioner on this point. As regards the other two items of payment, they are of Rs.2,548/- and Rs.724/- and no specific allegation has been made in respect of these payments by the respondent.

9. As regards the payments made to M/s Beli Ram Chaman Lal Jain for purchase of silver articles in connection with the Silver Jubilee Function expenses of the school held on 25th January, 2008, the objection of the respondent was that the bills are dated 6th February, 2008 for 29 silver articles whereas the function had been held earlier on 25th January, 2008. He further says that the petitioner has no evidence to show that the silver articles had been received by it before the Silver Jubilee Function. The inference drawn by him is that they were “obviously appropriated for personal use”. We think that the inference is somewhat farfetched. The fact that the silver jubilee function took place on 25th January, 2008 is not doubted. It could very well be that silver items were supplied by the seller on that date itself pending settlement/finalization of the payment after issue of bills at a later date. Such things are not strange or unknown to take place. Such a serious charge as that the articles were appropriated for personal purposes, does not follow from the material placed before the respondent.

10. Similar is the approach by the respondent with reference to the payments made to Shankar Halwai in connection with the expenses incurred on the annual day function for the financial year 2007-08. These are caterers of food/snacks/refreshments and it would be too much of a nit-picking to expect them to have regular printed bills. Serious allegations such as the signature on the voucher was forged and that they were fabricated or manipulated or doctored have been made by the respondent. The other allegation regarding bills issued by one Deepa Seth are also quite serious, but we have our own doubts as to whether on the material produced before the respondent, he could have drawn such serious inferences against the petitioner and whether he could conclude that the account books were manipulated or fabricated merely because of certain irregularities in the evidence adduced in support

of the payments. The books of accounts of the petitioner are audited every year. It has been averred in the petition that the annual receipts and expenses of the school are more than Rs.3 crores. The accounts are audited and the audited balance sheet for the years 31.3.2006 to 31.3.2008 have been filed. It is also seen from the averments made in the writ petition that the payments to Mahavir Video Studio were all made through cheques and the bank statements were also produced before the respondent. These facts have not been questioned. As regards the payments made to M/s Beli Ram Chaman Lal Jain, they are stated to be for 84 silver shields which were given to the teachers to honour them. The explanation of the petitioner is that the articles were supplied first since the suppliers were well known to the petitioner for the several years and bills were sent later. Here also the payments have been stated to have been made by cheques. The petitioner has also sought to explain the payments made to Shankar Halwai and Deepa Seth.

11. Having regard to the facts noted above as well as explanation adduced by the petitioner in respect of the payments and the suspicious approach of the respondent towards the evidence adduced by the petitioner without noticing the crucial facts such as payment by cheques etc., it seems to us that the respondent was not justified in law in readily inferring that the petitioner manipulated and fabricated its books of accounts and vouchers and also debited personal, bogus and exaggerated expenses. The respondent does not also appear to be justified, having regard to his cursory examination of the evidence adduced by the petitioner, in holding that the income of the petitioner was not applied wholly and exclusively for education.

12. The result of the above discussion is that the impugned order passed by the respondent on 29th July, 2009 refusing to grant approval to the petitioner under Section 10(23C)(vi) of the Act is quashed and set aside. It is open to the respondent to consider the application of the petitioner afresh and pass a speaking order after granting an effective hearing to the petitioner. It is also open to the petitioner to put forth the claim before the respondent that the application is made for the assessment

year 2008-09 onwards and if any such claim is made, the respondent shall consider the same in terms of the proviso inserted by the Finance Act, 2006 with effect from 1st June, 2006. The respondent shall pass fresh orders in accordance with law.

13. WP(C) No.5113/2010 is consequential. Since we have quashed the impugned order passed by the respondent on 29th July, 2009, the order passed by him under Section 154 of the Act on 28th May, 2010 is also quashed.

14. Writ petitions are allowed in the above terms with no order as to costs.

R.V.EASWAR, J

S. RAVINDRA BHAT, J

JULY 04, 2012
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